

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Edward W Miller, Circuit Court Judge

S.C. Supreme Court

Case No 2011-CP-23-8578
Appellate Case No 2014-002638

Francis P Maybank and Jane H P
Maybank, as trustee for the Francis P
Maybank Family Insurance Trust,

Plaintiffs,

Of whom Francis P Maybank is the,

Respondent/Appellant,

v

BB&T Corporation, Branch Banking and
Trust Company, Successor in merger to
Branch Banking and Trust Company of SC,
and Sterling Capital Management, LLC,
Successor in merger to BB&T Asset
Management, LLC,

Appellants/Respondents

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Mitchell M Willoughby, Esquire
Elizabeth Zeck, Esquire
Chad Johnston, Esquire
John M S Hoefer, Esquire
Tracey Colton Green, Esquire
WILLOUGHBY & HOEFER, P A
Post Office Box 8416
Columbia, SC 29202

C Mitchell Brown
D Larry Kristinik
Brian P Crotty
Michael J Anzelmo
NELSON MULLINS RILEY & SCARBOROUGH LLP
Post Office Box 11070
Columbia, SC 29211

Bruce W Bannister, Esquire
BANNISTER, WYATT & STALVEY LLC
Post Office Box 10007
Greenville, SC 29603

William S Brown
NELSON MULLINS RILEY & SCARBOROUGH LLP
Post Office Box 10084
Greenville, SC 29601

Attorneys for Respondent/Appellant

Attorneys for Appellants/Respondents

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SCHEDULE C
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Profit or Loss From Business

(Sole Proprietorship)

► Partnerships, joint ventures, etc., must file Form 1065 or 1065-B

► Attach to Form 1040 or 1041

► See instructions for Schedule C (Form 1040)

OMB No. 1545-0074

2003

Attachment
Sequence No. 09

Name of proprietor

FRANCIS P. MAYBANK

Social security number (SSN)

B Enter code from pages C-7, 8, & 9

► **112900**

A Principal business or profession including product or service (see page C-2)

HORSE RACING

C Business name. If no separate business name, leave blank.

FRANCIS P. MAYBANK LLC

D Employer ID number (EIN), if any

E Business address (including suite or room no.)

City, town or post office, state, and ZIP code

F Accounting method. (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ►

G Did you "materially participate" in the operation of this business during 2003? If "no," see page C-3 for limit on losses

☒ Yes ☐ No

H If you started or acquired this business during 2003, check here

► ☒

Part I Income

1 Gross receipts or sales. Debit or If this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, see page C-3 and check here

1 **34,750.**

2 Returns and allowances

2

3 Subtract line 2 from line 1

3 **34,750.**

4 Cost of goods sold (from line 42 on page 2)

4

5 Gross profit. Subtract line 4 from line 3

5 **34,750.**

6 Other income, including Federal and state gasoline tax credit or refund (see page C-3)

6

7 Gross income. Add lines 5 and 6

7 **34,750.**

Part II Expenses. Enter expenses for business use of your home only on line 30

8 Advertising

8

9 Car and truck expenses

9

(see page C-3)

9

10 Commissions and fees

10

11 Contract labor

11

(see page C-4)

11

12 Depletion

12

13 Depreciation and section 179 expense deduction (not included in Part III) (see page C-4)

13

48,045.

14 Employee benefit programs (other than on line 19)

14

15 Insurance (other than health)

15

16 Interest

16

a Mortgage (paid to banks, etc.)

16a

b Other

16b

17 Legal and professional services

17

1,303.

18 Office expense

18

28 Total expenses before expenses for business use of home. Add lines 8 through 27 in columns

28 **75,700.**

29 Tentative profit (loss). Subtract line 28 from line 7

29 **<40,950.>**

30 Expenses for business use of your home. Attach Form 8829

30

31 Net profit or (loss). Subtract line 30 from line 29.

• If a profit, enter on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see page C-6).

• Estates and trusts, enter on Form 1041, line 3.

• If a loss, you must go to line 32.

32 If you have a loss, check the box that describes your investment in this activity (see page C-6).

• If you checked 32a, enter the loss on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see page C-6). Estates and trusts, enter on Form 1041, line 3.

• If you checked 32b, you must attach Form 8198.

32a ☒ All investment is at risk.
32b ☐ Some investment is not at risk.

LHA For Paperwork Reduction Act Notice, see Form 1040 instructions

8320001 10-08-03

Schedule C (Form 1040) 2003

DEFENDANT'S

EXHIBIT

198

ARGO(BB&T)04579

ROA 5338

Part III Cost of Goods Sold (see page C-6)

33	Method(s) used to value closing inventory	a ☐ Cost	b ☐ Lower of cost or market	c ☒ Other (attach explanation)
				NA
34	Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation			
				☐ Yes ☒ No
35	Inventory at beginning of year. If different from last year's closing inventory attach explanation			
				35
36	Purchases less cost of items withdrawn for personal use			
				36
37	Cost of labor. Do not include any amounts paid to yourself			
				37
38	Materials and supplies			
				38
39	Other costs			
				39
40	Add lines 35 through 39			
				40
41	Inventory at end of year			
				41
42	Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on page 1, line 4			
				42

Part IV Information on Your Vehicle Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 19 on page C-4 to find out if you must file Form 4562.

43	When did you place your vehicle in service for business purposes? (month, day, year) <u>1 / 1</u>		
44	Of the total number of miles you drove your vehicle during 2003, enter the number of miles you used your vehicle for		
	a Business	b Commuting	c Other
45	Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No		
46	Was your vehicle available for personal use during off duty hours? ☐ Yes ☐ No		
47 a	Do you have evidence to support your deduction? ☐ Yes ☐ No		
b	If "Yes," is the evidence written? ☐ Yes ☐ No		

Part V Other Expenses. List below business expenses not included on lines 8-26 or line 60

VET EXPENSE	1,713.
STABLE COSTS	21,173.
BANK CHARGES	72.
TRANSPORT COSTS	1,165.
DUES & SUBSCRIPTIONS	80.
48 Total other expenses. Enter here and on page 1, line 27	24,203.

SCHEDULE C- 2

[illegible]

328102
05-01 03

(D) Asset disposed

* ITC, Section 179 Salvage, HR 3090, Commercial Revitalization Deduction

ARGO(BB&T)04581

SCHEDULE C
(Form 1040)

Department of the Treasury
Internal Revenue Service

Profit or Loss From Business

(Sole Proprietorship)

Partnerships, joint ventures, etc., must file Form 1065 or 1066-B

Attach to Form 1040 or 1041

See instructions for Schedule C (Form 1040)

OMB No. 1545-0047

2004

Attachment
Sequence No. 09

Name of proprietor

Social security number (SSN)

FRANCIS P. MAYBANK

A Principal business or profession, including product or service (see page C 2)

HORSE RACING

C Business name. If no separate business name, leave blank.

FRANCIS P. MAYBANK LLC

E Business address (including suite or room no.)

City, town or post office, state, and ZIP code

F Accounting method (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify)

G Did you "materially participate" in the operation of this business during 2004? If "No" see page C-3 for limit on losses

☒ Yes ☐ No

H If you started or acquired this business during 2004, check here

Part I Income

1	Gross receipts or sales. Caution: If this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, see page C-3 and check here.	1	37,984.
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	37,984.
4	Cost of goods sold (from line 42 on page 2)	4	
5	Gross profit. Subtract line 4 from line 3	5	37,984.
6	Other income, including Federal and state gasoline or fuel tax credit or refund (see page C 3)	6	
7	Gross income. Add lines 5 and 6	7	37,984.

Part II Expenses. Enter expenses for business use of your home only on line 30

8	Advertising	8		19	Pension and profit-sharing plans	19	
9	Car and truck expenses (see page C-3)	9		20	Rent or lease (see page C 5)	20	
10	Commissions and fees	10		a	Vehicles, machinery, and equipment	20a	
11	Contract labor (see page C 4)	11		b	Other business property	20b	
12	Depletion	12		21	Repairs and maintenance	21	
13	Depreciation and section 179 expense deduction (not included in Part III) (see page C-4)	13	18,090.	22	Supplies (not included in Part III)	22	1,389.
14	Employee benefit programs (other than on line 18)	14		23	Taxes and licenses	23	
15	Insurance (other than health)	15		24	Travel, meals, and entertainment:	24	
16	Interest:	16		a	Travel	24a	
a	Mortgage (paid to banks, etc.)	16a		b	Meals and entertainment		
b	Other	16b		c	Enter nondeductible amount included on line 24b (see page C 5).		
17	Legal and professional services	17		d	Subtract line 24c from line 24b	24d	
18	Office expense	18		25	Utilities	25	
26	Total expenses before expenses for business use of home. Add lines 8 through 27 in columns	26		26	Wages (less employment credits)	26	
29	Tentative profit (loss). Subtract line 26 from line 7	29		27	Other expenses (from line 48 on page 2)	27	50,864.
30	Expenses for business use of your home. Attach Form 8829	30		28		28	70,343.
31	Net profit or (loss). Subtract line 30 from line 29	31		29		29	<32,359.>
	• If a profit, enter on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see page C 6). Estates and trusts, enter on Form 1041, line 3.			30		30	
	• If a loss, you must go to line 32.			31		31	<32,359.>
32	If you have a loss, check the box that describes your investment in this activity (see page C-6):						
	• If you checked 32a, enter the loss on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see page C-6). Estates and trusts, enter on Form 1041, line 3.						
	• If you checked 32b, you must attach Form 6198.						

32a ☒ All investment is at risk.
32b ☐ Some investment is not at risk.

LHA For Paperwork Reduction Act Notice, see Form 1040 instructions

Schedule C (Form 1040) 2004

420001 11-03-04

ARGO(BB&T)04676

ROA 5341

Part III Cost of Goods Sold (see page C 5)

33 Method(s) used to value closing inventory a ☐ Cost b ☐ Lower of cost or market c ☒ Other (attach explanation) **NA**

34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☒ No

35 Inventory at beginning of year, if different from last year's closing inventory, attach explanation **35**

36 Purchases, less cost of items withdrawn for personal use **36**

37 Cost of labor. Do not include any amounts paid to yourself **37**

38 Materials and supplies **38**

39 Other costs **39**

40 Add lines 35 through 39 **40**

41 Inventory at end of year **41**

42 Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on page 1, line 4 **42**

Part IV Information on Your Vehicle. Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 on page C-4 to find out if you must file Form 4562.

43 When did you place your vehicle in service for business purposes? (month, day, year) **1 / 1**

44 Of the total number of miles you drove your vehicle during 2004, enter the number of miles you used your vehicle for:
 a Business _____ b Commuting _____ c Other _____

45 Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No

46 Was your vehicle available for personal use during off duty hours? ☐ Yes ☐ No

47a Do you have evidence to support your deduction? ☐ Yes ☐ No
 b If "Yes," is the evidence written? ☐ Yes ☐ No

Part V Other Expenses List below business expenses not included on lines 8-26 or line 30

VET EXPENSE	14,770.
STABLE COSTS	30,337.
BANK CHARGES	48.
TRANSPORT COSTS	3,567.
DUES & SUBSCRIPTIONS	105.
REGISTRATION	2,037.
48 Total other expenses Enter here and on page 1, line 27	50,864.

2004 DEPRECIATION AND AMORTIZATION REPORT
FRANCIS P. MAYBANK LLC

SCHEDULE C- 2

Asset No.	Description	Date Acquired	Method	Life	Line No.	Unadjusted Cost Or Basis	Bus % Excl	Reduction In Basis	Basis For Depreciation	Accumulated Depreciation	Current Sec 179	Amount Of Depreciation
2	HORSE - EVERYDAY WAY	100503	200DB	3.00	17	10,000.		10000.	0.			0.
3	(D)HORSE - SOFT SAND	092703	200DB	3.00	17	9,045.		9,045.	0.			0.
4	HORSE - CAROLINA VALLEY	052803	200DB	3.00	17	20,000.		20000.	0.			0.
5	HORSE - ANNANDALE	010103	200DB	3.00	17	9,000.		9,000.	0.			0.
17	HORSE - STORMING LADY	083104	200DB	3.00	19A	18,090.		18090.	0.		18,090	18,090.
	Total Sch C Depreciation					66,135.		66135.	0.		18,090.	18,090.

428102
10-08-06

(D) - Asset disposed

* ITC, Section 179, Salvage, Bonus, Commercial Revitalization Deduction

SCHEDULE C
(Form 1040)
Department of the Treasury
Internal Revenue Service (99)

Profit or Loss From Business
(Sole Proprietorship)

OMB No. 1545-0074

2005

Attachment
Sequence No 09

Partnerships, joint ventures, etc., must file Form 1065 or 1065-B
Attach to Form 1040 or 1041 See Instructions for Schedule C (Form 1040)

Name of proprietor

FRANCIS P MAYBANK

Social security number (SSN)

B Enter code from pages C-8, 9 & 10
112900

A Principal business or profession, including product or service (see page C-2)
HORSE RACING

C Business name If no separate business name, leave blank

FRANCIS P MAYBANK LLC

E Business address (including suite or room no.)
City, town or post office, state, and ZIP code

F Accounting method (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify)

G Did you materially participate in the operation of this business during 2005? If "No," see page C-3 for limit on losses ☒ Yes ☐ No

H If you started or acquired this business during 2005 check here

Part I Income

1	Gross receipts or sales. Caution: If this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked see page C-3 and check here	1	
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	
4	Cost of goods sold (from line 42 on page 2)	4	
5	Gross profit Subtract line 4 from line 3	5	
6	Other income, including Federal and state gasoline or fuel tax credit or refund (see page C-3)	6	
7	Gross income. Add lines 5 and 6	7	

Part II Expenses Enter expenses for business use of your home only on line 30

8	Advertising	8		18	Office expense	18	
9	Car and truck expenses (see page C-3)	9		19	Pension and profit-sharing plans	19	
10	Commissions and fees	10		20	Rent or lease (see page C-5)	20a	
11	Contract labor (see page C-4)	11		a	Vehicles, machinery, and equipment	20b	
12	Depreciation	12		b	Other business property	21	
13	Depreciation and section 179 expense deduction (not included in Part III) (see page C-4)	13	3,667	21	Repairs and maintenance	22	2,010
14	Employee benefit programs (other than on line 19)	14		22	Supplies (not included in Part III)	23	
15	Insurance (other than health)	15		23	Taxes and licenses	24	
16	Interest	16a		24	Travel, meals, and entertainment	24a	
a	Mortgage (paid to banks, etc.)	16b		a	Travel	24b	
b	Other			b	Deductible meals and entertainment (see page C-5)	25	
17	Legal and professional services	17	1,000	25	Utilities	26	
26				26	Wages (less employment credits)	27	48,462
27				27	Other expenses (from line 48 on page 2)	28	55,139
28	Total expenses before expenses for business use of home. Add lines 8 through 27 in columns	28		29		29	<55,139>
29	Tentative profit (loss) Subtract line 28 from line 7	29		30		30	
30	Expenses for business use of your home. Attach Form 8829	30		31		31	<55,139>
31	Net profit or (loss) Subtract line 30 from line 29	31					
	• If a profit, enter on Form 1040, line 12 and also on Schedule SE line 2 (statutory employees, see page C-6)						
	Estates and trusts, enter on Form 1041, line 3						
	• If a loss, you must go to line 32						
32	If you have a loss, check the box that describes your investment in this activity (see page C-6)						
	• If you checked 32a enter the loss on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see page C-6) Estates and trusts, enter on Form 1041, line 3.						
	• If you checked 32b, you must attach Form 6198. Your loss may be limited.						

32a ☒ All investment is at risk
32b ☐ Some investment is not at risk

LHA For Paperwork Reduction Act Notice see page C-7 of the Instructions

Schedule C (Form 1040) 2005

520001 01-11-06

ARGO(BB&T)04767

ROA 5344

Part III Cost of Goods Sold (see page C-6)

33 Method(s) used to value closing inventory: a ☐ Cost b ☐ Lower of cost or market c ☒ Other (attach explanation) NA

34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☒ No

35 Inventory at beginning of year. If different from last year's closing inventory, attach explanation	35
36 Purchases less cost of items withdrawn for personal use	36
37 Cost of labor. Do not include any amounts paid to yourself	37
38 Materials and supplies	38
39 Other costs	39
40 Add lines 35 through 39	40
41 Inventory at end of year	41
42 Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on page 1, line 4	42

Part IV Information on Your Vehicle. Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 on page C-4 to find out if you must file Form 4562.

43 When did you place your vehicle in service for business purposes? (month day year) 1 / 1 /

44 Of the total number of miles you drove your vehicle during 2005, enter the number of miles you used your vehicle for:
a Business _____ b Commuting _____ c Other _____

45 Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No

46 Was your vehicle available for personal use during off-duty hours? ☐ Yes ☐ No

47a Do you have evidence to support your deduction? ☐ Yes ☐ No
b If "Yes," is the evidence written? ☐ Yes ☐ No

Part V Other Expenses. List below business expenses not included on lines 8-26 or line 30.

VET EXPENSE	11,586
STABLE COSTS	20,373
BANK CHARGES	60
TRANSPORT COSTS	15,212
DUES & SUBSCRIPTIONS	439
REGISTRATION	792
48 Total other expenses. Enter here and on page 1, line 27	48 48,462

2005 DEPRECIATION AND AMORTIZATION REPORT
FRANCIS P MAYBANK LLC

SCHEDULE C- 2

Asset No.	Description	Date Acquired	Method	Life	Unit No.	Unadjusted Cost Or Basis	Basis %	Reduction In Basis	Basis For Depreciation	Accumulated Depreciation	Current Sec 179	Amount Of Depreciation
	(D) HORSE - EVERYDAY											
2	HORSE - CAROLINA VALLEY	10/05/03	200DB	00	17	10,000		10,000	0			0
5	HORSE - ANNANDALE	01/01/03	200DB	00	17	9,000		9,000	0			0
17	HORSE - STORMING LADY	00/11/04	200DB	00	17	18,000		18,000	0			0
18	HORSE - SPIRIT WING	07/01/05	200DB	00	19A	11,000		11,000				3,667
	Total Sch C Depreciation					68,090		57,090	11,000			3,667

828102
01-00-06

(D) Asset disposed

* ITC Section 179 Salvage Bonus Commercial Revitalization Deduction GO Zone

ARGO(BB&T)04769

ROA 5346

SCHEDULE C
(Form 1040)

Department of the Treasury
Internal Revenue Service (IRS)

Profit or Loss From Business

(Sole Proprietorship)

Partnerships, joint ventures, etc., must file Form 1065 or 1065-B
Attach to Form 1040, 1040NR, or 1041 See Instructions for Schedule C (Form 1040)

OMB No. 1545-0074

2006

Attachment
Sequence No. 09

Name of proprietor

FRANCIS P MAYBANK

Social security number (SSN)

Enter code from pages C-8, B & 10

A Principal business or profession, including product or service (see page C-2)

HORSE RACING

112900

C Business name (if no separate business name leave blank)

FRANCIS P MAYBANK LLC

D Employer ID number (EIN) if any

E Business address (including suite or room no.)
City town or post office state and ZIP code

F Accounting method (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify)

G Did you "materially participate" in the operation of this business during 2006? If "No," see page C-3 for limit on losses

☒ Yes ☐ No

H If you started or acquired this business during 2006 check here

Part I Income

1	Gross receipts or sales. Caution. If this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, see page C-3 and check here	1	16,213
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	16,213
4	Cost of goods sold (from line 42 on page 2)	4	
5	Gross profit. Subtract line 4 from line 3	5	16,213
6	Other income, including federal and state gasoline or fuel tax credit or refund (see page C-3)	6	
7	Gross income. Add lines 5 and 6	7	16,213

Part II Expenses Enter expenses for business use of your home only on line 30

8	Advertising	18	Office expense	18	
9	Car and truck expenses (see page C-4)	19	Pension and profit-sharing plans	19	
10	Commissions and fees	20	Rent or lease (see page C-5):	20a	
11	Contract labor (see page C-4)	a	Vehicles, machinery and equipment	20b	
12	Depletion	b	Other business property	21	
13	Depreciation and section 179 expense deduction (not included in Part III) (see page C-4)	21	Repairs and maintenance	22	2,385
14	Employee benefit programs (other than on line 19)	22	Supplies (not included in Part II)	23	
15	Insurance (other than health)	23	Taxes and licenses	24	
16	Interest:	24	Travel, meals, and entertainment:	24a	
a	Mortgage (paid to banks, etc.)	a	Travel	24b	
b	Other	b	Deductible meals and entertainment (see page C-6)	25	
17	Legal and professional services	25	Utilities	26	
		26	Wages (less employment credits)	27	66,546
		27	Other expenses (from line 48 on page 2)	28	85,453
28	Total expenses before expenses for business use of home. Add lines 8 through 27 in columns	28		29	-69,240
29	Tentative profit (loss). Subtract line 28 from line 7	29		30	
30	Expenses for business use of your home. Attach Form 8829	30		31	-69,240
31	Net profit or (loss). Subtract line 30 from line 29	31			
	• If a profit, enter on both Form 1040, line 12, and Schedule SE, line 2 or on Form 1040NR, line 13 (statutory employees see page C-6). Estates and trusts, enter on Form 1041, line 3.				
	• If a loss, you must go to line 32.				
32	If you have a loss check the box that describes your investment in this activity (see page C-6).				
	• If you checked 32a enter the loss on both Form 1040 line 12, and Schedule SE line 2 or on Form 1040NR, line 13 (statutory employees, see page C-6). Estates and trusts, enter on Form 1041, line 3.				
	• If you checked 32b you must attach Form 6198. Your loss may be limited.				

32a ☒ All investment is at risk.
32b ☐ Some investment is not at risk.

LHA For Paperwork Reduction Act Notice see page C-8 of the Instructions.

Schedule C (Form 1040) 2006

620001 11-03-06

ARGO(BB&T)04872

ROA 5347

Part III Cost of Goods Sold (see page C-7)

33 Method(s) used to value closing inventory a ☐ Cost b ☐ Lower of cost or market c ☒ Other (attach explanation) NA

34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☒ No

35 Inventory at beginning of year. If different from last year's closing inventory, attach explanation	35
36 Purchases less cost of items withdrawn for personal use	36
37 Cost of labor. Do not include any amounts paid to yourself	37
38 Materials and supplies	38
39 Other costs	39
40 Add lines 35 through 39	40
41 Inventory at end of year	41
42 Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on page 1, line 4	42

Part IV Information on Your Vehicle. Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 on page C-4 to find out if you must file Form 4562.

43 When did you place your vehicle in service for business purposes? (month day year) / /

44 Of the total number of miles you drove your vehicle during 2006, enter the number of miles you used your vehicle for:
a Business _____ b Commuting _____ c Other _____

45 Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No

46 Was your vehicle available for personal use during off-duty hours? ☐ Yes ☐ No

47a Do you have evidence to support your deduction? ☐ Yes ☐ No
b If "Yes," is the evidence written? ☐ Yes ☐ No

Part V Other Expenses. List below business expenses not included on lines B-26 or line 30.

VET EXPENSE	8,099
STABLE & TRAINING COSTS	35,059
BANK CHARGES	549
TRANSPORT COSTS	343
DUES & SUBSCRIPTIONS	233
REGISTRATION, STAKING AND STUD FEES	22,263
48 Total other expenses. Enter here and on page 1, line 27	66,546

2006 DEPRECIATION AND AMORTIZATION REPORT
FRANCIS P MAYBANK LLC

SCHEDULE C- 2

Asset No.	Description	Date Acquired	Method	Life	Line No.	Unadjusted Cost Or Basis	Bus % Etd	Reduction in Basis	Basis For Depreciation	Accumulated Depreciation	Current Bco 17D	Current Year Deduction
4	HORSE - CAROLINA VALLEY	052803	200DB	3 00	17	20,000		20000	0			0
5	HORSE - ANNANDALE	010103	200DB	3 00	17	8,000		8,000	0			0
17	HORSE - STORMING LADY	083104	200DB	3 00	17	18,090		18090	0			0
18	HORSE - SPIRIT WING	070105	200DB	3 00	17	11,000		11,000	0			0
21	HORSE - SPECIAL DESIRE	070806	200DB	3 00	19A	15,000		15,000	0			0
22	HORSE - ELEDGE	070806	200DB	3 00	19A	16,000		16,000	0			0
	Total Sch C Depreciation					69,090		47090	42,000	3,667		13,222
	Current Year Activity											
	Beginning balance					58,090		47090	11,000	3,667		
	Acquisitions					32,000		0	32,000	0		
	Dispositions					0		0	0	0		
	Ending balance					62,090		47090	42,000	3,667		

534102
01-26-08

(D) Asset disposed

ITC Section 17D Salvage Bonus Commercial Revitalization Deduction, GO Zone

ARGO(BB&T)04874

ROA 5349

SCHEDULE C
(Form 1040)
Department of the Treasury
Internal Revenue Service (99)

Profit or Loss From Business
(Sole Proprietorship)

Partnerships, joint ventures, etc., must file Form 1065 or 1065-B
Attach to Form 1040, 1040NR, or 1041 See Instructions for Schedule C (Form 1040)

OMB No. 1545-0074

2007

Attachment
Sequence No. 09

Name of proprietor

FRANCIS P MAYBANK

A Principal business or profession. Including product or service (see page C-2)

HORSE RACING

C Business name. If no separate business name, leave blank

FRANCIS P MAYBANK LLC

E Business address (including suite or room no.)
City, town or post office, state and ZIP code

F Accounting method. (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) _____

G Did you "materially participate" in the operation of this business during 2007? If "No," see page C-3 for limit on losses. ☒ Yes ☐ No

H If you started or acquired this business during 2007, check here _____

Social security number (SSN)

B Enter code from pages C-8, 9 & 10

112900

D Employer ID number (EIN) if any

Part I Income

1	Gross receipts or sales. Caution: If this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, see page C-3 and check here	1	20,290
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	20,290
4	Cost of goods sold (from line 42 on page 2)	4	
5	Gross profit. Subtract line 4 from line 3	5	20,290
6	Other income, including federal and state gasoline or fuel tax credit or refund (see page C-3)	6	
7	Gross income. Add lines 5 and 6	7	20,290

Part II Expenses Enter expenses for business use of your home only on line 30

8	Advertising	8		18	Office expense	18	
9	Car and truck expenses (see page C-4)	9		19	Pension and profit-sharing plans	19	
10	Commissions and fees	10		20	Rent or lease (see page C-5):	20a	
11	Contract labor (see page C-4)	11		a	Vehicles, machinery, and equipment	20b	
12	Depreciation	12		b	Other business property	21	
13	Depreciation and section 179 expense deduction (not included in Part III) (see page C-4)	13	15,407	21	Repairs and maintenance	22	3,322
14	Employee benefit programs (other than on line 10)	14		22	Supplies (not included in Part III)	23	
15	Insurance (other than health)	15		23	Taxes and licenses	24	
16	Interest:	16a		24	Travel, meals, and entertainment:	24a	
a	Mortgage (paid to banks, etc.)	16b		a	Travel	24b	
b	Other	17	1,435	b	Deductible meals and entertainment (see page C-6)	25	
17	Legal and professional services	17		25	Utilities	26	
28	Total expenses before expenses for business use of home. Add lines 8 through 27 in columns	28		26	Wages (less employment credits)	27	91,759
29	Tentative profit (loss). Subtract line 28 from line 7	29		27	Other expenses (from line 48 on page 2)	28	111,923
30	Expenses for business use of your home. Attach Form 8829	30		28		29	-91,633
31	Net profit or (loss). Subtract line 30 from line 29	31		29		30	
32	If you have a loss, check the box that describes your investment in this activity (see page C-7):	32a		30		31	-91,633
a	If a profit, enter on both Form 1040, line 12, and Schedule SE, line 2 or on Form 1040NR, line 13 (statutory employees, see page C-7). Estates and trusts, enter on Form 1041, line 3.	32b		31		32a	
b	If a loss, you must go to line 32.	32b		32a		32b	
c	If you checked 32a, enter the loss on both Form 1040, line 12, and Schedule SE, line 2 or on Form 1040NR, line 13 (statutory employees, see page C-7). Estates and trusts, enter on Form 1041, line 3.	32b		32b		32c	
d	If you checked 32b, you must attach Form 6198. Your loss may be limited.	32b		32c		32d	

LHA For Paperwork Reduction Act Notice, see page C-8 of the Instructions.

Schedule C (Form 1040) 2007

720001 11-05-07

ARGO(BB&T)04979

ROA 5350

Part III Cost of Goods Sold (see page C-7)

33 Method(s) used to value closing inventory: a ☐ Cost b ☐ Lower of cost or market c ☒ Other (attach explanation) NA

34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☒ No

35 Inventory at beginning of year. If different from last year's closing inventory, attach explanation	35
36 Purchases less cost of items withdrawn for personal use	36
37 Cost of labor. Do not include any amounts paid to yourself	37
38 Materials and supplies	38
39 Other costs	39
40 Add lines 35 through 39	40
41 Inventory at end of year	41

42 Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on page 1, line 4. 42

Part IV Information on Your Vehicle. Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 on page C-4 to find out if you must file Form 4562.

43 When did you place your vehicle in service for business purposes? (month day year) 1 / 1 /
 44 Of the total number of miles you drove your vehicle during 2007, enter the number of miles you used your vehicle for:
 a Business _____ b Commuting _____ c Other _____

45 Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No

46 Was your vehicle available for personal use during off-duty hours? ☐ Yes ☐ No

47 a Do you have evidence to support your deduction? ☐ Yes ☐ No
 b If "Yes," is the evidence written? ☐ Yes ☐ No

Part V Other Expenses. List below business expenses not included on lines 8-26 or line 30.

VET EXPENSE	17,098
STABLE & TRAINING COSTS	53,895
DUES & SUBSCRIPTIONS	829
REGISTRATION, STAKING AND STUD FEES	19,538
BANK CHARGES	399
48 Total other expenses. Enter here and on page 1, line 27.	91,759

2007 DEPRECIATION AND AMORTIZATION REPORT
FRANCIS P MAYBANK LLC

SCHEDULE C- 2

Asset No	Description	Date Acquired	Method	Life	Line No	Unadjusted Cost Or Basis	Btu % Etd	Reduction In Basis	Basis For Depreciation	Accumulated Depreciation	Current Sec 179	Current Year Deduction
4	HORSE - CAROLINA VALLEY	052803	200DB3	00	17	20,000		20000	0			0
5	HORSE - ANNANDALE	010103	200DB3	00	17	9,000		9,000	0			0
17	HORSE - STORMING LADY	093104	200DB3	00	17	18,090		18090	0			0
18	HORSE - SPIRIT WING	070105	200DB3	00	17	11,000		11,000	8,556			629
21	HORSE - SPECIAL DESIRE	070806	200DB3	00	17	15,000		15,000	5,000			6,667
22	HORSE - PLEDGE	070806	200DB3	00	17	16,000		16,000	5,333			1,144
	Total Sch C Depreciation					69,090		67090	42,000	16,899		15,402

724902
04-27-07

(0) - Asset disposed

* ITC Section 179 Salvage Bonus Commercial Revitalization Deduction QO Zone

ARGO(BB&T)04981

ROA 5352

SCHEDULE C
(Form 1040)

Profit or Loss From Business

(Sole Proprietorship)

OMB No 1545-0074

2008

Attachment
Sequence No **09**

Department of the Treasury
Internal Revenue Service (99)

Partnerships, joint ventures, etc., generally must file Form 1065 or 1065-B
Attach to Form 1040, 1040NR, or 1041 See Instructions for Schedule C (Form 1040)

Name of proprietor

FRANCIS P MAYBANK

Social security number (SSN)

Enter code from pages C-9, 10 & 11
112900

A Principal business or profession, including product or service (see page C-3 of the instructions)
HORSE RACING

C Business name. If no separate business name, leave blank.
FRANCIS P MAYBANK LLC

E Business address (including suite or room no.)
City, town or post office, state, and ZIP code

SC

F Accounting method (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶

G Did you "materially participate" in the operation of this business during 2008? If "No," see page C-4 for limit on losses

☒ Yes ☐ No

H If you started or acquired this business during 2008, check here

Part I Income

1 Gross receipts or sales **Caution.** See page C-4 and check the box if

- This income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, or
- You are a member of a qualified joint venture reporting only rental real estate income not subject to self-employment tax. Also see page C-4 for limit on losses.

2 Returns and allowances

3 Subtract line 2 from line 1

4 Cost of goods sold (from line 42 on page 2)

5 Gross profit Subtract line 4 from line 3

6 Other income, including federal and state gasoline or fuel tax credit or refund (see page C-4)

7 Gross income Add lines 5 and 6

Part II Expenses Enter expenses for business use of your home only on line 30

8 Advertising

9 Car and truck expenses (see page C-5)

10 Commissions and fees

11 Contract labor (see page C-5)

12 Depletion

13 Depreciation and section 179 expense deduction (not included in Part II) (see page C-5)

14 Employee benefit programs (other than on line 19)

15 Insurance (other than health)

16 Interest

a Mortgage (paid to banks, etc.)

b Other

17 Legal and professional services

18 Office expense

19 Pension and profit sharing plans

20 Rent or lease (see page C-6)

a Vehicles, machinery, and equipment

b Other business property

21 Repairs and maintenance

22 Supplies (not included in Part II)

23 Taxes and licenses

24 Travel, meals, and entertainment

a Travel

b Deductible meals and entertainment (see page C-7)

25 Utilities

26 Wages (less employment credits)

27 Other expenses (from line 48 on page 2)

28 Total expenses before expenses for business use of home Add lines 8 through 27

29 Tentative profit or (loss) Subtract line 28 from line 7

30 Expenses for business use of your home Attach Form 8829

31 Net profit or (loss) Subtract line 30 from line 29

If a profit, enter on both Form 1040, line 12, and Schedule SE, line 2, or on Form 1040NR, line 13 (if you checked the box on line 1, see page C-7). Estates and trusts, enter on Form 1041, line 3

If a loss, you must go to line 32.

32 If you have a loss, check the box that describes your investment in this activity (see page C-8)

If you checked 32a, enter the loss on both Form 1040, line 12, and Schedule SE, line 2, or on Form 1040NR, line 13 (if you checked the box on line 1, see the line 31 instructions on page C-7). Estates and trusts, enter on Form 1041, line 3

If you checked 32b, you must attach Form 6198. Your loss may be limited

32a ☒ All investment is at risk.
32b ☐ Some investment is not at risk.

For Paperwork Reduction Act Notice, see page C-9 of the Instructions
DAA

Schedule C (Form 1040) 2008

ARGO(BB&T)05063

ROA 5353

FRANCIS P MAYBANK

Schedule C (Form 1040) 2008 HORSE RACING

Page 2

Part III Cost of Goods Sold (see page C-8)33 Method(s) used to value closing inventory a ☒ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation)34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory?
If "Yes" attach explanation ☐ Yes ☐ No

35 Inventory at beginning of year If different from last year's closing inventory attach explanation

36 Purchases less cost of items withdrawn for personal use

37 Cost of labor Do not include any amounts paid to yourself

38 Materials and supplies

39 Other costs

40 Add lines 35 through 39

41 Inventory at end of year

42 Cost of goods sold Subtract line 41 from line 40 Enter the result here and on page 1, line 4

Part IV Information on Your Vehicle Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business See the instructions for line 13 on page C-5 to find out if you must file Form 4562

43 When did you place your vehicle in service for business purposes? (month, day, year) ▶

44 Of the total number of miles you drove your vehicle during 2008, enter the number of miles you used your vehicle for

a Business

b Commuting (see instructions)

c Other

45 Was your vehicle available for personal use during off-duty hours?

46 Do you (or your spouse) have another vehicle available for personal use?

47a Do you have evidence to support your deduction?

b If "Yes," is the evidence written?

Part V Other Expenses List below business expenses not included on lines 8-26 or line 30

VET EXPENSE

STABLE & TRAINING COSTS

DUES & SUBSCRIPTIONS

REGISTRATION, STAKING AND STU

BANK CHARGES

☐	Yes	☐	No
☐	Yes	☐	No
☐	Yes	☐	No
☐	Yes	☐	No

9,212

58,209

344

34,451

415

102,631

48 Total other expenses Enter here and on page 1, line 27

Schedule C (Form 1040) 2008

DAA

ARGO(BB&T)05064

ROA 5354

SCHEDULE C
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Profit or Loss From Business

(Sole Proprietorship)

▶ Partnerships, joint ventures, etc., generally must file Form 1065 or 1065 B
▶ Attach to Form 1040, 1040NR, or 1041 ▶ See Instructions for Schedule C (Form 1040)

OMB No 1545-0074

2009

Attachment
Sequence No **09**

Name of proprietor

FRANCIS P MAYBANK

Social security number (SSN)

[REDACTED]

A Principal business or profession, including product or service (see page C-2 of the instructions)
HORSE RACING

B Enter code from pages C-9 10, & 11
▶ **112900**

C Business name. If no separate business name, leave blank.
FRANCIS P. MAYBANK LLC

D Employer ID number (EIN), if any

E Business address (including suite or room no.) ▶
City, town or post office, state, and ZIP code

SC

F Accounting method (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶

G Did you "materially participate" in the operation of this business during 2009? If "No," see page C-3 for limit on losses

☒ Yes ☐ No

H If you started or acquired this business during 2009, check here

Part I Income

1 Gross receipts or sales. Caution See page C 4 and check the box if • This income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, or • You are a member of a qualified joint venture reporting only rental real estate income not subject to self employment tax. Also see page C-3 for limit on losses	☐	1	49,462
2 Returns and allowances		2	
3 Subtract line 2 from line 1		3	49,462
4 Cost of goods sold (from line 42 on page 2)		4	
5 Gross profit Subtract line 4 from line 3		5	49,462
6 Other income, including federal and state gasoline or fuel tax credit or refund (see page C-4)		6	
7 Gross income Add lines 5 and 6		7	49,462

Part II Expenses Enter expenses for business use of your home only on line 30

8 Advertising	8		18 Office expense	18	
9 Car and truck expenses (see page C-4)	9		19 Pension and profit-sharing plans	19	
10 Commissions and fees	10		20 Rent or lease (see page C-6)	20a	
11 Contract labor (see page C-4)	11		a Vehicles, machinery, and equipment	20b	
12 Depletion	12		b Other business property	21	
13 Depreciation and section 179 expense deduction (not included in Part III) (see page C-5)	13	2,296	21 Repairs and maintenance	22	
14 Employee benefit programs (other than on line 19)	14		22 Supplies (not included in Part III)	23	
15 Insurance (other than health)	15		23 Taxes and licenses	24	
16 Interest	16a		24 Travel, meals, and entertainment	24a	
a Mortgage (paid to banks, etc.)	16b		a Travel	24b	
b Other			b Deductible meals and entertainment (see page C-6)	25	
17 Legal and professional services	17	2,500	25 Utilities	26	
			26 Wages (less employment credits)	27	68,719
			27 Other expenses (from line 48 on page 2)		
28 Total expenses before expenses for business use of home Add lines 8 through 27	28		28	73,515	
29 Tentative profit or (loss) Subtract line 28 from line 7	29		29	-24,053	
30 Expenses for business use of your home. Attach Form 8829	30		30		
31 Net profit or (loss) Subtract line 30 from line 29 • If a profit, enter on both Form 1040, line 12, and Schedule SE, line 2, or on Form 1040NR, line 13 (if you checked the box on line 1, see page C-7) Estates and trusts enter on Form 1041, line 3 • If a loss, you must go to line 32	31		31	-24,053	

32 If you have a loss, check the box that describes your investment in this activity (see page C-7)
• If you checked 32a enter the loss on both Form 1040, line 12, and Schedule SE, line 2, or on Form 1040NR, line 13 (if you checked the box on line 1, see the line 31 instructions on page C-7) Estates and trusts, enter on Form 1041, line 3
• If you checked 32b, you must attach Form 6198 Your loss may be limited

32a ☒ All investment is at risk
32b ☐ Some investment is not at risk

For Paperwork Reduction Act Notice, see page C-9 of the instructions

Schedule C (Form 1040) 2009

DAA

ARGO/RR&T05168

ROA 5355

FRANCIS P MAYBANK

Schedule C (Form 1040) 2009 HORSE RACING

Page 2

Part III Cost of Goods Sold (see page C-8)33 Method(s) used to value closing inventory a ☐ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation)34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory?
If "Yes," attach explanation ☐ Yes ☐ No

35 Inventory at beginning of year If different from last year's closing inventory, attach explanation

36 Purchases less cost of items withdrawn for personal use

37 Cost of labor Do not include any amounts paid to yourself

38 Materials and supplies

39 Other costs

40 Add lines 35 through 39

41 Inventory at end of year

42 Cost of goods sold Subtract line 41 from line 40 Enter the result here and on page 1, line 4

Part IV Information on Your Vehicle Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business See the instructions for line 13 on page C-5 to find out if you must file Form 4562

43 When did you place your vehicle in service for business purposes? (month, day, year) ►

44 Of the total number of miles you drove your vehicle during 2009 enter the number of miles you used your vehicle for

a Business

b Commuting (see instructions)

c Other

45 Was your vehicle available for personal use during off-duty hours?

46 Do you (or your spouse) have another vehicle available for personal use?

47a Do you have evidence to support your deduction?

b If "Yes," is the evidence written?

☐	Yes	☐	No
☐	Yes	☐	No
☐	Yes	☐	No
☐	Yes	☐	No

Part V Other Expenses List below business expenses not included on lines 8-26 or line 30

VET EXPENSE

STABLE & TRAINING COSTS

BANK CHARGES

TRANSPORT COSTS

DUES & SUBSCRIPTIONS

REGISTRATION, STAKING, & STUD

10,196

47,293

500

735

369

9,626

48 Total other expenses. Enter here and on page 1 line 27

48 68,719

DAA

Schedule C (Form 1040) 2009

ARGO(BB&T)05169

ROA 5356

SCHEDULE C
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Profit or Loss From Business

(Sole Proprietorship)

Partnerships, joint ventures, etc., generally must file Form 1065 or 1065-B
Attach to Form 1040, 1040NR, or 1041 See Instructions for Schedule C (Form 1040)

OMB No 1545-0074

2010

Attachment
Sequence No. **09**

Name of proprietor

FRANCIS P MAYBANK

Social security number (SSN)

A Principal business or profession, including product or service (see Instructions)
HORSE RACING

B Enter code from pages C-9 10 & 11
112900

C Business name If no separate business name, leave blank
FRANCIS P. MAYBANK LLC

D Employer ID number (EIN), if any

E Business address (including suite or room no.) **124 HIDDEN HILLS DRIVE**
City, town or post office, state, and ZIP code **GREENVILLE SC 29605**

F Accounting method (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) **▶**

G Did you "materially participate" in the operation of this business during 2010? If "No," see Instructions for limit on losses ☒ Yes ☐ No

H If you started or acquired this business during 2010, check here

Part I Income

1 Gross receipts or sales **Caution** See Instructions and check the box if

- This income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, or
- You are a member of a qualified joint venture reporting only rental real estate income not subject to self-employment tax Also see Instructions for limit on losses

1 **48,490**

2 Returns and allowances

3 **48,490**

3 Subtract line 2 from line 1

4 Cost of goods sold (from line 42 on page 2)

4 **48,490**

6 Gross profit Subtract line 4 from line 3

6 Other income including federal and state gasoline or fuel tax credit or refund (see Instructions)

6 **48,490**

7 Gross income Add lines 5 and 6

7 **48,490**

Part II Expenses Enter expenses for business use of your home only on line 30

8 Advertising

8

18 Office expense

18

9 Car and truck expenses (see Instructions)

9

19 Pension and profit sharing plans

19

10 Commissions and fees

10

20 Rent or lease (see Instructions)

20

11 Contract labor (see Instructions)

11

a Vehicles, machinery, and equipment

20a

12 Depletion

12

b Other business property

20b

13 Depreciation and section 179 expense deduction (not included in Part III) (see Instructions)

13

21 Repairs and maintenance

21

14 Employee benefit programs (other than on line 19)

14

22 Supplies (not included in Part III)

22

16 Insurance (other than health)

16

23 Taxes and licenses

23

16 Interest

16

24 Travel, meals, and entertainment:

24

a Mortgage (paid to banks, etc.)

16a

a Travel

24a

b Other

16b

b Deductible meals and entertainment (see Instructions)

24b

17 Legal and professional services

17

26 Utilities

26

26 Wages (less employment credits)

26

27 Other expenses (from line 48 on page 2)

27

76,795

28 Total expenses before expenses for business use of home Add lines 8 through 27

28

78,713

29 Tentative profit or (loss) Subtract line 28 from line 7

29

-30,223

30 Expenses for business use of your home Attach Form 8829

30

31 Net profit or (loss) Subtract line 30 from line 29

31

-30,223

- If a profit, enter on both Form 1040, line 12, and Schedule SE, line 2, or on Form 1040NR, line 13 (if you checked the box on line 1, see Instructions) Estates and trusts, enter on Form 1041, line 3
- If a loss, you must go to line 32

32 If you have a loss, check the box that describes your investment in this activity (see Instructions)

- If you checked 32a enter the loss on both Form 1040, line 12, and Schedule SE, line 2, or on Form 1040NR, line 13 (if you checked the box on line 1, see the line 31 Instructions) Estates and trusts, enter on Form 1041, line 3
- If you checked 32b, you must attach Form 6198 Your loss may be limited

32a ☒ All investment is at risk.
32b ☐ Some investment is not at risk.

For Paperwork Reduction Act Notice, see your tax return Instructions

Schedule C (Form 1040) 2010

DAA

ARGO(BB&T)05327

ROA 5357

FRANCIS P MAYBANK

Schedule C (Form 1040) 2010 HORSE RACING

Page 2

Part III Cost of Goods Sold (see instructions)33 Method(s) used to value closing inventory a ☐ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation)34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory?
If "Yes," attach explanation ☐ Yes ☐ No

35 Inventory at beginning of year If different from last year's closing inventory, attach explanation

36 Purchases less cost of items withdrawn for personal use

37 Cost of labor Do not include any amounts paid to yourself

38 Materials and supplies

39 Other costs

40 Add lines 35 through 39

41 Inventory at end of year

42 Cost of goods sold Subtract line 41 from line 40 Enter the result here and on page 1, line 4

Part IV Information on Your Vehicle Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business See the instructions for line 13 to find out if you must file Form 4562

43 When did you place your vehicle in service for business purposes? (month, day, year) ▶

44 Of the total number of miles you drove your vehicle during 2010, enter the number of miles you used your vehicle for

a Business

b Commuting (see instructions)

c Other

45 Was your vehicle available for personal use during off-duty hours? ☐ Yes ☐ No46 Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No47a Do you have evidence to support your deduction? ☐ Yes ☐ No

b If "Yes," is the evidence written?

Part V Other Expenses List below business expenses not included on lines 8-26 or line 30

VET EXPENSE

18,935

STABLE & TRAINING COSTS

54,534

TRANSPORT COSTS

1,915

DUES & SUBSCRIPTIONS

137

REGISTRATION, STAKING, & STUD

1,274

48 Total other expenses Enter here and on page 1, line 27

76,795

Schedule C (Form 1040) 2010

DAA

ARGO(BB&T)05328

ROA 5358

**SCHEDULE C
(Form 1040)**

Profit or Loss From Business
(Sole Proprietorship)

OMB No 1545-0074

2011

Attachment
Sequence No **09**

Department of the Treasury
Internal Revenue Service

(99)

▶ For information on Schedule C and its instructions, go to www.irs.gov/schedulec
▶ Attach to Form 1040, 1040NR, or 1041; partnerships generally must file Form 1065.

Name of proprietor

FRANCIS P MAYBANK

Social security number (SSN)

[REDACTED]

A Principal business or profession, including product or service (see instructions)
HORSE RACING

B Enter code from instructions
▶ **112900**

C Business name. If no separate business name, leave blank.
FRANCIS P MAYBANK LLC

D Employer ID number (EIN) (see instr)

E Business address (including suite or room no) ▶ **124 HIDDEN HILLS DRIVE**
City, town or post office, state, and ZIP code **GREENVILLE SC 29605**

F Accounting method (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶

☒ Yes ☐ No

G Did you materially participate in the operation of this business during 2011? If No, see instructions for limit on losses

☐ Yes ☒ No

H If you started or acquired this business during 2011, check here

☐ Yes ☒ No

I Did you make any payments in 2011 that would require you to file Form(s) 1099? (see instructions)

☐ Yes ☒ No

J If "Yes" did you or will you file all required Forms 1099?

Part I Income

1a Merchant card and third party payments. For 2011, enter -0-

b Gross receipts or sales not entered on line 1a (see instructions)

c Income reported to you on Form W-2. If the "Statutory Employee" box on that form was checked, Caution. See instr before completing this line

d Total gross receipts. Add lines 1a through 1c

2 Returns and allowances plus any other adjustments (see instructions)

3 Subtract line 2 from line 1d

4 Cost of goods sold (from line 42)

5 Gross profit. Subtract line 4 from line 3

6 Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)

7 Gross income. Add lines 5 and 6

1a	0
1b	
1c	

1d	
2	
3	
4	
5	0
6	
7	0

Part II Expenses

Enter expenses for business use of your home only on line 30

8 Advertising	8		18 Office expense (see instructions)	18	
9 Car and truck expenses (see instructions)	9		19 Pension and profit-sharing plans	19	
10 Commissions and fees	10		20 Rent or lease (see instructions)	20a	
11 Contract labor (see instructions)	11		a Vehicles, machinery, and equipment	20b	
12 Depletion	12		b Other business property	21	
13 Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13		21 Repairs and maintenance	22	6,771
14 Employee benefit programs (other than on line 19)	14		22 Supplies (not included in Part III)	23	
15 Insurance (other than health)	15		23 Taxes and licenses	24	
16 Interest	16a		24 Travel, meals, and entertainment	24a	
a Mortgage (paid to banks, etc)	16b		a Travel	24b	
b Other			b Deductible meals and entertainment (see instructions)	25	
17 Legal and professional services	17	1,545	25 Utilities	26	
28 Total expenses before expenses for business use of home. Add lines 8 through 27a			26 Wages (less employment credits)		
29 Tentative profit or (loss). Subtract line 28 from line 7			27a Other expenses (from line 48)	27b	18,173
30 Expenses for business use of your home. Attach Form 8829. Do not report such expenses elsewhere			b Reserved for future use	28	26,489
31 Net profit or (loss). Subtract line 30 from line 29				29	-26,489
• If a profit, enter on both Form 1040, line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2				30	
If you entered an amount on line 1c, see instr. Estates and trusts, enter on Form 1041, line 3				31	-26,489
• If a loss, you must go to line 32					
32 If you have a loss, check the box that describes your investment in this activity (see instructions)				32a	☒ All investment is at risk.
• If you checked 32a, enter the loss on both Form 1040, line 12, (or Form 1040NR, line 13) and on Schedule SE, line 2				32b	☐ Some investment is not at risk.
If you entered an amount on line 1c, see the instructions for line 31. Estates and trusts, enter on Form 1041, line 3					
• If you checked 32b, you must attach Form 6198. Your loss may be limited					

For Paperwork Reduction Act Notice, see your tax return instructions

Schedule C (Form 1040) 2011

DAA

ARGO(BB&T)05552

ROA 5359

FRANCIS P MAYBANK

Schedule C (Form 1040) 2011 HORSE RACING

Page 2

Part III Cost of Goods Sold (see instructions)33 Method(s) used to value closing inventory a ☐ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation)34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory?
If "Yes," attach explanation ☐ Yes ☐ No

35 Inventory at beginning of year If different from last year's closing inventory, attach explanation

36 Purchases less cost of items withdrawn for personal use

37 Cost of labor Do not include any amounts paid to yourself

38 Materials and supplies

39 Other costs

40 Add lines 35 through 39

41 Inventory at end of year

42 Cost of goods sold Subtract line 41 from line 40 Enter the result here and on line 4

Part IV Information on Your Vehicle Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business See the instructions for line 13 to find out if you must file Form 4562

43 When did you place your vehicle in service for business purposes? (month, day year) ▶

44 Of the total number of miles you drove your vehicle during 2011, enter the number of miles you used your vehicle for

a Business b Commuting (see instructions) c Other

45 Was your vehicle available for personal use during off-duty hours? ☐ Yes ☐ No46 Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No47a Do you have evidence to support your deduction? ☐ Yes ☐ No

b If "Yes," is the evidence written?

Part V Other Expenses List below business expenses not included on lines 8-26 or line 30

VET EXPENSE

STABLE & TRAINING COSTS

835

17,338

48 Total other expenses Enter here and on line 27a

48 18,173

Schedule C (Form 1040) 2011

DAA

ARGO(BB&T)05553

ROA 5360

Bear, Stearns & Co Inc
383 Madison Avenue
New York, New York 10179

Re Risk Disclosure Form for the Trading of Over-the-Counter Derivative Contracts

To Whom It May Concern

In connection with the undersigned entering into, from time to time, over-the-counter derivative transactions, including but not limited to, put options, call options, collar transactions, forward contracts, swaps, forward sales, variable pre-paid forward contracts, selling strategies including, but not limited to Contingent Forward Sales ("CFS") or Accelerated Share Appreciation Strategy ("ASAP") and others collectively called ("OTC Derivatives") with Bear, Stearns & Co Inc or any of its affiliates (together, "Bear Stearns"), the undersigned hereby represents and warrants to Bear Stearns as follows.

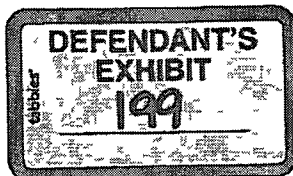
(i) the undersigned has total assets of USD _____ of which USD _____ is in liquid assets (liquid assets are cash, cash equivalents and assets readily salable and convertible into cash) and a net worth of USD _____.

(ii) the undersigned has sufficient knowledge and understanding of financial instruments so as to enable the undersigned to evaluate the merits and risks of an investment/divestment decision with respect to OTC Derivatives,

(iii) the undersigned has liquid assets sufficient to meet all margin calls associated with OTC Derivatives and if the undersigned loses the entire investment (or amounts in excess of the initial premium) should the market go against the undersigned, such losses will not materially adversely affect the financial condition of the undersigned,

(iv) the undersigned acknowledges that OTC Derivatives are not standardized stock options of the type issued by the Options Clearing Corporation and traded on an exchange, and that OTC Derivatives are not liquid investments in that (A) OTC Derivatives have not been and will not be registered under the United States Securities Act of 1933, as amended (the "Act"), or under the securities laws of any state or jurisdiction and may not be transferred without such registration or an exemption therefrom, (B) the OTC Derivatives may not be assigned or transferred without the consent of Bear Stearns, which consent may be withheld in Bear Stearns' discretion, and (C) the OTC Derivatives may be required to be held to maturity or exercise and Bear Stearns is not required to permit an unwind of the OTC Derivatives,

(v) the undersigned understands that (A) OTC Derivatives involve a high degree of risk, including the risk of (1) expiring worthless in the case of purchased options, (2) limiting potential profits in the case of sold "covered" options/selling strategies relating to stock owned by the undersigned as at trade date, (3) incurring a substantial loss in the case of written "naked" options as to which the undersigned does not own the stock at trade date, (4) not selling shares in the case of the ASAP or CFS and (5) in the case of any of the foregoing for which the undersigned is obligated to maintain stock as collateral one-for-one against the maximum stock underlying the OTC



Derivative ("covered" positions), the inability to liquidate the stock unless the OTC Derivative is first unwound (which Bear Stearns is not obligated to do), (B) a profitable investment decision requires that a purchaser or writer generally be correct about the direction, amount and timing of changes in the underlying stock; (C) a purchased option is a "wasting asset" in that the market value will tend to decrease as the time to expiration becomes shorter; (D) the value of an option may not move on a one for one basis with the value of the underlying asset; and (E) the OTC Derivatives discussed in this letter (to the extent they are obligations of Bear Stearns) are unsecured obligation of Bear, Stearns;

(vi) the undersigned has the power to execute and deliver this Representation Letter and to purchase, sell and/or enter into the OTC Derivatives, and such execution, delivery and, following due inquiry, to the undersigned's knowledge, purchase, sale and or entry into do not violate or conflict with any law, regulation or order or judgment applicable to the undersigned or the assets of the undersigned,

(vii) the undersigned has had an opportunity to discuss and receive advice from its financial advisers, accountants and counsel relating to OTC Derivatives, and the undersigned, such advisors, accountants and counsel have had a reasonable opportunity to ask questions of and receive answers from representatives of Bear Stearns concerning the terms and conditions of the OTC Derivatives, including information regarding any Bear Stearns company or issuer of OTC Derivatives, and all such questions have been answered to the full satisfaction of the undersigned,

(viii) the undersigned has relied solely upon tax, regulatory, accounting or legal advice received from its own advisors and not from Bear Stearns in connection with these transactions and therefore acknowledges that Bear Stearns shall assume no liability whatsoever for any existing or future tax, regulatory, accounting or legal treatment relating to OTC transactions.

The undersigned acknowledges and agrees that Bear Stearns will rely on the foregoing representations and warranties for its ongoing OTC Derivatives business with the undersigned. The undersigned agrees to advise Bear Stearns promptly of any changes that may render any of the representations contained herein untrue or incorrect in any way

FRANCIS P. MAYBANK
Undersigned Name in Print

7/16/06
Date

Francis P. Maybank
Signature of Undersigned

Title of Signatory: (if applicable)

Affiliate Offices.
Bear, Stearns International Limited
One Canada Square
London E14 5AD England

Bear Stearns Bank, plc
Block 8 Harcourt Centre
Dublin 2, Ireland

STAMPS

LIBOR -
5.15%

@ 42.16
25

Prepaid Variable Forward Settlement Illustration

Underlying Stock: BBT
Initial Stock Price: \$42.2500
Number of Shares: 220,000
Current Market Value: \$9,295,000

Floor Level: 100.00%
Cap Level: 132.50%
Proceeds Upfront: 76.35%
Maturity (Years): 3

\$42.2500
\$55.9313
\$7,096,732.50

Aug 16th
Settlement

Tues 11 Aug 2009
14 Settlement

\$1,190,000 Dividend

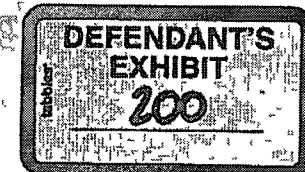
Stock Price	Change from Original Price	Appreciation Retention		Settlement Choices	
		Shares Retained	Retained Share Value	Cash Delivered	Shares Delivered
\$33.80	-20.00%	0	\$0	\$7,436,000	220,000
\$34.86	-17.50%	0	\$0	\$7,668,375	220,000
\$35.91	-15.00%	0	\$0	\$7,900,750	220,000
\$36.97	-12.50%	0	\$0	\$8,133,125	220,000
\$38.03	-10.00%	0	\$0	\$8,365,500	220,000
\$39.08	-7.50%	0	\$0	\$8,597,875	220,000
\$40.14	-5.00%	0	\$0	\$8,830,250	220,000
\$41.19	-2.50%	0	\$0	\$9,062,625	220,000
\$42.25	0.00%	220,000	\$9,295,000	\$0	0
\$43.31	2.50%	5,366	\$232,375	\$9,295,000	214,634
\$44.36	5.00%	10,476	\$464,750	\$9,295,000	209,524
\$45.42	7.50%	15,349	\$697,125	\$9,295,000	204,651
\$46.48	10.00%	20,000	\$929,500	\$9,295,000	200,000
\$47.53	12.50%	24,444	\$1,161,875	\$9,295,000	195,556
\$48.59	15.00%	28,696	\$1,394,250	\$9,295,000	191,304
\$49.64	17.50%	32,766	\$1,626,625	\$9,295,000	187,234
\$50.70	20.00%	36,667	\$1,859,000	\$9,295,000	183,333
\$52.81	25.00%	44,000	\$2,323,750	\$9,295,000	176,000
\$55.93	32.50%	56,222	\$3,020,875	\$9,295,000	163,778
\$57.04	35.00%	52,963	\$3,020,875	\$9,527,375	167,037
\$59.15	40.00%	51,071	\$3,020,875	\$9,992,125	168,929
\$61.26	45.00%	49,310	\$3,020,875	\$10,456,875	170,690
\$63.38	50.00%	47,667	\$3,020,875	\$10,921,625	172,333

Floor Level

Ceiling Level

\$7,096,732.50

**This example is for illustrative purposes only and is not intended to be a full description of the risks and benefits associated with Prepaid Variable Forwards. The pricing provided is indicative only and may change significantly due to changes in market conditions. Also, the analysis assumes that the underlying stock continues to pay the projected dividend. BB&T Asset Management does not provide tax advice, and investors must consult a tax expert prior to entering into any hedging strategies.



Maybank 001745

BEAR STEARNS

BEAR, STEARNS & CO INC
383 MADISON AVENUE
NEW YORK NEW YORK 10179
212-272-2000

DATE August 14, 2006

TO: Francis P. Maybank
ATTENTION: Shawn Gibson
TELEPHONE: 804-787-1014
FACSIMILE: 804-787-1461

FROM: Derivatives Documentation
TELEPHONE: 212-272-2711
FACSIMILE: 212-272-9857

SUBJECT: Equity Derivatives Confirmation

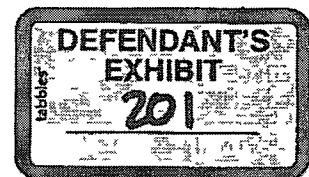
REFERENCE NUMBER NY46426

The purpose of this letter agreement is to confirm the terms and conditions of the Transaction entered into on the Trade Date specified below (the "Transaction") between Bear, Stearns & Co Inc. ("Bear Stearns") and Francis P. Maybank ("Counterparty"). This letter agreement constitutes the sole and complete "Confirmation," as referred to in the Master Agreement specified below, with respect to this Transaction.

1. In lieu of negotiating an ISDA Master Agreement and Schedule, Bear Stearns and Counterparty hereby agree that the ISDA Master Agreement, with a Schedule attached thereto containing all elections, modifications and amendments thereto contained in "Elections, Modifications and Amendments Under the Master Agreement" below (as so supplemented, the "Master Agreement") shall be deemed to have been executed by both of us on the Trade Date on which we entered into the first "Transaction" (as defined in the ISDA Master Agreement). This Confirmation and the Transaction to which it relates, as well as all other Transactions between us (unless otherwise specified in the Confirmations relating to such Transactions) shall supplement, form a part of and be subject to such Master Agreement. All provisions contained in, or incorporated by reference to the Master Agreement shall govern the Transaction referenced in this Confirmation, as well as all other Transactions between the parties heretofore or hereafter entered into, except as expressly modified herein or therein. **THIS CONFIRMATION CONSTITUTES BOTH A MASTER AGREEMENT AND A CONFIRMATION THEREUNDER.**

This Confirmation is subject to and incorporates the 2000 ISDA Definitions (the "Definitions") and the 2002 Equity Derivatives Definitions (the "2002 Definitions"), each as published by the International Swaps and Derivatives Association, Inc. ("ISDA").

In the event of any inconsistency between this Confirmation and the Definitions or the Master Agreement, this Confirmation shall prevail.



Maybank 001847

Reference Number NY46426
Francis P. Maybank
August 14, 2006
Page 2 of 11

1 This Transaction constitutes a Share Forward Transaction for purposes of the 2002 Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date	August 11, 2006
Seller	Counterparty
Buyer	Bear Stearns
Shares	The common shares of BB&T Corporation, currently trading under the ticker symbol BBT
Number of Shares	220,000
Prepayment	Applicable
Prepayment Amount	USD 7,116,434.59
Prepayment Date	August 16, 2006
Variable Obligation	Applicable
Forward Floor Price	USD 42.3562 per Share
Forward Cap Price	USD 56.122 per Share
Valuation Date	August 11, 2009
Exchange	New York Stock Exchange
Related Exchange(s)	All Exchanges
Calculation Agent	Bear Stearns

Valuation:

Valuation Time: Determined in accordance with Section 6.1 of the 2002 Definitions.

Settlement Terms:

Settlement Method Election: Applicable

As a condition precedent to Cash Settlement, Counterparty shall post

Maybank 001848

Reference Number NY46426
Francis P. Maybank
August 14, 2006
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	additional Collateral (as defined herein) by the Settlement Method Election Date.
Electing Party	Counterparty
Settlement Method Election Date	Five Scheduled Trading Days prior to the Valuation Date
Default Settlement Method	Physical Settlement
Number of Shares to be Delivered	Determined in accordance with Section 9.5 of the 2002 Definitions.
Settlement Currency	USD
Settlement Price	The closing price per Share for the regular trading session as quoted by the Exchange on the Valuation Date.
Cash Settlement Payment Date	Three Currency Business Days after the Valuation Date.
Forward Cash Settlement Amount	Determined in accordance with Section 8.5(f) of the 2002 Definitions
Payments and Deliveries in Respect of Dividends	
Payment Obligation	On each Dividend Payment Date, the Seller will pay to the Buyer any associated Dividend Adjustment Amount
Dividend Payment Date	The third Currency Business Day following that on which a Covered Dividend would be received by a holder of the Shares
Covered Dividend	Any ordinary or extraordinary cash or any non-cash dividend declared on the ex-dividend date during the period commencing on, but excluding, the Trade Date to, but including, the Valuation Date
Dividend Adjustment Amount	For any ordinary cash dividend, the amount, if positive, calculated separately for each Covered Dividend equal to (a) (i) amount of such Covered Dividend minus (ii) the associated Contractual Dividend multiplied

Maybank 001849

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by (b) the Number of Shares For any extraordinary cash or any non-cash dividend, the amount equal to (a) the Covered Dividend on one Share multiplied by (b) the Number of Shares

Contractual Dividend

For any quarterly dividend, stated as follows,

for quarters 1 through 3, USD 0.42 per Share, for quarters 4 through 7, USD 0.46 per Share, for quarters 8 through 11, USD 0.50 per Share, and for quarter 12, USD 0.54 per Share

In the event that the Issuer changes the frequency of its dividends or does not declare a dividend when expected, the Calculation Agent may adjust the terms of this Transaction to preserve the economic effect of the dividend frequency expected by Bear Stearns at the Trade Date

Economic Adjustment for Shortfall in Covered Dividends

In the event that any Covered Dividend is less than the associated Contractual Dividend, then as of the open on the ex-dividend date for such Covered Dividend, the Calculation Agent will adjust any and all of the terms of the Transaction such in order that, all other things being equal, the value of the Transaction giving effect to the Covered Dividend and the applicable adjustment is equal to the value of the Transaction had the Covered Dividend been exactly equal to the Contractual Dividend

Share Adjustments.

Method of Adjustment

Calculation Agent Adjustment, *provided, however,* that adjustments may be made to account for changes in volatility, stock loan rate and liquidity relative to the relevant Share but only in respect of Potential Adjustment Events of the types described in Sections 11.2(e)(i)(B), 11.2(e)(i)(C) and 11.2(e)(ii)(D) and 11.2(e)(iii) of the Equity

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August 14, 2006
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Definitions, the Change in Dividend Event and events of the types described in Section 11.2(e)(vii) to the extent analogous to the foregoing

Change in Dividend Event

In addition to the Potential Adjustment Events enumerated in Section 11.2 of the 2002 Definitions, it shall be a Potential Adjustment Event if the ordinary cash dividends declared by the Issuer change from the policy of the Issuer anticipated at the Trade Date in a manner which has a material impact of the value of this transaction

Extraordinary Events.

New Shares

In the definition of New Shares in Section 12.1(i) of the 2002 Definitions, the text in (i) shall be deleted in its entirety and replaced with "publicly quoted, traded or listed on any of the New York Stock Exchange, the American Stock Exchange or NASDAQ (or their respective successors)"

Consequences of Merger Events

Share-for-Share

Modified Calculation Agent Adjustment

Share-for-Other

Modified Calculation Agent Adjustment

Share-for-Combined:

Modified Calculation Agent Adjustment

Tender Offer

Applicable

Consequences of Tender Offers

Share-for-Share

Modified Calculation Agent Adjustment

Share-for-Other

Modified Calculation Agent Adjustment

Share-for-Combined

Modified Calculation Agent Adjustment

Composition of Combined Consideration

Not Applicable

Nationalization, Insolvency or Delisting

Cancellation and Payment

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August 14, 2006
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Determining Party	Bear Stearns
Additional Disruption Events	
Change in Law	Applicable, provided that (a) Section 12.9(a)(i)(X) of the 2002 Definitions is hereby amended by replacing the word "Shares" with the words "Hedge Positions" and (b) Section 12.9(a)(ii)(Y) of the 2002 Definitions is hereby deleted
Failure to Deliver	If Cash Settlement applies, Not Applicable If Physical Settlement applies, Applicable
Insolvency Filing	Applicable
Determining Party	Bear Stearns
Non-Reliance	Applicable
Agreements and Acknowledgments Regarding Hedging Activities	Applicable
Additional Acknowledgments	Applicable
Collateral Provisions	(a) On or before the Local Business Day following the applicable Trade Date, Counterparty shall deliver to and at all times thereafter maintain with Bear Stearns as collateral Shares in number equal to the Number of Shares (b) These Collateral Provisions shall be deemed a security agreement, and notwithstanding anything to the contrary contained in the Master Agreement or this Confirmation, these provisions shall be governed by the laws of the State of New York, without giving effect to the conflicts or choice of law provisions thereof. The Counterparty hereby grants a first priority continuing security interest in all Collateral provided hereunder and in any and all substitutions therefor, proceeds thereof and distributions thereon. These Collateral Provisions constitute a Credit Support Document and the failure by a party to deliver or return Collateral in accordance with these Collateral Provisions (if such failure is not remedied on or before the Local Business Day after notice of such failure is given to such party) shall constitute an Event of Default for purposes of Section 5(a)(iii) of

Maybank 001852

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the Master Agreement with respect to such party. For purposes of these Collateral Provisions, the term "Local Business Day" shall have the meaning given such term in the Master Agreement, except that references to a payment in clause (b) thereof will be deemed to include a delivery or return of Collateral hereunder.

(c) The collateral delivered hereunder shall be used to secure Counterparty's obligations under this Transaction, as well as under any other transaction with Bear Stearns or any of its affiliates (in any case, a "Bear Stearns Entity"), including, without limitation, any loans or other extensions of credit made by a Bear Stearns Entity. Any such transactions, loans or other extensions of credit shall be subject to the Customer Agreement (defined herein) between Counterparty and any Bear Stearns Entity and/or any affiliate(s) thereof. In addition, you may from time to time be required to post additional collateral with Bear Stearns in accordance with the provisions of the Customer Agreement. For purposes of this paragraph, "Customer Agreement" means, as applicable, any document(s) provided by a Bear Stearns Entity which is referred to as the Customer Agreement, the Professional Account Agreement, the Institutional Account Agreement, the Standard Terms and Conditions of Business, or a similar name.

(d) Counterparty shall have the right to substitute different Shares (of a like class and number) for Shares maintained as collateral, and upon verification that the substitute Shares are acceptable collateral as determined by Bear Stearns in its sole discretion, the original Shares for which the substitute Shares are substituted shall be released to Counterparty within a reasonable time following its request.

3. Account Details and
Settlement Information

Payments to Bear Stearns:
Citibank N.A., New York
ABA Code 021-000-089, for the account of
Bear Stearns Securities Corp.
Account Number [REDACTED] for further credit to
Bear Stearns & Co. Inc.
Sub-Account Number: [REDACTED]

Payments to Counterparty
Bear Stearns Securities Corp.
Sub-Account Number: [REDACTED]

Maybank 001853

ROA 5370

Additional Provisions:

Additional Representations of the Counterparty: With respect to the Shares pledged as Collateral under this Transaction and any Shares delivered in accordance herewith, Counterparty represents and warrants to Bear Stearns and its affiliates and subsidiaries (collectively, "BSC") (which representation and warranty will be deemed repeated at all times during the period from and including the Trade Date to and including the Settlement Date) that

- (a) Counterparty is not now, nor has Counterparty been, an "affiliate" of the Issuer, as that term is defined in paragraph (a)(1) of Rule 144 under the Securities Act of 1933, as amended, ("Act"),
- (b) Counterparty is not an officer, director or beneficial owner of more than 10% of any class of security of the Issuer;
- (c) Counterparty is not in possession of any material adverse non-public information regarding the Shares or the Issuer, and Counterparty has not provided BSC with any material non-public information relating to the Issuer;
- (d) all representations made by the Counterparty in the Risk Disclosure Form were true and correct as of the date made or deemed made,
- (e) the Shares are, as of any relevant date, immediately saleable by Bear Stearns into the public market by Bear Stearns and are not and may not be subject to any condition to or restriction on the ability of the holder thereof to freely sell, assign, deliver (including delivery against any position the holder may have, whenever established) or otherwise transfer such Shares, including, without limitation, any restriction under the United States Securities Act of 1933, contractual restriction, requirement for receipt of approval, limitations on the status of transferees, deliveries of certifications, opinions or other documents (other than a stock power or like instrument of transfer), or requirement of registration or prospectus delivery,
- (f) Counterparty has not entered into any agreements with the Issuer or any other person which would prohibit or limit Counterparty from selling, transferring, or entering into any contracts or hedging activities relating to the Shares, or from entering into or performing its obligations under this Transaction or any transactions in connection herewith, and
- (g) Counterparty has the sole legal right, power and authority to sell, pledge, transfer and deliver the Shares, and authorizes BSC to have the Shares pledged as Collateral reregistered into Bear Stearns' "street name"

Eligible Contract Participant. Each party represents that it constitutes an "eligible contract participant" as such term is defined in Section 1(a)(12) of the Commodity Exchange Act, as amended

Documents to be Delivered by Counterparty to Bear Stearns. The Counterparty agrees to deliver no later than Trade Date any documentation or instrument necessary in order to

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Francis P. Maybank
August 14, 2006
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have the Shares registered into the name of Bear Stearns or its nominee which may include stock powers duly executed in blank, in proper form for transfer or like instrument of transfer.

Elections, Modifications and Amendments Under the Master Agreement

Survival The following provisions shall apply to all Transactions which are or will be governed by the Master Agreement, notwithstanding the termination of this particular Transaction

Payment Date Netting The parties agree that subparagraph (ii) of Section 2(c) of the Master Agreement will not apply to any Transactions that are or will be governed by the Master Agreement. Thus all amounts payable on the same date in the same currency in respect of all Transactions shall be netted

Payment Measure For all Transactions which are or will be governed by the Master Agreement, "Loss" and "Second Method" shall be the payment measure for purposes of Section 6(e) of the Master Agreement, subject, however, as to any particular Terminated Transaction, to the Confirmation thereof

Transfer Bear Stearns may transfer the Transaction(s) pursuant to this Confirmation and all of its interests in such Transaction(s) and all of its Obligations in or under this Confirmation to its Credit Support Provider or any Affiliates thereof, and if such transfer is to an entity other than its Credit Support Provider, Bear Stearns will furnish to Counterparty a Guaranty of such Credit Support Provider which guarantees all of such transferee's Obligations in substantially the form of the Guaranty of the Credit Support Provider of Bear Stearns delivered in connection with this Confirmation. Upon such transfer, Bear Stearns will be fully released from any and all Obligations and liabilities related to the interests assigned

Address for Notice For all Transactions which are or will be governed by the Master Agreement, the address of the parties shown as such on the most-recently-executed Confirmation under the Master Agreement shall be deemed to have been specified as the address for notices (for purposes of Section 12(a) of the Master Agreement).

Governing Law For all Transactions which are or will be governed by the Master Agreement, the laws of the State of New York, without reference to the choice of law principles thereof will be the governing law for purposes of Section 13(a) of the Master Agreement.

Dispute Resolution EXCEPT AS OTHERWISE SET FORTH HEREIN AS IT MAY RELATE TO SECTION 12.7 OF THE 2002 DEFINITIONS, CONTROVERSIES ARISING BETWEEN THE COUNTERPARTY AND BEAR STEARNS SHALL BE DETERMINED IN ACCORDANCE WITH THE "ARBITRATION PROVISIONS" OF THE CUSTOMER AGREEMENT

Rate of Interest For all Transactions which are or will be governed by the Master Agreement and for purposes of determining the Default Rate, the Non-default Rate or the Termination Rate, it will be deemed that each party's cost of funding will be determined daily as equaling USD-Federal Funds-H.15 for such day (as defined in the Definitions)

Maybank 001855

Reference Number NY4426
Francis P. Maybank
August 14, 2006
Page 10 of 11

Credit Support Documents The Customer Agreement, which shall be deemed to have been specified as a Credit Support Document with respect to Counterparty in a Schedule to the Master Agreement

Specified Transaction For all Transactions which are or will be governed by the Master Agreement and for purposes of Section (c) of the definition of "Specified Transactions" contained in Section 14 of the Master Agreement, Specified Transactions shall mean any transaction, agreements (including the Customer Agreement) and extensions of credit between Bear Stearns or any Specified Entity of Bear Stearns and Counterparty, whether now existing or hereafter entered into. "Specified Entity" shall mean any affiliates and/or subsidiaries of Bear Stearns

Termination Currency For all Transactions which are or will be governed by the Master Agreement, USD

Maybank 001856

ROA 5373

Reference Number NY46426
Francis P Maybank
August 14, 2006
Page 11 of 11

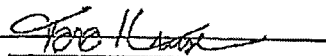
This Confirmation may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Counterparty hereby agrees to check this Confirmation and to confirm that the foregoing correctly sets forth the terms of the Transaction by signing in the space provided below and returning to Bear Stearns a facsimile of the fully-executed Confirmation to 212-272-9857. For inquiries regarding U.S. Transactions, please contact Derivatives Documentation by telephone at 212-272-2711. For all other inquiries please contact Derivatives Documentation by telephone at 353-1-402-6233. Originals will be provided for your execution upon your request.

We are very pleased to have executed this Transaction with you and we look forward to completing other transactions with you in the near future.

Very truly yours,

BEAR STEARNS & CO, INC.

By: 
Name: TARA KRUSE
Title: AUTHORIZED SIGNATORY

Counterparty, acting through its duly authorized signatory, hereby agrees to, accepts and confirms the terms of the foregoing as of the Trade Date.

FRANCIS P. MAYBANK

By: _____
As authorized agent or officer for Francis P Maybank
Name: _____
Title: _____

DBR

Maybank 001857

ROA 5374

Aug-16-2006 10:41

From:BS&T TRUST,

VILLE

Reference Number: NY46426
 Francis P. Maybank
 August 14, 2006
 Page 11 of 11

This Confirmation may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Counterparty hereby agrees to check this Confirmation and to confirm that the foregoing correctly sets forth the terms of the Transaction by signing in the space provided below and returning to Bear Stearns a facsimile of the fully-executed Confirmation to 212-272-9857. For inquiries regarding U.S. Transactions, please contact Derivatives Documentation by telephone at 212-272-2711. For all other inquiries please contact Derivatives Documentation by telephone at 353-1-402-6283. Originals will be provided for your execution upon your request.

We are very pleased to have executed this Transaction with you and we look forward to completing other transactions with you in the near future.

Very truly yours,

BEAR STEARNS & CO. INC.

By:

Name
 Title:

TARA KREMER
 AUTHORIZED SIGNATORY

Counterparty, acting through its duly authorized signatory, hereby agrees to, accepts and confirms the terms of the foregoing as of the Trade Date.

FRANCIS P. MAYBANK

By:

Name:
 Title:

As authorized agent or officer for Francis P. Maybank

DBR

Maybank 001858

ROA 5375

Underlying Stock.
Initial Stock Price.
Number of Shares
Initial Market Value.

0111
525 6800
271,000
\$5,642,600

Floor Level:
 Cup Level:
 Proceeds Upfront.
 Term:

\$25,000
 \$20,8160
 \$4 240,024.60

100.00%
120.00%
75.00%
25.00%

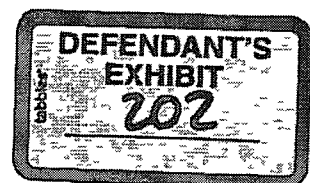
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Stock Price at Maturity	Change from Original Price	Appreciation Retention		Settlement Choices	
		Retained Value	Share Difference	Share Value	Share Difference
\$19,2400	25.00%	\$0	0	\$4,237,200	220,000
\$20,5440	20.00%	\$0	0	\$4,519,680	220,000
\$21,1860	17.50%	\$0	0	\$4,660,920	220,000
\$21,8280	-15.00%	\$0	0	\$4,802,160	220,000
\$22,4700	-12.50%	\$0	0	\$4,943,400	220,000
\$23,1120	10.00%	\$0	0	\$5,084,640	220,000
\$23,7540	-7.50%	\$0	0	\$5,225,880	220,000
\$24,3960	5.00%	\$0	0	\$5,367,120	220,000
\$25,0380	-2.50%	\$0	0	\$5,508,360	220,000
\$25,6800		\$1,129,920	26,419	\$5,649,600	220,000
\$26,3220	66.55%	\$3,382,480	10,476	\$5,649,600	209,520
\$26,9640	5.00%	\$423,720	15,349	\$5,649,600	204,651
\$27,6060	7.50%	\$564,960	20,000	\$5,649,600	200,000
\$28,2480	10.00%	\$706,200	24,444	\$5,649,600	195,556
\$28,8900	12.50%	\$847,440	28,696	\$5,649,600	191,304
\$29,5320	15.00%	\$988,680	32,766	\$5,649,600	187,234
\$30,1740	17.50%	\$1,129,920	36,836	\$5,649,600	183,329
\$30,8160	20.00%	\$1,129,920	40,906	\$5,649,600	179,000
\$31,4580	22.50%	\$1,129,920	44,976	\$5,649,600	174,671
\$32,1000	25.00%	\$1,129,920	49,046	\$5,649,600	170,342
\$32,7420	27.50%	\$1,129,920	53,116	\$5,649,600	166,013
\$33,3840	30.00%	\$1,129,920	57,186	\$5,649,600	161,684
\$34,0260	32.50%	\$1,129,920	61,256	\$5,649,600	157,355
\$34,6680	35.00%	\$1,129,920	65,326	\$5,649,600	153,026
\$35,3100	37.50%	\$1,129,920	69,396	\$5,649,600	148,697
\$35,9520	40.00%	\$1,129,920	73,466	\$5,649,600	144,368
\$36,5940	42.50%	\$1,129,920	77,536	\$5,649,600	140,039
\$37,2360	45.00%	\$1,129,920	81,606	\$5,649,600	135,710
\$37,8780	47.50%	\$1,129,920	85,676	\$5,649,600	131,381

Floor 1

Celling Level

781-242-2400
 Dept. 110
 Physical Therapy Stratosol
 410 East North St.
 Greenville, SC 29601
 (803) 282-3187
 N.H. Lee (4600) 678-7400
 Fax (864) 282-3186
 alicec@ccq@BWAYT.com



Maybank 002115

Settlement Overview (Frank Maybank)

Underlying Stock	BUT	Floor Level	\$19,8434	100.00%
Initial Stock Price	\$19,8434	Cap Level	\$24,8043	125.00%
Number of Shares	220,000	Proceeds Unfrank	\$3,015,720.56	69.08%
Initial Market Value	\$4,365,548	Term		2 years

Current Proceeds	\$3,015,720.56
Unfrank Proceeds	\$3,015,720.56
Unfrank Proceeds	\$3,015,720.56

Stock Price at Maturity	Change from Original Price	Appreciation Retention		Settlement Choices	
		Shares Retained	Shares Returned	Cash Delivered	Shares Delivered
\$14,8826	25.00%	\$0	0	\$3,274,161	-220,000
\$15,8747	20.00%	\$0	0	\$3,492,438	220,000
\$16,3708	-17.50%	\$0	0	\$3,601,577	220,000
\$16,8669	-15.00%	\$0	0	\$3,710,716	220,000
\$17,3630	12.50%	\$0	0	\$3,819,855	220,000
\$17,8591	-10.00%	\$0	0	\$3,928,993	220,000
\$18,3551	-7.50%	\$0	0	\$4,038,132	220,000
\$18,8512	5.00%	\$0	0	\$4,147,271	220,000
\$19,3471	2.50%	\$0	0	\$4,256,409	220,000
\$19,8434	0.00%	\$0	0	\$4,365,548	220,000
\$20,3395	2.50%	\$109,139	5,366	\$4,365,548	214,634
\$20,8356	5.00%	\$218,277	10,476	\$4,365,548	209,524
\$21,3317	7.50%	\$327,416	15,549	\$4,365,548	204,651
\$21,8277	10.00%	\$436,555	20,000	\$4,365,548	200,000
\$22,3238	12.50%	\$545,694	24,444	\$4,365,548	195,556
\$22,8199	15.00%	\$654,832	28,696	\$4,365,548	191,304
\$23,3160	17.50%	\$763,971	32,766	\$4,365,548	187,234
\$23,8121	20.00%	\$873,110	36,667	\$4,365,548	183,333
\$24,8043	25.00%	\$1,091,387	40,741	\$4,365,548	179,259
\$26,7886	35.00%	\$1,091,387	40,741	\$4,802,103	179,259
\$27,7808	40.00%	\$1,091,387	40,741	\$5,020,380	180,714
\$29,7729	45.00%	\$1,091,387	40,741	\$5,238,658	182,060
\$29,7651	50.00%	\$1,091,387	40,741	\$5,456,935	183,333

Maybank 002116

Settlement Overview (Frank Maybank)

Underlying Stock	BB1	Floor Level	\$25,6800	100.00%
Initial Stock Price	\$25.6800	Cap Level	\$77,3040	170.00%
Number of Shares	220,000	Proceeds Upfront	\$3,668,850.24	64.94%
Initial Market Value	\$5,649,600	Term	3 years	

Current Price	\$3,668,850.24
Proceeds Upfront	\$3,668,850.24
Term	3 years

Stock Price at Maturity	Change from Original Price	Appreciation Retention		Settlement Choices	
		Retained	Released	Delivered	Not Delivered
\$19,2600	25.00%	\$0	0	\$4,231,200	220,000
\$20,5440	20.00%	\$0	0	\$4,519,660	220,000
\$21,1860	-17.50%	\$0	0	\$4,660,920	220,000
\$21,8280	-15.00%	\$0	0	\$1,802,160	220,000
\$22,4700	-12.50%	\$0	0	\$4,943,400	220,000
\$23,1120	-10.00%	\$0	0	\$5,084,640	220,000
\$23,7540	-7.50%	\$0	0	\$5,225,880	220,000
\$24,3960	-5.00%	\$0	0	\$5,367,120	220,000
\$25,0380	-2.50%	\$0	0	\$5,508,360	220,000
\$25,6800	0.00%	\$0	0	\$5,649,600	220,000
\$26,3220	66.55%	\$1,694,880	39,628	\$7,714,520	160,372
\$26,9640	5.00%	\$282,480	10,476	\$5,649,600	209,524
\$27,6060	7.50%	\$423,720	15,240	\$5,649,600	204,651
\$28,2480	10.00%	\$564,960	20,000	\$5,649,600	200,000
\$28,8900	12.50%	\$706,200	24,444	\$5,649,600	195,556
\$29,5320	15.00%	\$847,440	28,696	\$5,649,600	191,304
\$30,1740	17.50%	\$988,680	32,766	\$5,649,600	187,234
\$30,8160	20.00%	\$1,129,920	36,667	\$5,649,600	183,333
\$31,4580	25.00%	\$1,412,400	44,000	\$5,649,600	176,000
\$33,3840	30.00%	\$1,694,880	50,769	\$5,649,600	169,231
\$34,7680	35.00%	\$1,694,880	48,889	\$5,932,080	171,111
\$35,9520	40.00%	\$1,694,880	47,143	\$6,214,560	172,857
\$37,2360	45.00%	\$1,694,880	45,517	\$6,497,040	174,483
\$38,5200	50.00%	\$1,694,880	44,000	\$6,779,520	176,000

Maybank 002117

Settlement Overview (Frank Maybank)

Underlying Stock:
Initial Stock Price:
Number of Shares:
Initial Market Value:

BUY
\$22,3500
220,000
\$4,917,000

Floor Level:
Cap Level:
Proccesst Upfront:
Term:

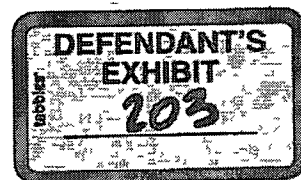
\$22,3500
\$29,0350
\$3,004,287 00

100.00%
130.00%
61.10%
9 years

		Appreciation Retention		Settlement Choices	
Initial Price	Retention %	Retention \$	Retention %	Settlement \$	Settlement %
\$16.7625	25.00%	\$0	0	\$3,687,750	220,000
\$17.8800	20.00%	\$0	0	\$3,933,600	220,000
\$18.4788	17.50%	\$0	0	\$4,056,525	220,000
\$18.9975	15.00%	\$0	0	\$4,179,450	220,000
\$19.5563	12.50%	\$0	0	\$4,302,375	220,000
\$20.1150	10.00%	\$0	0	\$4,425,300	220,000
\$20.6738	7.50%	\$0	0	\$4,548,225	220,000
\$21.2325	5.00%	\$0	0	\$4,671,150	220,000
\$21.7913	2.50%	\$0	0	\$4,794,075	220,000
\$22.3500					
\$42.7700	91.30%	\$1,475,100	34,489	\$7,934,300	185,511
\$23.4675	5.00%	\$245,850	10,476	\$4,917,000	209,524
\$24.0263	7.50%	\$368,775	15,349	\$4,917,000	204,651
\$24.5850	10.00%	\$491,700	20,000	\$4,917,000	200,000
\$25.1438	12.50%	\$614,625	24,444	\$4,917,000	195,556
\$25.7025	15.00%	\$737,550	28,686	\$4,917,000	191,304
\$26.2613	17.50%	\$860,475	32,766	\$4,917,000	187,234
\$26.8200	20.00%	\$983,400	36,667	\$4,917,000	183,333
\$27.3788	25.00%	\$1,106,325	44,000	\$4,917,000	176,000
\$27.9375					
\$28.4963					
\$29.0550					
\$29.6138					
\$30.1725	35.00%	\$1,475,100	48,889	\$5,162,850	171,111
\$31.2900	40.00%	\$1,475,100	47,143	\$5,408,700	172,857
\$32.4075	45.00%	\$1,475,100	45,517	\$5,654,550	174,483
\$33.5250	50.00%	\$1,475,100	44,000	\$5,900,400	176,000

Floor Level

Ceiling Level



Maybank 002142

Underlying Stock
Initial Stock Price
Number of Shares
Initial Market Value:

Floor Level
 Cap Level
 Proceeds Upfront
 Term

\$22,3500
\$26,8200
\$3,540,240 00

100.00%
120.00%
72.00%
2 years

Maybank 002143

Settlement Overview (Frank Maybank)

Underlying Stock
Initial Stock Price
Number of Shares
Initial Market Value

B01
\$42,3562
220,000
\$9,318,364

Floor Level
Cap Level
Proceeds Upfront
Term:

\$42,3562
\$56,1220
\$7,116,434.59

100.00%
132.50%
76.37%
3 years
8/11/2009

Stock Price	Change from Original Price	Appreciation Retention		Settlement Choices	
		Retained Value	Share Proceeds	Cap Level	Share Proceeds
\$31,7672	-25.00%	\$0	0	\$6,988,773	220,000
\$33,8850	-20.00%	\$0	0	\$7,454,691	220,000
\$34,9439	-17.50%	\$0	0	\$7,687,650	220,000
\$36,0028	-15.00%	\$0	0	\$7,920,609	220,000
\$37,0617	-12.50%	\$0	0	\$8,153,569	220,000
\$38,1206	-10.00%	\$0	0	\$8,386,528	220,000
\$39,1795	-7.50%	\$0	0	\$8,619,487	220,000
\$39,5400	-6.65%	\$0	0	\$8,698,800	220,000
\$41,2973	-2.50%	\$0	0	\$9,085,405	220,000
\$42,3562	0.00%	\$0	0	\$9,318,364	220,000
\$42,7700	0.98%	\$91,036	2,129	\$9,318,364	217,871
\$44,4740	5.00%	\$465,918	10,476	\$9,318,364	209,524
\$45,5329	7.50%	\$698,877	15,349	\$9,318,364	204,651
\$46,5918	10.00%	\$931,836	20,000	\$9,318,364	200,000
\$47,6507	12.50%	\$1,164,796	24,444	\$9,318,364	195,556
\$48,7096	15.00%	\$1,397,755	28,696	\$9,318,364	191,304
\$49,7685	17.50%	\$1,630,714	32,766	\$9,318,364	187,234
\$50,8274	20.00%	\$1,863,673	36,667	\$9,318,364	183,333
\$52,9453	25.00%	\$2,329,591	44,000	\$9,318,364	176,000
\$56,1220	33.33%	\$3,109,846	59,523	\$9,318,364	160,477
\$57,1809	35.00%	\$3,028,468	52,963	\$9,551,323	167,037
\$59,2987	40.00%	\$3,028,468	51,071	\$10,017,241	168,929
\$61,4165	45.00%	\$3,028,468	49,310	\$10,483,160	170,690
\$63,5343	50.00%	\$3,028,468	47,667	\$10,949,078	172,933

Floor Level

Ceiling Level

Maybank 002144

Deutsche Bank

Settlement Overview (Frank Maybank)

Underlying Stock
Initial Stock Price
Number of Shares
Initial Market Value

BHT
\$22,1500
220,000
\$4,917,000

Floor Level
Cap Level
Proceeds Upfront
Term

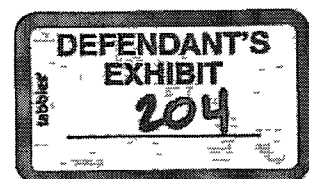
\$22,1500
\$29,0550
\$3,004,287.00

100.00%
130.00%
61.70%
3 years

Initial Market Value	\$4,917,000
Initial Stock Price	\$22.15
Number of Shares	220,000
Initial Market Value	\$4,917,000

Appreciation Retention				Settlement Choices	
Initial Stock Price	Appreciation Retention	Initial Market Value	Initial Stock Price	Initial Market Value	Initial Stock Price
\$16.7625	25.00%	\$0	0	\$3,667,750	220,000
\$17.8800	20.00%	\$0	0	\$3,933,600	220,000
\$18.4388	17.40%	\$0	0	\$4,056,525	220,000
\$18.9975	15.00%	\$0	0	\$4,179,450	220,000
\$19.5561	12.50%	\$0	0	\$4,302,375	220,000
\$20.1150	10.00%	\$0	0	\$4,425,300	220,000
\$20.6738	7.50%	\$0	0	\$4,548,225	220,000
\$21.2325	5.00%	\$0	0	\$4,671,150	220,000
\$21.7913	2.50%	\$0	0	\$4,794,075	220,000
Floor Level					
\$22.3500	0.00%	\$0	0	\$4,917,000	220,000
\$22.7700	91.36%	\$1,475,100	14,489	\$7,934,300	185,511
\$23.4625	5.00%	\$245,850	10,476	\$4,917,000	209,524
\$24.0261	7.50%	\$368,775	15,349	\$4,917,000	204,651
\$24.5850	10.00%	\$491,700	20,000	\$4,917,000	200,000
\$25.1438	12.50%	\$614,625	24,444	\$4,917,000	195,546
\$25.7025	15.00%	\$737,550	28,696	\$4,917,000	191,304
\$26.2613	17.50%	\$860,475	32,766	\$4,917,000	187,234
\$26.8200	20.00%	\$983,400	36,667	\$4,917,000	183,333
\$27.3788	25.00%	\$1,229,250	44,000	\$4,917,000	176,000
Ceiling Level					
\$30.0850	0.00%	\$0	0	\$5,162,850	171,111
\$30.1725	10.00%	\$1,475,100	48,889	\$5,408,700	172,857
\$31.2900	40.00%	\$1,475,100	47,143	\$5,654,550	174,483
\$32.4075	45.00%	\$1,475,100	45,517	\$5,900,400	176,000
\$33.5250	50.00%	\$1,475,100	44,000		

Three years



Maybank 005470

Deutsche Bank

Settlement Overview (Frank Maybank)

Underlying Stock:
Initial Stock Price:
Number of Shares:
Initial Market Value:

BBT
\$22,1500
220,000
\$4,917,000

Floor Level:
Cap Level:
Proceeds Upfront:
Term:

\$22,3500 100.00%
\$26,8200 120.00%
\$3,540,210.00 72.00%
2 years

Cap Level: \$26,820,000
Floor Level: \$22,350,000
Proceeds Upfront: \$3,540,210.00
Term: 2 years

		Appreciation Retention		Settlement Choices	
Initial Stock Price	Change in Stock Price	Retained Value	Retained Shares	Settlement Value	Settlement Shares
\$16.7625	-25.00%	\$0	0	\$3,687,750	220,000
\$17.8600	-20.00%	\$0	0	\$3,973,600	220,000
\$18.4788	-17.50%	\$0	0	\$4,056,525	220,000
\$18.9975	-15.00%	\$0	0	\$4,179,450	220,000
\$19.5563	-12.50%	\$0	0	\$4,302,375	220,000
\$20.1150	-10.00%	\$0	0	\$4,425,300	220,000
\$20.6738	-7.50%	\$0	0	\$4,548,225	220,000
\$21.2325	-5.00%	\$0	0	\$4,671,150	220,000
\$21.7913	-2.50%	\$0	0	\$4,794,075	220,000
\$22.3500	0.00%	\$0	0	\$4,917,000	220,000
\$22.9088	2.50%	\$983,400	22,500	\$5,426,000	197,000
\$23.4675	5.00%	\$245,850	10,476	\$4,917,000	209,524
\$24.0263	7.50%	\$368,775	15,349	\$4,917,000	204,651
\$24.5850	10.00%	\$491,700	20,000	\$4,917,000	200,000
\$25.1438	12.50%	\$614,625	24,444	\$4,917,000	195,556
\$25.7025	15.00%	\$737,550	28,696	\$4,917,000	191,304
\$26.2613	17.50%	\$860,475	32,766	\$4,917,000	187,234
\$26.8200	20.00%	\$983,400	35,200	\$5,162,850	184,800
\$27.3788	22.50%	\$983,400	32,593	\$5,654,550	187,407
\$27.9375	25.00%	\$983,400	31,429	\$5,900,400	188,571
\$28.4963	27.50%	\$983,400	30,345	\$6,146,250	189,655
\$29.0550	30.00%	\$983,400	29,333	\$6,392,100	190,667

\$ 4,248,288

Floor Level

Ceiling Level

\$ 5,900,400

Maybank 005471

Settlement Overview (Frank Maybank)

Underlying Stock	BBT	Floor Level	\$42,3562	100.00%
Initial Stock Price	\$42,3562	Cap Level	\$56,1270	132.50%
Number of Shares	220,000	Proceeds Upfront:	\$7,116,434.59	76.37%
Initial Market Value:	\$9,318,364	Term		3 years
				8/11/2009

		Appropriation Retention		Settlement Choices		
Stock Price	Change from Original Price	Share Retention	Share Redemption	Cap Level Proceeds	Floor Level Proceeds	
\$41.7672	25.00%	\$0	0	\$6,988,773	220,000	
\$33.8850	20.00%	\$0	0	\$7,454,691	220,000	
\$34.9439	-17.50%	\$0	0	\$7,687,650	220,000	
\$36.0028	-15.00%	\$0	0	\$7,920,609	220,000	
\$37.0617	-12.50%	\$0	0	\$8,153,569	220,000	
\$38.1206	-10.00%	\$0	0	\$8,386,528	220,000	
\$39.1795	-7.50%	\$0	0	\$8,619,487	220,000	
\$39.5400	-6.63%	\$0	0	\$8,698,800	220,000	
\$41.2973	-2.50%	\$0	0	\$9,085,405	220,000	
\$42.3562		\$0	0	\$9,318,364	220,000	Floor Level
\$42.7700	0.98%	\$91,036	2,129	\$9,318,364	217,871	
\$44.4740	5.00%	\$465,918	10,476	\$9,318,364	209,524	
\$45.5329	7.50%	\$698,877	15,349	\$9,318,364	204,651	
\$46.5918	10.00%	\$931,836	20,000	\$9,318,364	200,000	
\$47.6507	12.50%	\$1,164,796	24,444	\$9,318,364	195,556	
\$48.7096	15.00%	\$1,397,755	28,696	\$9,318,364	191,304	
\$49.7685	17.50%	\$1,630,714	32,766	\$9,318,364	187,234	
\$50.8274	20.00%	\$1,863,673	36,667	\$9,318,364	183,333	
\$52.9453	25.00%	\$2,329,591	44,000	\$9,318,364	176,000	
\$56.1270		\$3,028,468	52,963	\$9,551,323	167,037	Ceiling Level
\$59.2987	40.00%	\$3,028,468	51,071	\$10,017,241	168,929	
\$61.4165	45.00%	\$3,028,468	49,310	\$10,483,160	170,690	
\$63.5343	50.00%	\$3,028,468	47,667	\$10,949,078	172,333	

Maybank 005472

Deutsche Bank

Settlement Overview (Frank Maybank)

Underlying Stock
Initial Stock Price
Number of Shares
Initial Market Value

BUT
\$22,3500
220 000
\$4,917,000

Floor Level:
Cap Level
Proceeds Upfront
Term

\$22,3500
\$29,0550
\$3,004,287 00

100.00%
130.00%
61.10%
3 years

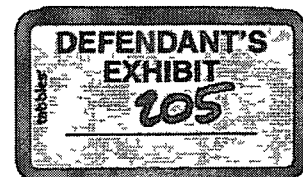
Settlement Proceeds: \$3,004,287.00
Cap Level: \$29,055.00
Floor Level: \$22,350.00

Three years

		Appreciation Retention		Settlement Choices	
Price	Change from Initial	Retained Value	Share	Cap Level	Share
\$16.7625	25.00%	\$0	0	\$3,687,750	220,000
\$17.8800	20.00%	\$0	0	\$3,531,600	220,000
\$18.4188	-17.50%	\$0	0	\$4,056,525	220,000
\$18.7975	15.00%	\$0	0	\$4,179,450	220,000
\$19.5563	12.50%	\$0	0	\$4,302,375	220,000
\$20.1150	10.00%	\$0	0	\$4,425,300	220,000
\$20.6738	7.50%	\$0	0	\$4,548,225	220,000
\$21.2325	5.00%	\$0	0	\$4,671,150	220,000
\$21.7913	2.50%	\$0	0	\$4,794,075	220,000
Floor Level					
\$42.7700	91.36%	\$1,475,100	34,489	\$7,934,300	185,511
\$23.4675	5.00%	\$245,850	10,476	\$4,917,000	209,524
\$24.0263	7.50%	\$368,775	15,349	\$4,917,000	204,651
\$24.5850	10.00%	\$491,700	20,000	\$4,917,000	200,000
\$25.1438	12.50%	\$614,625	24,444	\$4,917,000	195,456
\$25.7025	15.00%	\$737,550	28,696	\$4,917,000	191,304
\$26.2613	17.50%	\$860,475	32,766	\$4,917,000	187,234
\$26.8200	20.00%	\$983,400	36,667	\$4,917,000	183,333
\$27.3788	25.00%	\$1,106,325	44,000	\$4,917,000	176,000
Ceiling Level					
\$40.1725	35.00%	\$1,475,100	48,889	\$5,162,850	171,111
\$31.2900	40.00%	\$1,475,100	47,143	\$5,408,700	172,857
\$32.4075	45.00%	\$1,475,100	45,517	\$5,654,550	174,483
\$33.5250	50.00%	\$1,475,100	44,000	\$5,900,400	176,000

Floor Level

Ceiling Level



Maybank 005555

Deutsche Bank

Settlement Overview (Frank Maybank)

Underlying Stock:	BBT	Floor Level	\$22,3500	100.00%
Initial Stock Price:	\$22.3500	Cap Level:	\$26,8200	120.00%
Number of Shares:	220,000	Proceeds Upfront	\$3,540,240.00	72.00%
Initial Market Value	\$4,917,000	Term:	2 years	

BBT Initial Market Value: \$4,917,000
BBT Initial Stock Price: \$22.3500
BBT Number of Shares: 220,000

		Appreciation Retention		Settlement Choices	
Initial Stock Price	Retention %	Retention Value	Retention %	Settlement Choice	Settlement Value
\$16.7625	25.00%	\$0	0	\$3,687,750	220,000
\$17.8600	20.00%	\$0	0	\$3,933,600	220,000
\$18.4388	-17.50%	\$0	0	\$4,056,525	220,000
\$18.9975	-15.00%	\$0	0	\$4,179,450	220,000
\$19.5563	12.50%	\$0	0	\$4,302,375	220,000
\$20.1150	10.00%	\$0	0	\$4,425,300	220,000
\$20.6738	-7.50%	\$0	0	\$4,548,225	220,000
\$21.2325	-5.00%	\$0	0	\$4,671,150	220,000
\$21.7913	2.50%	\$0	0	\$4,794,075	220,000
\$22.3500		\$0	0	\$4,917,000	220,000
\$22.9088	91.36%	\$983,400	22,993	\$5,420,000	197,007
\$23.4675	5.00%	\$245,850	10,476	\$4,917,000	209,524
\$24.0263	7.50%	\$368,775	15,349	\$4,917,000	204,651
\$24.5850	10.00%	\$491,700	20,000	\$4,917,000	200,000
\$25.1438	12.50%	\$614,625	24,444	\$4,917,000	195,556
\$25.7025	15.00%	\$737,550	28,696	\$4,917,000	191,304
\$26.2613	17.50%	\$860,475	32,766	\$4,917,000	187,234
\$26.8200		\$983,400	36,700	\$4,917,000	183,333
\$27.3788	25.00%	\$983,400	35,200	\$5,162,850	181,800
\$27.9375	35.00%	\$983,400	32,593	\$5,654,550	187,407
\$28.4963	35.00%	\$983,400	32,593	\$5,654,550	187,407
\$29.0550	40.00%	\$983,400	31,429	\$5,909,400	188,571
\$29.6138	45.00%	\$983,400	30,345	\$6,146,250	189,655
\$30.1725	50.00%	\$983,400	29,333	\$6,392,100	190,667

\$ 4,248,288

Floor Level

Ceiling Level \$ 5,909,400

Maybank 005556

Settlement Overview (Frank Maybank)

Underlying Stock:	BBT	Floor Level	\$42 3562	100.00%
Initial Stock Price:	\$42.3562	Cap Level	\$56 1220	132.50%
Number of Shares:	220 000	Proceeds Upfront:	\$7,116,434.59	76.37%
Initial Market Value:	\$9,318,369	Term		3 years
				8/11/2009

		Appreciation Retention		Settlement Choices	
Stock Price	Change from Original Price	By Dividend	By Share Retention	Cash Delivered	Shares Delivered
\$31 7672	-25.00%	\$0	0	\$6,988 773	220,000
\$33 8850	20.00%	\$0	0	\$7,454,691	220,000
\$34 9439	-17.50%	\$0	0	\$7 687,650	220 000
\$36 0028	-15.00%	\$0	0	\$7,920 609	220 000
\$37 0617	-12.50%	\$0	0	\$8,153,569	220 000
\$38 1206	-10.00%	\$0	0	\$8,386 528	220 000
\$39 1795	-7.50%	\$0	0	\$8 619 487	220 000
\$39 5400	-6.65%	\$0	0	\$8 698 800	220 000
\$41 2973	2.50%	\$0	0	\$9 085 405	220 000
Floor Level					
\$42 3562	0.00%	\$91 036	2,129	\$9,318,364	217,871
\$44 4740	5.00%	\$465,918	10 476	\$9,318,364	209,524
\$45.5329	7.50%	\$698 877	15 349	\$9 318 364	204 651
\$46 5918	10.00%	\$931 836	20,000	\$9,318 364	200,000
\$47 6507	12.50%	\$1 164 796	24,444	\$9,318 364	195,556
\$48 7096	15.00%	\$1,397 755	28 696	\$9,318,364	191,304
\$49 7685	17.50%	\$1,630,714	32,766	\$9,318,364	187 234
\$50 8274	20.00%	\$1,863,673	36 667	\$9,318 364	183,333
\$52 9453	25.00%	\$2 329,591	41 000	\$9,318,364	176 000
Ceiling Level					
\$57 1809	35.00%	\$3,028 468	52,963	\$9,551 323	167,037
\$59,2987	40.00%	\$3,028,468	51,071	\$10 017,241	168 929
\$61 4165	45.00%	\$3,028 468	49 310	\$10,483,160	170,690
\$63 5343	50.00%	\$3 028 468	47 667	\$10 949 078	172 333

Maybank 005557

13/12/10 22:41:52 GMT FROM: DEUTSCHE BANK

MSG# NY-NY-ST-312564-2-1- PAGE 001 OF 004

Deutsche Bank



13 December 2010

FACSIMILE TRANSMISSION
Global Equity Derivatives

Deutsche Bank AG London
Winchester House
1 Great Winchester Street
London EC2N 2DB
Telephone +44 207 545 8000

c/o Deutsche Bank Securities Inc
60 Wall Street
New York, NY 10005

Francis P. Maybank (Sec 1692(a)(2)(B) Straddle
Account), New York

To: MNW Desk
Fax No: 0019175129255



Transaction Reference Number: NY 312564 Event No: 1

If you do not receive all the pages, please telephone immediately
Please find attached the confirmation for the above referenced transaction

Please note that this will be the only form of Confirmation despatched by us. Kindly execute and return it by facsimile immediately, marked for my attention. Please also note that the Deutsche Bank group may require you to provide a copy of your authorised signature list/ certificate of incumbency, ensuring that the signatory on the confirmation is included in that list.

If you wish to exchange hard copy forms of this Confirmation or should you have any comments or queries please do not hesitate to contact me on the above telephone number.

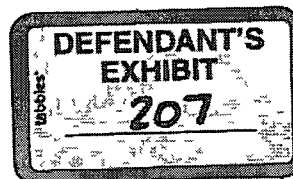
Please return the signed Confirmation to fax number: +44 113 336 2089.

Regards
Zhao Sparks

NOTICE: This communication may contain information which is confidential and/or legally privileged and is intended only for the addressee named above. If you are not the named addressee, the communication has been sent to you in error and you are asked not to read, use or disclose it. We should be grateful if you would confirm by immediately so that we can arrange for its return. Thank you.

Chairman of the Supervisory Board: Clemens Beis
Management Board: Josef Ackermann (Chairman), Hugo Blankner, Michael
Cohn, Jürgen Fichtner, Ansgar Jahn, Stefan Kravitz, Heinfried-Joachim
Lindberg, Rainer Nieske

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Deutsche Bank Group online: <http://www.deutsche-bank.com>



ARGO(BB&T)04428

ROA 5388

.. 13/12/10 22:42:48 GMT FROM: DEUTSCHE BANK

MSGH NY-NY-ST-312564-2-1- PAGE 002 OF 004

Deutsche Bank



13 December 2010

Deutsche Bank AG London
Winchester House
1 Great Winchester Street
London EC2N 2DB
Telephone: +44 207 545 8000

c/o Deutsche Bank Securities Inc
60 Wall Street
New York, NY 10005

Francis P Maybank(Sec 1092(a)(2)(B)Straddle
Account)
30 Meeting Street
Charleston, SC 29601

Our Transaction Reference Number: NY 312564 Event No: 1

Dear Sir / Madam,

The purpose of this letter (this "Termination Agreement") is to confirm the terms and conditions governing our agreement to terminate the Transaction identified below (the "Original Transaction") between Deutsche Bank AG, London Branch ("Party A" or "Deutsche") and Francis P. Maybank(Sec 1092(a)(2)(B)Straddle Account) ("Party B" or the "Counterparty"), the Confirmation of which bears DBSI Reference Number 312564 (the "Original Confirmation").

DEUTSCHE BANK AG, LONDON BRANCH, IS NOT REGISTERED AS A BROKER DEALER UNDER THE U.S. SECURITIES EXCHANGE ACT OF 1934. DEUTSCHE BANK SECURITIES INC. HAS ACTED SOLELY AS AGENT IN CONNECTION WITH THIS TRANSACTION AND HAS NO OBLIGATION, BY WAY OF ISSUANCE, ENDORSEMENT, GUARANTEE OR OTHERWISE WITH RESPECT TO THE PERFORMANCE OF EITHER PARTY UNDER THE TRANSACTION. AS SUCH, ALL DELIVERY OF FUNDS, ASSETS, NOTICES, DEMANDS AND COMMUNICATIONS OF ANY KIND RELATING TO THIS TRANSACTION BETWEEN DEUTSCHE BANK AG, LONDON BRANCH, AND COUNTERPARTY SHALL BE TRANSMITTED THROUGH DEUTSCHE BANK SECURITIES INC. DEUTSCHE BANK AG, LONDON BRANCH, IS NOT A MEMBER OF THE SECURITIES INVESTOR PROTECTION CORPORATION (SIPC).

Capitalized terms used but not defined herein shall have the meanings set forth in the Original Confirmation.

Original Transaction Terms:

Trade Date:	January 20, 2009
Issuer:	BB&T Corporation (the "Issuer")
Shares:	"BBT", Cusip # 0545371070, the common stock of the Issuer
Number of Shares:	220,000
Threshold Price:	USD 24.6049
Floor Price:	USD 19.8434



ARGO(BB&T)04429

ROA 5389

13/12/10 22:42:24 GMT FROM: DEUTSCHE BANK

MSG# NY-NY-ST-312564-2-1- PAGE 003 OF 004

Valuation Date:	January 20, 2011
Termination Terms and Conditions:	
Termination Trade Date:	December 13, 2010
Number of Shares being Terminated:	220,000
Number of Shares Remaining:	Zero
Termination Amount Payable by Counterparty:	USD 4,877,884.00
Termination Settlement Date:	December 16, 2010

In consideration of the Termination Amount payable on the Termination Settlement Date, you and we agree that with effect from the Termination Trade Date, the Original Transaction shall terminate and, with the exception of the Termination Amount, the obligations of Deutsche and Counterparty arising after the Termination Trade Date are hereby deemed terminated except in respect of any amounts which have become due and remain unpaid on the Termination Trade Date. Except as expressly provided herein, all other Transactions between Deutsche and Counterparty shall remain in full force and effect.

This Termination Agreement constitutes an amendment to, and forms, a part of, the Original Confirmation. Without limiting the generality of the foregoing, payment of the Termination Amount shall be deemed to be a payment specified as being payable in such Original Confirmation.

Please confirm that the foregoing correctly sets forth the terms of our agreement by sending a return executed acknowledgment hereto to the HNW Desk, via facsimile number (917) 612-9266. Notwithstanding the foregoing, your payment of the Termination Amount shall constitute your agreement to the terms of this Termination Agreement.



3

ARGO(BB&T)04430

ROA 5390

13/12/10 22:42:37 GMT FROM: DEUTSCHE BANK

MSG BY-HX-ST-312564-Z-1- PAGE 004 OF 004

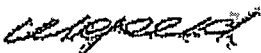
THIS MESSAGE WILL BE THE ONLY FORM OF CONFIRMATION DISPATCHED BY US. PLEASE EXECUTE AND RETURN IT BY FACSIMILE PROMPTLY TO FAX NUMBER +44 118 336 2009. IF YOU WISH TO EXCHANGE HARD COPY FORMS OF THIS CONFIRMATION PLEASE CONTACT US

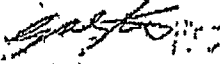
Please confirm that the foregoing correctly sets forth the terms of our agreement by sending to us a letter or telex substantially similar to this facsimile, which letter or telex sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms. The time of execution of this Transaction will be made available by Party A upon written request.

Notwithstanding the foregoing, your payment of the Termination Amount shall constitute your agreement to the terms of this Confirmation.

Yours faithfully,
for and on behalf of

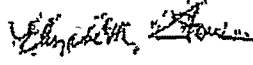
Deutsche Bank AG, London Branch

By: 
Name: Martin Gould
Title: Authorised Signatory

By: 
Name: Gaby Bolton
Title: Authorised Signatory

DEUTSCHE BANK SECURITIES INC.

By: 
Name: Steven Horn
Title: Authorised Signatory

By: 
Name: Elizabeth Stone
Title: Authorised Signatory

Confirmed as of the date first above written

FRANCIS P. MAYBANK[SEC 1092(A)(2)(B)STRADDLE ACCOUNT]

By: 
Name: Francis P. Maybank
Title: Chairman of the Supervisory Board, Deutsche Bank AG

By:
Name:
Title:

Chairman of the Supervisory Board, Deutsche Bank AG
Members of the Board: Josef Ackermann (Chairman), Hugo Darmann,
Michael Cohen, Jürgen Fritsch, Anton von der Lippe, Stefan Krüger,
Hermann-Josef Lohmeier, Rainer Nettekoven

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Financial Services Authority for the conduct of UK business; a member of the
London Stock Exchange. Deutsche Bank AG is a joint stock corporation with
limited liability incorporated in the Federal Republic of Germany HRB No. 23 000
District Court of Frankfurt am Main, Branch Registered in England and Wales
BR000005 Registered address: Winchester House, 1 Great Winchester Street
London EC2N 2DL
Deutsche Bank Group online: <http://www.deutsche-bank.com>



4

ARGO(BB&T)04431

ROA 5391

15/12/10 14:53:12 GMT FROM: DEUTSCHE BANK

MSGN NY-NY-ST-414124-1-B- PAGE 001 OF 009

Deutsche Bank



13 December 2010

FACSIMILE TRANSMISSION
Global Equity Derivatives

Deutsche Bank AG London
* Winchester House
1 Great Winchester Street
London EC2N 2DB
Telephone +44 207 545 8000

c/o Deutsche Bank Securities Inc
60 Wall Street
New York, NY 10005

Francis P. Maybank[Sec 1092(a)(2)(B) Straddle
Account] New York

To: HNW Desk
Fax No: 0019175129255

Transaction Reference Number, NY 414124

If you do not receive all the pages, please telephone immediately.
Please find attached the confirmation for the above referenced transaction

Please note that this will be the only form of Confirmation despatched by us. Kindly execute and return it by facsimile immediately, marked for my attention. Please also note that the Deutsche Bank group may require you to provide a copy of your authorised signature list/ certificate of incumbency ensuring that the signatory on the confirmation is included in that list.

If you wish to exchange hard copy forms of this Confirmation or should you have any comments or queries please do not hesitate to contact me on the above telephone number.

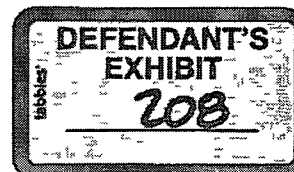
Please return the signed Confirmation to fax number +44 113 336 2009.

Regards
Zhuo Sparks

NOTICE: This communication may contain information which is confidential and/or proprietary and is intended only for the addressee named above. If you are not the named addressee, the communication has been sent to you in error and you are asked not to read, use or disclose it. We should be grateful if you would contact us immediately so that we can arrange for its return. Thank you.

Chairman of the Supervisory Board: Clemens Börsig
Management Board: Josef Ackermann (Chairman), Hugo Ender, Michael
Cohn, Jürgen Fichtel, Anshuman Jain, Stefan Krüger, Hermann Joraj
Lambert, Rainer Löske

Deutsche Bank AG is authorised under German Banking Law (credit institution) by BaFin - Federal Financial Supervising Authority and regulated by the Federal Reserve Authority for the conduct of its business. It is a member of the London Stock Exchange. Deutsche Bank AG is a joint stock corporation with limited liability incorporated in the Federal Republic of Germany. HRB No. 33000, Court of Commerce of Frankfurt am Main. Branch registered in England: 2001100000005 (registered address: Winchester House, 1 Great Winchester Street, London EC2N 2DB).
Daily for Bank Group phone: +44 20 7 545 8000. At the Bank.com



ARGO(BB&T)04432

ROA 5392

15/12/10 14:53:28 GMT FROM: DEUTSCHE BANK

MSG# NY-NY-ST-414124-1-B PAGE 002 OF 009

Deutsche Bank



13 December 2010

Deutsche Bank AG London
Winchester House
1 Great Winchester Street
London EC2N 2DB
Telephone: +44 207 545 8000

c/o Deutsche Bank Securities Inc
60 Wall Street
New York, NY 10005

Francis P. Maybank (Sec 1092(a)(2)(B) Straddle
Account)
90 Meeting Street
Charleston, SC 29601

Internal Reference Number NY-NY-ST-414124-1-00

Our Transaction Reference Number, NY 414124

Dear Sir / Madam,

This letter constitutes a Confirmation as specified in the Forward Purchase Contract relating to Transactions, by and between Deutsche Bank AG, London Branch ("Deutsche" or "Party A"), and Francis P. Maybank (Sec 1092(a)(2)(B) Straddle Account) (the Counterparty or "Party B") dated as of January 16, 2009 (the "Forward Purchase Contract"). This Confirmation supplements, forms part of and is subject to, the Forward Purchase Contract. The purpose of this Confirmation is to set forth the terms and conditions of the above-referenced Transactions. All provisions contained in the Forward Purchase Contract govern this Confirmation except as expressly modified as set out below. Counterparty and Deutsche are parties to a Pledge and Security Annex (the "Security Annex") as defined in the Forward Purchase Contract. This Confirmation is a confirmation for purposes of Rule 10b-1a promulgated under the 1934 Act.

DEUTSCHE BANK AG, LONDON BRANCH, IS NOT REGISTERED AS A BROKER DEALER UNDER THE U.S. SECURITIES EXCHANGE ACT OF 1934. DEUTSCHE BANK SECURITIES INC. HAS ACTED SOLELY AS AGENT IN CONNECTION WITH THIS TRANSACTION AND HAS NO OBLIGATION, BY WAY OF ISSUANCE, ENDORSEMENT, GUARANTEE OR OTHERWISE WITH RESPECT TO THE PERFORMANCE OF EITHER PARTY UNDER THE TRANSACTION. AS SUCH, DEUTSCHE BANK SECURITIES INC. DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES AND CONFIRMATIONS OF ANY KIND RELATING TO THE TRANSACTION BETWEEN DEUTSCHE BANK AG, LONDON BRANCH, AND COUNTERPARTY OR ANY OF THE TRANSACTIONS THROUGH DEUTSCHE BANK SECURITIES INC. DEUTSCHE BANK AG, LONDON BRANCH, IS NOT A MEMBER OF THE SECURITIES INVESTOR PROTECTION CORPORATION (SIPC).

DEUTSCHE BANK AG, LONDON BRANCH, IS NOT A MEMBER OF THE SECURITIES INVESTOR PROTECTION CORPORATION (SIPC). DEUTSCHE BANK SECURITIES INC. IS A MEMBER OF THE SECURITIES INVESTOR PROTECTION CORPORATION (SIPC).

DEUTSCHE BANK AG, LONDON BRANCH, IS NOT A MEMBER OF THE SECURITIES INVESTOR PROTECTION CORPORATION (SIPC).

Yours faithfully,

Deutsche Bank

Deutsche Bank

Deutsche Bank

Deutsche Bank

Deutsche Bank

Calculation Agent.	Deutsche
<u>Description of Shares:</u>	
Issuer.	BB&T Corporation
Shares.	"B5T", Cusip # 054937107, the common stock of the Issuer
Exchanges	The New York Stock Exchange, or any successor to such exchange or quotation system.
Related Exchange(s).	Any relevant exchange or recognized quotation system (and any other successor thereto) on which futures and/or options contracts on the Shares are traded as determined by the Calculation Agent.
Number of Shares;	203,600
Purchase Price (\$);	USD 4,877,894.00
Threshold Price.	USD 31.824
Floor Price	USD 28.520
<u>Valuation.</u>	
Valuation Date	August 12, 2011
<u>Settlement Terms:</u>	
Settlement	(A) If physically settled then the "Number of Shares to be Delivered" means the number of Shares determined by the Calculation Agent on the Valuation Date (rounded down to the nearest whole number) equal to or (B) If cash settled then the "Cash Settlement Amount" means a dollar amount equal to the value of a number of Shares equal to: (i) If the Settlement Price is less than or equal to the Floor Price, the Number of Shares; (ii) If the Settlement Price is greater than the Floor Price, but less than or equal to the Threshold Price: $\frac{\text{Floor Price}}{\text{Settlement Price}} \times \text{Number of Shares}$ and (iii) If the Settlement Price is greater than the Threshold Price: $\frac{\text{Floor Price} + (\text{Settlement Price} - \text{Threshold Price})}{\text{Settlement Price}} \times \text{Number of Shares}$
Notification Date	In the event Counterparty elects cash settlement instead of physical settlement, the Notification Date shall be the 10 th Business Day prior to the Valuation Date.
Settlement Date	Three (3) Business Days after the Valuation Date
Conditions to Physical Settlement;	The Shares delivered were either not on the Trade Date "restricted securities" within the meaning of Rule 144(a)(3) promulgated under the 1933 Act or ceased to be "restricted securities" by virtue of this



Transaction because both the offer and sale thereof complied with Rule 144 and at the time of settlement the Shares delivered are in the hands of Deutsche or its designee, as transferee, Free Shares (as defined below)

Physical Settlement Fee on Restricted Stock:

In the event of physical settlement, if Deutsche determines, in its reasonable discretion that due to the affiliate status of Counterparty (if applicable) or due to restrictions on the stock being delivered as physical settlement (if any), such stock should be sold by Deutsche in the market instead of used by Deutsche to close out its hedge position, Counterparty shall pay to Deutsche on the Settlement Date a physical settlement fee of USD 0.06 per share.

Free Shares

Shares that are not subject to any condition to or restriction on the ability of the holder to sell, assign or otherwise transfer such Shares (or security entitlements in respect thereof) or to enforce the provisions thereof or of any document related thereto whether set forth in such Shares or in any document related thereto

Disclosed Restrictions:

The Disclosed Securities Law Restrictions (if any)

Disclosed Securities Law Restrictions:

None

Dividends:

Extraordinary Dividend

As determined by the Calculation Agent, (i) any cash dividend on the Shares at a time when the issuer has not previously declared or paid dividends on such Shares for the prior four full calendar quarters (ii) any cash dividend or distribution declared on the Shares in a "Relevant Period" (as specified in the Extraordinary Dividend Schedule below) which exceeds the corresponding number of "Expected Dividend Payment(s)" (as specified in the Extraordinary Dividend Schedule below) or whose value exceeds the corresponding "Dividend Threshold" (as specified in the Extraordinary Dividend Schedule below), or (iii) any other "special" cash or non-cash dividend or distribution with respect to the Shares which is, by its terms or declared intent, declared and paid outside the normal operations or normal dividend procedures of the issuer, provided that, in all cases, the related ex dividend date occurs during the period from but excluding the Trade Date to and including the Valuation Date.



Extraordinary Dividend Schedule:

Relevant Period		Expected Dividend Payments	Dividend Threshold
From but excluding	To and including		
Trade Date	The final Valuation Date	3	USD 0.15

Extraordinary Dividend Payment Date: The earlier of (i) the Settlement Date or (ii) two (2) Exchange Business Days following the date on which the issuer pays the Extraordinary Dividend to holders of the Shares

Collateral Arrangements:

Collateral Method: Share Pledge

Arrangements: Counterparty hereby pledges the Shares (and all proceeds thereof) to Deutsche to secure this Transaction pursuant to the terms of the Annex.

Securities Control: The Shares shall be deemed to be Identified as Account Contents in Attachment 1 of the Account Control Agreement included as Schedule 1 to the Forward Purchase Contract.

Share Repothecation: Counterparty does not consent to rehypothecation of Shares by Deutsche.

Other Provisions:

Hedging Disruption Event: Applicable, for purposes of this Transaction, Deutsche, at its election, may treat a Hedging Disruption Event as a Potential Adjustment Event or a Termination Event; provided, however, that prior to taking any action, Deutsche shall notify Counterparty of the Hedging Disruption Event.

For purposes of this Transaction, "Material Increase" shall mean any increase in cost determined to be material by Deutsche in its sole discretion and shall include, but not be limited to, the cost of borrow of Shares, as determined by the Calculation Agent, exceeding 0.50 bps, where the stock remains at or above such increased level for 3 consecutive Business Days.

Method of Delivery: Whenever delivery of funds or other assets is required hereunder by or to Counterparty, such delivery shall be effected through DSI. In addition, all notices, demands and communications of any kind relating to this Transaction between Deutsche and Counterparty shall be transmitted through DSI.

Miscellaneous:

Time of Execution: Deutsche will supply the time of execution of the Transaction upon the request of the Counterparty

Adverse Regulatory Change: The parties agree that, for the avoidance of doubt, for purposes of the Definition of Adverse Regulatory Change, "any applicable law or regulation" shall include the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, any rules and regulations promulgated thereunder and any similar law or regulation, without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, and the consequences specified in the



15/12/18 14:54:48 ENT FROM: DEUTSCHE BANK

MSG# NY-NY-ST-414124-1-B- PAGE 006 OF 009

Forward Purchase Contract shall apply to any Adverse Regulatory Change arising from any such act, rule or regulation.

Additional Representations:

The Counterparty hereto affirms and repeats its acknowledgements, representations and warranties set forth in (i) the Forward Purchase Contract, (ii) the Annex thereto and (iii) Schedule A hereto

Counterparty further represents, warrants and agrees with Deutsche as follows.

(a) Neither Counterparty nor any of its Affiliates is aware of, or has any special access to, any non-public material information regarding the Issuer. Such representation shall be deemed to be a continuous representation made by Counterparty up to and including the date of the signing of this Confirmation.

(b) In connection with any sale of the Shares, Counterparty will satisfy all applicable filing, reporting or other requirements.

(c) It intends to treat this Transaction and the stock pledged as collateral in BBSI account 699-01409-1X, as positions in an "identified straddle" as defined in Internal Revenue Code Section 1092(a)(2)(B) as currently in effect, and has by separate written communication notified Deutsche of its intention to identify these positions and has directed Deutsche to legend the account holding such positions with the following statement: "All positions held in this account are part of an identified straddle for purposes of Section 1092(a)(2)(B) of the Internal Revenue Code of 1996 as amended."

(d) The pledge of the Shares constitutes a bona fide pledge with full recourse to Counterparty. Counterparty agrees not to pledge to any person other than Deutsche any Shares or any securities convertible or exchangeable into Shares, as security for any obligation, without the prior written consent of Deutsche, and acknowledges that Deutsche is relying on such agreement.

Counterparty Information:

Address for Notices, Payment or Delivery:

Francis P. Maybank [Sec 1092(a)(2)(B) Straddle Account]
39 Meeting Street
Charleston, SC 29601



6

ARGO(BB&T)04437

ROA 5397

15/12/18 14:54:56 GMT FROM: DEUTSCHE BANK

MSGID: HY-SI-414124-1-B- PAGE 887 OF 889

Please confirm by signing below that the foregoing correctly sets out the terms of our Transaction and return by fax to the attention of HNW Desk at (917) 512 9255.

Party B Representations Party B represents, warrants and acknowledges that:

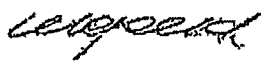
The execution, delivery and performance of this Confirmation and the Transactions contemplated hereunder will not violate any applicable law or regulation, including, without limitation, any short-selling restrictions and reporting obligations as may be imposed in any relevant jurisdiction from time to time, and that Counterparty is not engaging in the Transactions contemplated hereunder with the intent to impermissibly avoid any such restrictions, reporting or disclosure obligations or any applicable regulatory filings.

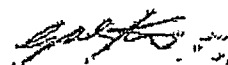
THIS MESSAGE WILL BE THE ONLY FORM OF CONFIRMATION DISPATCHED BY US PLEASE EXECUTE AND RETURN IT BY FACSIMILE PROMPTLY TO FAX NUMBER +44 113 336 2009 IF YOU WISH TO EXCHANGE HARD COPY FORMS OF THIS CONFIRMATION PLEASE CONTACT US.

Please confirm that the foregoing correctly sets forth the terms of our agreement by sending to us a letter or telex substantially similar to this facsimile, which letter or telex sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms. The time of execution of this Transaction will be made available by Party A upon written request.

Yours faithfully,
for and on behalf of

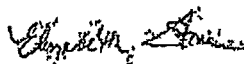
Deutsche Bank AG, London Branch

By 
Name: Martin Gould
Title: Authorised Signatory

By 
Name: Gaby Bolton
Title: Authorised Signatory

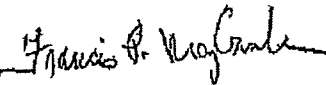
DEUTSCHE BANK SECURITIES INC

By 
Name: Steven Horn
Title: Authorised Signatory

By 
Name: Elizabeth Stone
Title: Authorised Signatory

Confirmed as of the date first above written

FRANCIS P. MAYBANK[SEC 1052(A)(2)(B)STRADDLE ACCOUNT]

By 
Name: Francis P. Maybank
Title:

By:
Name:
Title:

Chairman of the Supervisory Board: Clemens Baisig
Management Board: Jozsef Ackermann (Chairman), Hugo Bossler,
Michael Gohr, Jürgen Flüggen, Anthonen John, Stefan Krosch,
Hermann-Josef Lamberz, Rainer Necker

Deutsche Bank AG is authorised under German Banking Law (BanksG) by the authority: BaFin - Federal Financial Supervisory Authority and regulated by the Financial Services Authority for the conduct of UK business, a member of the London Stock Exchange. Deutsche Bank AG is a joint stock corporation with limited liability incorporated in the Federal Republic of Germany HRB No. 33 000 District Court of Frankfurt am Main. Branch Registration in England and Wales: BR000025 Registered address: Winchester House, 1 Great Winchester Street, London EC2N 2DB. Deutsche Bank Group website: <http://www.deutschebank.com>



ARGO(BB&T)04438

ROA 5398

SCHEDULE A

COUNTERPARTY IS NOT AN AFFILIATE OF THE ISSUER, THE COLLATERAL CONSISTING OF SHARES ARE NOT "RESTRICTED SECURITIES" WITHIN THE MEANING OF RULE 144 AND COUNTERPARTY IS NOT A SECTION 16 FILER UNDER THE 1934 ACT

Freely Transferable On the date hereof, the Collateral consisting of Shares (the "Collateral Shares") are freely transferable by Counterparty under the 1933 Act without registration thereunder and without any restrictions on transfer whatsoever. Without limiting the foregoing, the Collateral Shares are not "restricted securities" within the meaning of Rule 144(a)(3) promulgated under the 1933 Act, and the Issuer was not at the time the Collateral Shares were initially issued or any previous time an issuer described in Rule 144(i)(1).

The Collateral is not subject to any restrictions on transfer whatsoever, and no Collateral Shares are entitled to the benefits of any registration rights agreement or similar agreement. There are no agreements, contracts, instruments or understandings that relate to the Collateral, other than those specified in the Confirmation, if any.

Non-Affiliate, Non-Insider Counterparty and, its general partner, each of its limited partners and each of their respective Affiliates as applicable is not, has not been during the three months preceding the Trade Date, and will not become during the term of the Transaction, an Affiliate of the Issuer. Counterparty and, its general partner, each of its limited partners and each of their respective Affiliates as applicable is not, has not been, and will not become during the term of the Transaction, subject to the reporting and other requirements of Section 16 of the 1934 Act and the rules and regulations promulgated thereunder.

Section 19 If Counterparty is not a Section 13 filer under the 1934 Act, then Counterparty and, its general partner, each of its limited partners and each of their respective Affiliates as applicable is not, has not been, and will not become during the term of the Transaction, the beneficial owner (as defined in Rule 13d-3 promulgated under the 1934 Act, but treating any securities beneficially owned by Counterparty that are convertible, exchangeable or exercisable into or for equity securities of the issuer as if they had been converted, exchanged or exercised) of more than five percent of the outstanding shares of any class or series of equity securities issued by the Issuer. For the purposes of this representation Counterparty shall be deemed to have beneficial ownership of any securities it beneficially owns within the meaning of Rule 13d-3 whether such beneficial ownership is direct or indirect and whether it is based on securities individually owned by Counterparty or securities owned as a member of a "group" within the meaning of Rule 13d-5(b) promulgated under the 1934 Act.



TRANSMISSION VERIFICATION REPORT

TIME 08/23/2011 23 08
NAME UPSSTORE
FAX 8644210880
TEL
SER # BROH0J196687

DATE, TIME 08/23 23.04
FAX NO /NAME 17325782641
DURATION 00 04'18
PAGE(S) 11
RESULT OK
MODE STANDARD
ECM

Aug 17 2011 13:54:34 GMT FROM: DEUTSCHE BANK

HSG# NY-NY-ST-449110-1-B- PAGE 001 OF 008

Jeremy Levine
732 578 2641

15 August 2011

FACSIMILE TRANSMISSION
Global Equity Derivatives

Deutsche Bank



Deutsche Bank AG London
Winchester House
1 Great Winchester Street
London EC2N 2DB
Telephone +44 207 545 8000

c/o Deutsche Bank Securities Inc
60 Wall Street
New York, NY 10005

Francis P Maybank(Sec 1092(a)(2)(B)Straddle
Account], New York

To: HNW Desk
Fax No 0019176129255

Transaction Reference Number: NY 449110

If you do not receive all the pages, please telephone immediately
Please find attached the confirmation for the above referenced transaction.

Please note that this will be the only form of Confirmation despatched by us. Kindly execute and return it by facsimile immediately, marked for my attention. Please also note that the Deutsche Bank group may require you to provide a copy of your authorised signature list/ certificate of incumbency, ensuring that the signatory on the confirmation is included in that list.

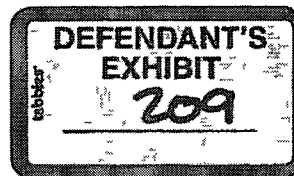
If you wish to exchange hard copy forms of this Confirmation or should you have any comments or queries please do not hesitate to contact me on the above telephone number

Please return the signed Confirmation to fax number: +44 113 336 2009.

Remarks

Maybank 005649

ROA 5400



Francis P Maybank

Aug 15 2011 21:36:36 GMT FROM: DEUTSCHE BANK

MSG# NY-NY-ST-414124-1-1- PAGE 001 OF 004

Jeremy Levin
732-578-2641

15 August 2011

FACSIMILE TRANSMISSION
Global Equity Derivatives

Deutsche Bank



Deutsche Bank AG London
Winchester House
1 Great Winchester Street
London EC2N 2DB
Telephone +44 207 545 8000

c/o Deutsche Bank Securities Inc
60 Wall Street
New York, NY 10005

Francis P Maybank[Sec 1092(a)(2)(B)Straddle
Account], New York

To: HNW Desk
Fax No 0019175129255

Transaction Reference Number NY 414124 Event No 1

If you do not receive all the pages, please telephone immediately
Please find attached the confirmation for the above referenced transaction

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If you wish to exchange hard copy forms of this Confirmation or should you have any comments or queries please do not hesitate to contact me on the above telephone number.

Please return the signed Confirmation to fax number, +44 113 336 2009

Regards
Palem-S Bharath

NOTICE: This communication may contain information which is confidential and/or legally privileged and is intended only for the addressee named above. If you are not the named addressee, the communication has been sent to you in error and you are asked not to read, use or disclose it. We should be grateful if you would contact us immediately so that we can arrange for its return. Thank you.

Chairman of the Supervisory Board: Clemens Börsig
Management Board: Josef Ackermann (Chairman), Hugo Bänziger, Jürgen Fitschen, Anshuman Jahn, Stefan Krause, Hermann-Josef Lamberth, Rainer Niese

Deutsche Bank AG is authorised under German Banking Law (competent authority: BaFin – Federal Financial Supervising Authority) and regulated by the Financial Services Authority for the conduct of UK business, a member of the London Stock Exchange. Deutsche Bank AG is a joint stock corporation with limited liability incorporated in the Federal Republic of Germany HRB No 30 000 District Court of Frankfurt am Main. Branch Registration in England and Wales BR000006; Registered address: Winchester House 1 Great Winchester Street, London EC2N 2DB
Deutsche Bank Group online: <http://www.deutsche-bank.com>



Maybank 005650

ROA 5401

Deutsche Bank



15 August 2011

Deutsche Bank AG London
Winchester House
1 Great Winchester Street
London EC2N 2DB
Telephone +44 207 545 8000

c/o Deutsche Bank Securities Inc
60 Wall Street
New York, NY 10005

Francis P Maybank [Sec 1092(a)(2)(B) Straddle
Account]
30 Meeting Street
Charleston, SC 29601

Our Transaction Reference Number NY 414124 Event No. 1

Dear Sir / Madam,

The purpose of this letter (this "Termination Agreement") is to confirm the terms and conditions governing our agreement to terminate the Transaction Identified below (the "Original Transaction") between Deutsche Bank AG, London Branch ("Deutsche" or "Party A") and Francis P. Maybank [Sec 1092(a)(2)(B) Straddle Account] (the "Counterparty" or "Party B"), the Confirmation of which bears DBSI Reference Number 414124 (the "Original Confirmation")

DEUTSCHE BANK AG, LONDON BRANCH, IS NOT REGISTERED AS A BROKER DEALER UNDER THE U.S. SECURITIES EXCHANGE ACT OF 1934. DEUTSCHE BANK SECURITIES INC HAS ACTED SOLELY AS AGENT IN CONNECTION WITH THIS TRANSACTION AND HAS NO OBLIGATION, BY WAY OF ISSUANCE, ENDORSEMENT, GUARANTEE OR OTHERWISE WITH RESPECT TO THE PERFORMANCE OF EITHER PARTY UNDER THE TRANSACTION. AS SUCH, ALL DELIVERY OF FUNDS, ASSETS, NOTICES, DEMANDS AND COMMUNICATIONS OF ANY KIND RELATING TO THIS TRANSACTION BETWEEN DEUTSCHE BANK AG, LONDON BRANCH, AND COUNTERPARTY SHALL BE TRANSMITTED THROUGH DEUTSCHE BANK SECURITIES INC. DEUTSCHE BANK AG, LONDON BRANCH, IS NOT A MEMBER OF THE SECURITIES INVESTOR PROTECTION CORPORATION (SIPC)

Capitalized terms used but not defined herein shall have the meanings set forth in the Original Confirmation

Original Transaction Terms.

Trade Date	December 13, 2010
Issuer	BB&T Corporation (the "Issuer")
Shares	BBT
Number of Shares	203,600
Threshold Price	USD 31.824
Floor Price	USD 26.520
Valuation Date	August 12, 2011



Maybank 005651

ROA 5402

Aug 15 2011 21:37:20 GMT FROM: DEUTSCHE BANK

MSG# NY-NY-ST-414124-1-1- PAGE 004 OF 004

Please confirm that the foregoing correctly sets forth the terms of our agreement by sending a return executed acknowledgment hereof to the HNW Desk, via facsimile number (917) 512-9255. Notwithstanding the foregoing, your payment of the Termination Amount shall constitute your agreement to the terms of this Termination Agreement.

THIS MESSAGE WILL BE THE ONLY FORM OF CONFIRMATION DISPATCHED BY US. PLEASE EXECUTE AND RETURN IT BY FACSIMILE PROMPTLY TO FAX NUMBER +44 113 336 2009. IF YOU WISH TO EXCHANGE HARD COPY FORMS OF THIS CONFIRMATION PLEASE CONTACT US.

Please confirm that the foregoing correctly sets forth the terms of our agreement by sending to us a letter or telex substantially similar to this facsimile, which letter or telex sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms. The time of execution of this Transaction will be made available by Party A upon written request.

Notwithstanding the foregoing, your payment of the Termination Amount shall constitute your agreement to the terms of this Confirmation.

Yours faithfully,
for and on behalf of

Deutsche Bank AG, London Branch

By: 

Name: Martin Gould
Title: Authorised Signatory

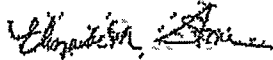
DEUTSCHE BANK SECURITIES INC

By: 

Name: Steven Horn
Title: Authorised Signatory

By: 

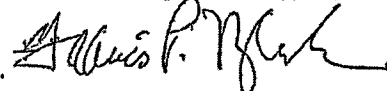
Name: Stephanie Wood
Title: Authorised Signatory

By: 

Name: Elizabeth Stone
Title: Authorised Signatory

Confirmed as of the date first above written.

FRANCIS P. MAYBANK[SEC 1092(A)(2)(B)STRADDLE ACCOUNT]

By: 

Name:
Title:

By:
Name:
Title:

Chairman of the Supervisory Board: Clemens Börsig
Management Board: Josef Ackermann (Chairman), Hugo Böttger,
Jürgen Filschen, Anshuman Jain, Stefan Krause, Hermann-Josef
Lamberth, Rainer Neske

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Deutsche Bank Group online: <http://www.deutsche-bank.com>



Maybank 005652

ROA 5403

Aug 15 2011 21:37:08 GMT FROM: DEUTSCHE BANK

MSG# NY-NY-ST-414124-1-1- PAGE 003 OF 004

Termination Terms and Conditions

Termination Trade Date	August 12, 2011
Number of Shares being Terminated	203,600
Number of Shares Remaining	Zero
Termination Amount Payable by Counterparty	USD 4,251,168 00
Termination Settlement Date	August 17, 2011

In consideration of the Termination Amount payable on the Termination Settlement Date, you and we agree that, with effect from the Termination Trade Date, the Original Transaction shall terminate and, with the exception of the Termination Amount, the obligations of Deutsche and Counterparty arising after the Termination Trade Date are hereby deemed terminated except in respect of any amounts which have become due and remain unpaid on the Termination Trade Date. Except as expressly provided herein, all other Transactions between Deutsche and Counterparty shall remain in full force and effect.

This Termination Agreement constitutes an amendment to, and forms, a part of, the Original Confirmation. Without limiting the generality of the foregoing, payment of the Termination Amount shall be deemed to be a payment specified as being payable in such Original Confirmation.



Maybank 005653

ROA 5404

Jeremy Levine
732-578-2641

15 August 2011

FACSIMILE TRANSMISSION
Global Equity Derivatives

Deutsche Bank



Deutsche Bank AG London
Winchester House
1 Great Winchester Street
London EC2N 2DB
Telephone +44 207 545 8000

c/o Deutsche Bank Securities Inc
60 Wall Street
New York, NY 10005

Francis P. Maybank[Sec 1092(a)(2)(B)Straddle
Account], New York

To: HNW Desk
Fax No: 0019175129255

Transaction Reference Number NY 449110

If you do not receive all the pages, please telephone immediately
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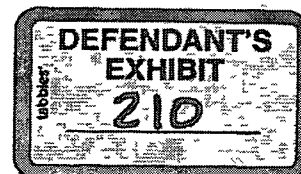
Please return the signed Confirmation to fax number +44 113 336 2009

Regards
Palem S Bharath

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Management Board: Josef Ackermann (Chairman), Hugo Bänziger, Jürgen Filsch, Anshuman Jain, Stefan Krause, Hermann-Josef Lamberth, Rainer Neske

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Deutsche Bank Group online: <http://www.deutsche-bank.com>



Maybank 005713

ROA 5405

Deutsche Bank



15 August 2011

Deutsche Bank AG London
Winchester House
1 Great Winchester Street
London EC2N 2DB
Telephone: +44 207 545 8000

c/o Deutsche Bank Securities Inc
60 Wall Street
New York, NY 10005

Francis P. Maybank [Sec 1092(a)(2)(B) Straddle
Account]
30 Meeting Street
Charleston, SC 29601

Internal Reference Number: NY-NY-ST-449110-1-B-0

Our Transaction Reference Number: NY 449110

Dear Sir / Madam,

This letter constitutes a Confirmation as specified in the Forward Purchase Contract relating to Transactions, by and between Deutsche Bank AG, London Branch ("Deutsche" or "Party A"), and Francis P. Maybank [Sec 1092(a)(2)(B) Straddle Account] (the "Counterparty" or "Party B") dated as of January 15, 2009 (the "Forward Purchase Contract"). This Confirmation supplements, forms part of and is subject to, the Forward Purchase Contract. The purpose of this Confirmation is to set forth the terms and conditions of the above-referenced Transactions. All provisions contained in the Forward Purchase Contract govern this Confirmation except as expressly modified as set out below. Counterparty and Deutsche are parties to a Pledge and Security Annex (the "Security Annex") as defined in the Forward Purchase Contract. This Confirmation is a confirmation for purposes of Rule 10b-10 promulgated under the 1934 Act.

DEUTSCHE BANK AG, LONDON BRANCH, IS NOT REGISTERED AS A BROKER DEALER UNDER THE U.S. SECURITIES EXCHANGE ACT OF 1934. DEUTSCHE BANK SECURITIES INC. HAS ACTED SOLELY AS AGENT IN CONNECTION WITH THIS TRANSACTION AND HAS NO OBLIGATION, BY WAY OF ISSUANCE, ENDORSEMENT, GUARANTEE OR OTHERWISE WITH RESPECT TO THE PERFORMANCE OF EITHER PARTY UNDER THE TRANSACTION. AS SUCH, ALL DELIVERY OF FUNDS, ASSETS, NOTICES, DEMANDS AND COMMUNICATIONS OF ANY KIND RELATING TO THIS TRANSACTION BETWEEN DEUTSCHE BANK AG, LONDON BRANCH, AND COUNTERPARTY SHALL BE TRANSMITTED THROUGH DEUTSCHE BANK SECURITIES INC. DEUTSCHE BANK AG, LONDON BRANCH, IS NOT A MEMBER OF THE SECURITIES INVESTOR PROTECTION CORPORATION (SIPC).

Capitalized terms not otherwise defined in this Confirmation shall have the respective meanings set forth in the Forward Purchase Contract. In addition, if any of the scheduled dates specified herein falls on a day that is not a Business Day, then such date(s) shall be adjusted forward to the first succeeding Business Day, unless otherwise stated below.

The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date

August 12, 2011

Payment Date

August 17, 2011, *provided, however*, if Counterparty has not delivered (i) to Deutsche the executed Confirmation and (ii) to the Collateral Custodian all Collateral required to be delivered in respect of the Transaction, such payment shall be made promptly following Deutsche's receipt of the executed Confirmation and the Collateral.



Maybank 005714

ROA 5406

Calculation Agent Deutsche

Description of Shares

Issuer BB&T Corporation
 Shares "BBT", Cusip # 054937107, the common stock of the issuer
 Exchange The New York Stock Exchange, or any successor to such exchange or quotation system.
 Related Exchange(s) Any relevant exchange or recognized quotation system (and any other successor thereto) on which futures and/or options contracts on the Shares are traded, as determined by the Calculation Agent.
 Number of Shares 224,724
 Purchase Price (\$) USD 4,251,168 00
 Threshold Price USD 25 06
 Floor Price USD 20 88

Valuation

Valuation Date January 03, 2012

Settlement Terms

Settlement:

(A) If physically settled then the "Number of Shares to be Delivered" means the number of Shares determined by the Calculation Agent on the Valuation Date (rounded down to the nearest whole number) equal to or (B) If cash settled then the "Cash Settlement Amount" means a dollar amount equal to the value of a number of Shares equal to

(I) If the Settlement Price is less than or equal to the Floor Price, the Number of Shares,

(II) If the Settlement Price is greater than the Floor Price, but less than or equal to the Threshold Price

$$\frac{\text{Floor Price}}{\text{Settlement Price}} \times \text{Number of Shares}$$

and

(III) If the Settlement Price is greater than the Threshold Price

$$\frac{\text{Floor Price} + (\text{Settlement Price} - \text{Threshold Price})}{\text{Settlement Price}} \times \text{Number of Shares}$$

Notification Date

In the event Counterparty elects cash settlement instead of physical settlement, the Notification Date shall be the 10th Business Day prior to the Valuation Date

Settlement Date

3 Business Days after the Valuation Date

Conditions to Physical Settlement:

The Shares delivered were either not on the Trade Date "restricted securities" within the meaning of Rule 144(a)(3) promulgated under the



Maybank 005715

ROA 5407

1933 Act or ceased to be "restricted securities" by virtue of this Transaction because both the offer and sale thereof complied with Rule 144 and, at the time of settlement, the Shares delivered are, in the hands of Deutsche or its designee, as transferee, Free Shares (as defined below)

Physical Settlement Fee on Restricted Stock

In the event of physical settlement, if Deutsche determines, in its reasonable discretion, that due to the affiliate status of Counterparty (if applicable) or due to restrictions on the stock being delivered as physical settlement (if any), such stock should be sold by Deutsche in the market instead of used by Deutsche to close out its hedge position, Counterparty shall pay to Deutsche on the Settlement Date a physical settlement fee of USD 0.06 per share

Free Shares

Shares that are not subject to any condition to or restriction on the ability of the holder to sell, assign or otherwise transfer such Shares (or security entitlements in respect thereof) or to enforce the provisions thereof or of any document related thereto whether set forth in such Shares or in any document related thereto

Disclosed Restrictions

The Disclosed Securities Law Restrictions (if any)

Disclosed Securities Law Restrictions

None

Dividends

Extraordinary Dividend

As determined by the Calculation Agent, (I) any cash dividend on the Shares at a time when the Issuer has not previously declared or paid dividends on such Shares for the prior four full calendar quarters, (II) any cash dividend or distribution declared on the Shares in a "Relevant Period" (as specified in the Extraordinary Dividend Schedule below) which exceeds the corresponding number of "Expected Dividend Payments" (as specified in the Extraordinary Dividend Schedule below) or whose value exceeds the corresponding "Dividend Threshold" (as specified in the Extraordinary Dividend Schedule below), or (III) any other "special" cash or non-cash dividend or distribution with respect to the Shares which is, by its terms or declared intent, declared and paid outside the normal operations or normal dividend procedures of the Issuer, provided that, in all cases, the related ex-dividend date occurs during the period from but excluding the Trade Date to and including the Valuation Date

Extraordinary Dividend Schedule

Relevant Period		Expected Dividend Payments	Dividend Threshold
From but excluding	To and Including		
Trade Date	The Valuation Date	1	USD 0.16

Extraordinary Dividend Payment Date

The earlier of (I) the Settlement Date or (II) two (2) Exchange Business Days following the date on which the Issuer pays the Extraordinary Dividend to holders of the Shares



Maybank 005716

ROA 5408

Collateral Arrangements

Collateral Method

Share Pledge

Arrangements.

Counterparty hereby pledges the Shares (and all proceeds thereof) to Deutsche to secure this Transaction pursuant to the terms of the Annex.

Securities Control

The Shares shall be deemed to be Identified as Account Contents In Attachment 1 of the Account Control Agreement included as Schedule I to the Forward Purchase Contract.

Share Reprehocaton.

Counterparty does not consent to rehypothecation of Shares by Deutsche.

Other Provisions

Hedging Disruption Event

Applicable, for purposes of this Transaction, Deutsche, at its election, may treat a Hedging Disruption Event as a Potential Adjustment Event or a Termination Event, provided, however, that prior to taking any action, Deutsche shall notify Counterparty of the Hedging Disruption Event.

For purposes of this Transaction, "Material Increase" shall mean any increase in cost determined to be material by Deutsche in its sole discretion, and shall include, but not be limited to, the cost of borrow of Shares, as determined by the Calculation Agent, exceeding 50 bps, where the stock remains at or above such increased level for 3 consecutive Business Days

Method of Delivery

Whenever delivery of funds or other assets is required hereunder by or to Counterparty, such delivery shall be effected through DBSI. In addition, all notices, demands and communications of any kind relating to this Transaction between Deutsche and Counterparty shall be transmitted through DBSI.

Miscellaneous

Time of Execution

Deutsche will supply the time of execution of the Transaction upon the request of the Counterparty

Adverse Regulatory Change

The parties agree that, for the avoidance of doubt, for purposes of the Definition of Adverse Regulatory Change, "any applicable law or regulation" shall include the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, any rules and regulations promulgated thereunder and any similar law or regulation, without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, and the consequences specified in the Forward Purchase Contract shall apply to any Adverse Regulatory Change arising from any such act, rule or regulation

John E. Miller



Maybank 005717

SCHEDULE A

COUNTERPARTY IS NOT AN AFFILIATE OF THE ISSUER, THE COLLATERAL CONSISTING OF SHARES ARE NOT "RESTRICTED SECURITIES" WITHIN THE MEANING OF RULE 144 AND COUNTERPARTY IS NOT A SECTION 16 FILER UNDER THE 1934 ACT

Freely Transferable On the date hereof, the Collateral consisting of Shares (the "Collateral Shares") are freely transferable by Counterparty under the 1933 Act without registration thereunder and without any restrictions on transfer whatsoever. Without limiting the foregoing, the Collateral Shares are not "restricted securities" within the meaning of Rule 144(a)(3) promulgated under the 1933 Act, and the Issuer was not at the time the Collateral Shares were initially issued or any previous time an issuer described in Rule 144(i)(1).

The Collateral is not subject to any restrictions on transfer whatsoever, and no Collateral Shares are entitled to the benefits of any registration rights agreement or similar agreement. There are no agreements, contracts, instruments or understandings that relate to the Collateral, other than those specified in the Confirmation, if any.

Non-Affiliate, Non-Insider Counterparty and, its general partner, each of its limited partners and each of their respective Affiliates as applicable is not, has not been during the three months preceding the Trade Date, and will not become during the term of the Transaction, an Affiliate of the Issuer. Counterparty and, its general partner, each of its limited partners and each of their respective Affiliates as applicable is not, has not been, and will not become during the term of the Transaction, subject to the reporting and other requirements of Section 16 of the 1934 Act and the rules and regulations promulgated thereunder.

Section 13 If Counterparty is not a Section 13 filer under the 1934 Act, then Counterparty and, its general partner, each of its limited partners and each of their respective Affiliates as applicable is not, has not been, and will not become during the term of the Transaction, the beneficial owner (as defined in Rule 13d-3 promulgated under the 1934 Act, but treating any securities beneficially owned by Counterparty that are convertible, exchangeable or exercisable into or for equity securities of the Issuer as if they had been converted, exchanged or exercised) of more than five percent of the outstanding shares of any class or series of equity securities issued by the Issuer. For the purposes of this representation, Counterparty shall be deemed to have beneficial ownership of any securities it beneficially owns within the meaning of Rule 13d-3 whether such beneficial ownership is direct or indirect and whether it is based on securities individually owned by Counterparty or securities owned as a member of a "group" within the meaning of Rule 13d-5(b) promulgated under the 1934 Act.

Schedule 13D or 13G If Counterparty is a Section 13 filer under the 1934 Act, then as of the date of Counterparty's most recent Schedule 13D or 13G, as applicable, filing with the Securities and Exchange Commission, Counterparty was the beneficial owner (as defined in Rule 13d-3 promulgated under the 1934 Act) of less than 10% of the outstanding shares of the Issuer. Counterparty is currently, and in the past has been, in compliance with its reporting obligations under Sections 13(d) and (g) of the 1934 Act. Unless Counterparty is a 13G filer, an amendment to the Schedule 13D (including attaching this Confirmation as an exhibit thereto) will be promptly filed by Counterparty with the Securities and Exchange Commission within one Business Day of the Trade Date.

Handwritten signature



Maybank 005718

ROA 5410

Please confirm by signing below that the foregoing correctly sets out the terms of our Transaction and return by fax to the attention of HNW Desk at (917) 512-9255

Party B Representations Party B represents, warrants and acknowledges that:

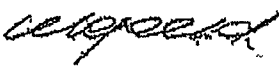
The execution, delivery and performance of this Confirmation and the Transactions contemplated hereunder will not violate any applicable law or regulation, including, without limitation, any short-selling restrictions and reporting obligations as may be imposed in any relevant jurisdiction from time to time, and that Counterparty is not engaging in the Transactions contemplated hereunder with the intent to impermissibly avoid any such restrictions, reporting or disclosure obligations or any applicable regulatory filings.

THIS MESSAGE WILL BE THE ONLY FORM OF CONFIRMATION DISPATCHED BY US PLEASE EXECUTE AND RETURN IT BY FACSIMILE PROMPTLY TO FAX NUMBER +44 113 336 2009 IF YOU WISH TO EXCHANGE HARD COPY FORMS OF THIS CONFIRMATION PLEASE CONTACT US

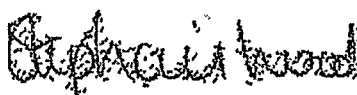
Please confirm that the foregoing correctly sets forth the terms of our agreement by sending to us a letter or telex substantially similar to this facsimile, which letter or telex sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms. The time of execution of this Transaction will be made available by Party A upon written request.

Yours faithfully,
for and on behalf of

Deutsche Bank AG, London Branch

By 

Name Martin Gould
Title Authorised Signatory

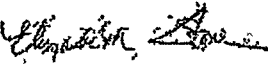
By 

By
Name Stephanie Wood
Title Authorised Signatory

DEUTSCHE BANK SECURITIES INC

By 

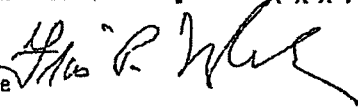
By
Name Steven Horn
Title Authorised Signatory

By 

By
Name Elizabeth Stone
Title Authorised Signatory

Confirmed as of the date first above written

FRANCIS P. MAYBANK[SEC 1092(A)(2)(B)STRADDLE ACCOUNT]

By 
Name
Title

By
Name
Title

Chairman of the Supervisory Board: Clemens Börsig
Management Board: Josef Aukermann (Chairman), Hugo Bänziger,
Jürgen Fäthgen, Anshuman Jain, Stefan Krause, Hermann-Josef
Lamberth, Rainer Neske

Deutsche Bank AG is authorised under German Banking Law (competent authority: BaFin – Federal Financial Supervising Authority) and regulated by the Financial Services Authority for the conduct of UK business; a member of the London Stock Exchange. Deutsche Bank AG is a joint stock corporation with limited liability incorporated in the Federal Republic of Germany HRB No. 30 000 District Court of Frankfurt am Main. Branch Registration in England and Wales: BR000005, Registered address: Winchester House, 1 Great Winchester Street, London EC2N 2DB
Deutsche Bank Group online: <http://www.deutsche-bank.com>



Maybank 005719

ROA 5411

Additional Representations

The Counterparty hereto affirms and repeats its acknowledgements, representations and warranties set forth in (i) the Forward Purchase Contract, (ii) the Annex thereto and (iii) Schedule A hereto

Counterparty further represents, warrants and agrees with Deutsche as follows:

(a) Neither Counterparty nor any of its Affiliates is aware of, or has any special access to, any non public material information regarding the Issuer. Such representation shall be deemed to be a continuous representation made by Counterparty up to and including the date of the signing of this Confirmation.

(b) In connection with any sale of the Shares, Counterparty will satisfy all applicable filing, reporting or other requirements.

(c) It intends to treat this Transaction and the stock pledged as collateral in DBSI Account # [REDACTED] as positions in an "identified straddle" as defined in Internal Revenue Code Section 1092(a)(2)(B), as currently in effect, and has by separate written communication notified Deutsche of its intention to identify these positions and has directed Deutsche to legend the account holding such positions with the following statement: "All positions held in this account are part of an identified straddle for purposes of Section 1092(a)(2)(B) of the Internal Revenue Code of 1986, as amended."

(d) The pledge of the Shares constitutes a bona fide pledge with full recourse to Counterparty. Counterparty agrees not to pledge to any person other than Deutsche any Shares or any securities convertible or exchangeable into Shares, as security for any obligation, without the prior written consent of Deutsche, and acknowledges that Deutsche is relying on such agreement.

Counterparty Information:

Address for Notices, Payment or Delivery:


Francis P. Maybank [Sec 1092(a)(2)(B) Straddle Account]
30 Meeting Street
Charleston, SC 29601



Maybank 005720

Deutsche Bank



04 January 2012
FACSIMILE TRANSMISSION
Global Equity Derivatives

Deutsche Bank AG London
Winchester House
1 Great Winchester Street
London EC2N 2DB
Telephone: +44 207 545 6000
c/o Deutsche Bank Securities Inc
60 Wall Street
New York, NY 10005

Frédéric P. Maybank (Soc 1992(e)(2)(B) Straddle
Account) New York

To: F&NW Desk
Fax No 0019175129265

17M

Transaction Reference Number NY 449110 Event No: 1

If you do not receive all the pages, please telephone immediately.
Please find attached the confirmation for the above referenced transaction.

Please note that this will be the only form of Confirmation despatched by us. Kindly execute and return it by facsimile immediately, marked for my attention. Please also note that the Deutsche Bank group may require you to provide a copy of your authorised signature and certificate of incumbency ensuring that the signatory on the confirmation is included in that list.

If you wish to exchange hard copy forms of this Confirmation or should you have any comments or queries please do not hesitate to contact me on the above telephone number.

Please return the signed Confirmation to fax number +44 113 338 2009.

Regards
Sreelish Unnikrishnan

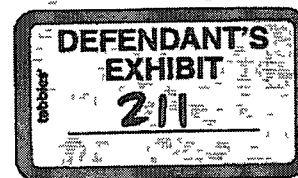
NOTICE: This communication may contain information which is confidential and/or proprietary and is intended only for the individual(s) named above. If you are not the named addressee (the individual(s) named above) do not print, copy, retransmit, or otherwise use this information. If you have received this message in error, please notify the sender immediately by e-mail or telephone. Thank you.

Chairman of the Supervisory Board: Christian Wulff
Management Board: Jeroen Ackermann (Chairman), Hagen Brühlmann, Jürgen
Friedrich, Anshuman Jain, Stefan Kretschmer, Matthias Löffel, Rüdiger
Nasse

Deutsche Bank AG is a financial services group with a long tradition of providing financial services to its customers. It is a member of the Deutsche Bank Group. Deutsche Bank AG is a public limited liability company registered in the Federal Register of Commerce of the State of Hesse, Germany. Its registered office is at Wall Street 60, New York, NY 10005. Its registered office in London is at Winchester House, 1 Great Winchester Street, London EC2N 2DB. Deutsche Bank Group plc is a public limited liability company registered in the United Kingdom.



4



ARGO(BB&T)04093

ROA 5413

Deutsche Bank



04 January 2012

Deutsche Bank AG London
Winchester House
1 Great Winchester Street
London EC2N 2DB
Telephone: +44 207 546 8000

c/o Deutsche Bank Securities Inc
80 Wall Street
New York, NY 10005

Francis P. Maybank (Sec 1082(a)(2)(B) Straddle
Account)
30 Meeting Street
Charleston, SC 29601

FPM

Our Transaction Reference Number NY 449110 Event No. 1

Dear Sir / Madam,

The purpose of this letter (this "Termination Agreement") is to confirm the terms and conditions governing our agreement to terminate the Transaction identified below (the "Original Transaction") between Deutsche Bank AG, London Branch ("Deutsche" or "Party A") and Francis P. Maybank (Sec 1082(a)(2)(B) Straddle Account) (the "Counterparty" or "Party B"), the Confirmation of which bears DSSI Reference Number 449110 (the "Original Confirmation").

DEUTSCHE BANK AG, LONDON BRANCH, IS NOT REGISTERED AS A BROKER DEALER UNDER THE U.S. SECURITIES EXCHANGE ACT OF 1934. DEUTSCHE BANK SECURITIES INC. HAS ACTED SOLELY AS AGENT IN CONNECTION WITH THIS TRANSACTION AND HAS NO OBLIGATION, BY WAY OF ISSUANCE, ENDORSEMENT, GUARANTEE OR OTHERWISE WITH RESPECT TO THE PERFORMANCE OF EITHER PARTY UNDER THE TRANSACTION. AS SUCH, ALL DELIVERY OF FUNDS, ASSETS, NOTICES, DEMANDS AND COMMUNICATIONS OF ANY KIND RELATING TO THIS TRANSACTION BETWEEN DEUTSCHE BANK AG, LONDON BRANCH, AND COUNTERPARTY SHALL BE TRANSMITTED THROUGH DEUTSCHE BANK SECURITIES INC. DEUTSCHE BANK AG, LONDON BRANCH, IS NOT A MEMBER OF THE SECURITIES INVESTOR PROTECTION CORPORATION (SIPC).

Capitalized terms used but not defined herein shall have the meanings set forth in the Original Confirmation

Original Transaction Terms:

Trade Date:	August 12, 2011
Issuer:	BB&T Corporation (the "Issuer")
Shares:	BBT
Number of Shares:	224,724
Threshold Price:	USD 25.06
Floor Price:	USD 20.88
Valuation Date:	January 03, 2012



(1)

ARGO(BB&T)04094

ROA 5414

Termination Terms and Conditions

Termination Trade Date:	January 03, 2012
Number of Shares being Terminated	224,724
Number of Shares Remaining	Zero
Termination Amount Payable by Counterparty.	USD 4,886,823.98
Termination Settlement Date.	January 06, 2012

FPM

In consideration of the Termination Amount payable on the Termination Settlement Date, you and we agree that, with effect from the Termination Trade Date, the Original Transaction shall terminate and, with the exception of the Termination Amount, the obligations of Deutsche and Counterparty arising after the Termination Trade Date are hereby deemed terminated except in respect of any amounts which have become due and remain unpaid on the Termination Trade Date. Except as expressly provided herein, all other Transactions between Deutsche and Counterparty shall remain in full force and effect.

This Termination Agreement constitutes an amendment to, and forms, a part of, the Original Confirmation. Without limiting the generality of the foregoing, payment of the Termination Amount shall be deemed to be a payment specified as being payable in such Original Confirmation.



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Please confirm that the foregoing correctly sets forth the terms of our agreement by sending a return executed acknowledgment hereof to the HNW Desk, via facsimile number (817) 512-8265. Notwithstanding the foregoing, your payment of the Termination Amount shall constitute your agreement to the terms of this Termination Agreement.

THIS MESSAGE WILL BE THE ONLY FORM OF CONFIRMATION DISPATCHED BY US. PLEASE EXECUTE AND RETURN IT BY FACSIMILE PROMPTLY TO FAX NUMBER +44 113 336 2009, IF YOU WISH TO EXCHANGE HARD COPY FORMS OF THIS CONFIRMATION PLEASE CONTACT US.

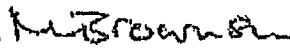
Please confirm that the foregoing correctly sets forth the terms of our agreement by sending to us a letter or telex substantially similar to this facsimile, which letter or telex sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms. The time of execution of this Transaction will be made available by Party A upon written request.

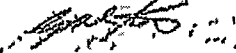
Notwithstanding the foregoing, your payment of the Termination Amount shall constitute your agreement to the terms of this Confirmation.

Yours faithfully,
for and on behalf of

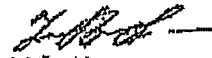
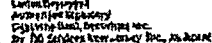
FPM

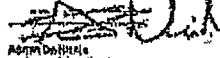
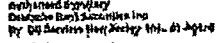
Deutsche Bank AG, London Branch

By: 
Name: Mark Brownson
Title: Authorised Signatory

By: 
Name: Gabby Bolton
Title: Authorised Signatory

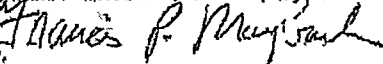
DEUTSCHE BANK SECURITIES INC.


By: 
Name: Larisa Bestovaya
Title: Authorised Signatory


By: 
Name: Adam De-Nicola
Title: Authorised Signatory

Confirmed as of the date first above written

FRANCIS P MAYBANK SEC 1082(A)(2)(B)STRADDLE ACCOUNT

By: 
Name:
Title:

By:
Name:
Title:

Chairman of the Supervisory Board: Christian Wulff
Managing Board: Jens Andriessen (Chairman), Hugo Draxler,
Joachim Fritzen, Andreasen John, Stefan Kuehn, Hermann-Josef
Lambert, Ralford Necker

Deutsche Bank AG is authorized under German Banking Law (Kreditwesengesetz - KWG) and is supervised by the Federal Financial Supervisory Authority and registered by the Federal Financial Supervisory Authority for the purposes of UK (banking) in accordance with the London Branch Regulations. Deutsche Bank AG is a bank incorporated in the United Kingdom and is registered in the Federal Republic of Germany (FRG) No. 25 000 District Court of Frankfurt am Main. Branch Registration in England and Wales: 2800655, Registered address: Westgate House, 1 Great Winchester Street, London EC2N 2DE
Deutsche Bank Group website: <http://www.deutsche-bank.com>



4

Jan 05 2012 14:09:31 GMT FROM: DEUTSCHE BANK

MSG# NY-NY-ST-467133-1-B- PAGE 001 OF 000

Deutsche Bank



03 January 2012

FACSIMILE TRANSMISSION
Global Equity Derivatives

Deutsche Bank AG London
Winchester House
1 Great Winchester Street
London EC2N 2DB
Telephone +44 207 545 8000

c/o Deutsche Bank Securities Inc
60 Wall Street
New York NY 10005

Franco P. Maybank (Sec 1092(e)(2)(B) Straddle
Account), New York

To: HNWDest
Fax No: 0019175129255

Transaction Reference Number NY 467133

If you do not receive all the pages, please telephone immediately.
Please find attached the confirmation for the above referenced transaction

Please note that this will be the only form of Confirmation despatched by us. Kindly execute and return it by facsimile immediately, marked for my attention. Please also note that the Deutsche Bank group may require you to provide a copy of your authorized signature and certificate of incumbency, ensuring that the signatory on the confirmation is included in that list.

If you wish to exchange hard copy forms of this Confirmation or should you have any comments or queries please do not hesitate to contact me on the above telephone number.

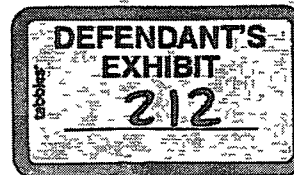
Please return the signed Confirmation to fax number +44 113 335 2009.

Regards
Sreejith Unnikrishnan

NOTICE: This communication may contain information which is confidential and/or legally privileged and is intended only for the addressee named above. If you are not the named addressee, this communication has been sent to you in error and you are asked not to read, use or disclose it. We should be grateful if you would notify us immediately so that we can arrange for its return. Thank you.

Chairman of the Supervisory Board: Tilman Giesecke
Management Board: Jens Andreasen (Chairman), Hugo Darmann, Jürgen
Friedrich, Andreasen, John, Stefan Kraus, Hans-Joachim Lauth, Rainer
Hahn

Deutsche Bank AG is authorized under German Banking Law (supervised
authorities: BaFin - Federal Financial Supervisory Authority) and regulated by
the Financial Services Authority for the purposes of UK legislation, a member of
the London Stock Exchange. Deutsche Bank AG is a joint stock corporation
with limited liability incorporated in the Federal Republic of Germany HRB No.
30 050 Datalog Court of Frankfurt am Main. Branch Registered in England
and Wales 141000005. Registered address: Winchester House, 1 Great
Winchester Street, London EC2N 2DB.
Deutsche Bank Group online: <http://www.dbonline.com>



5

ARGO(BB&T)04097

ROA 5417

Deutsche Bank



03 January 2012

Deutsche Bank AG London
Winchester House
1 Great Winchester Street
London EC2N 2DB
Telephone +44 207 545 8000

c/o Deutsche Bank Securities Inc
80 Wall Street
New York, NY 10005

Francis P Maybank [Sec 1092(a)(2)(B) Straddle
Account]
30 Meeting Street
Charleston, SC 29601

Internal Reference Number NY-NY-S1-467133-1-B-4

FPM

Our Transaction Reference Number: NY 467133

Dear Sir / Madam

This letter constitutes a Confirmation as specified in the Forward Purchase Contract relating to Transactions, by and between Deutsche Bank AG, London Branch ("Deutsche" or "Party A"), and Francis P Maybank [Sec 1092(a)(2)(B) Straddle Account] (the "Counterparty" or "Party B") dated as of January 16, 2008 (the "Forward Purchase Contract"). This Confirmation supplements, forms part of and is subject to, the Forward Purchase Contract. The purpose of this Confirmation is to set forth the terms and conditions of the above-referenced Transactions. All provisions contained in the Forward Purchase Contract govern this Confirmation except as expressly modified as set out below. Counterparty and Deutsche are parties to a Pledge and Security Annex (the "Security Annex") as defined in the Forward Purchase Contract. This Confirmation is a confirmation for purposes of Rule 10b-10 promulgated under the 1934 Act.

DEUTSCHE BANK AG, LONDON BRANCH, IS NOT REGISTERED AS A BROKER DEALER UNDER THE U.S. SECURITIES EXCHANGE ACT OF 1934. DEUTSCHE BANK SECURITIES INC HAS ACTED SOLELY AS AGENT IN CONNECTION WITH THIS TRANSACTION AND HAS NO OBLIGATION, BY WAY OF ISSUANCE, ENDORSEMENT, GUARANTEE OR OTHERWISE WITH RESPECT TO THE PERFORMANCE OF EITHER PARTY UNDER THE TRANSACTION. AS SUCH, ALL DELIVERY OF FUNDS, ASSETS, NOTICES, DEMANDS AND COMMUNICATIONS OF ANY KIND RELATING TO THIS TRANSACTION, BETWEEN DEUTSCHE BANK AG, LONDON BRANCH, AND COUNTERPARTY SHALL BE TRANSMITTED THROUGH DEUTSCHE BANK SECURITIES INC. DEUTSCHE BANK AG, LONDON BRANCH, IS NOT A MEMBER OF THE SECURITIES INVESTOR PROTECTION CORPORATION (SIPC).

Capitalized terms not otherwise defined in this Confirmation shall have the respective meanings set forth in the Forward Purchase Contract. In addition, if any of the scheduled dates specified herein falls on a day that is not a Business Day, then such date(s) shall be adjusted forward to the first succeeding Business Day, unless otherwise stated below.

The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms

Trade Date:

January 03, 2012

Payment Date:

January 06, 2012, provided, however, if Counterparty has not delivered (i) to Deutsche the executed Confirmation and (ii) to the Collateral Custodian all Collateral required to be delivered in respect of the Transaction, such payment shall be made promptly following Deutsche's receipt of the executed Confirmation and the Collateral.



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Calculation Agent	Deutsche
<u>Description of Shares</u>	
Issuer	BB&T Corporation
Shares	"BBT", Cusip # 054837107, the common stock of the issuer
Exchange	The New York Stock Exchange, or any successor to such exchange or quotation system.
Related Exchange(s)	Any relevant exchange or recognized quotation system (and any other successor thereto) on which futures and/or options contracts on the Shares are traded, as determined by the Calculation Agent.
Number of Shares	224,724
Purchase Price (\$)	USD 6,074,419.61
Threshold Price	USD 31.110
Floor Price	USD 25.925

Valuation

Valuation Date: December 20, 2012

Settlement Terms

Settlement:

(A) If physically settled then the "Number of Shares to be Delivered" means the number of Shares determined by the Calculation Agent on the Valuation Date (rounded down to the nearest whole number) equal to or (B) If cash settled then the "Cash Settlement Amount" means a dollar amount equal to the value of a number of Shares equal to

(i) if the Settlement Price is less than or equal to the Floor Price the Number of Shares,

(ii) if the Settlement Price is greater than the Floor Price, but less than or equal to the Threshold Price:

$$\frac{\text{Floor Price}}{\text{Settlement Price}} \times \text{Number of Shares}$$

and

(iii) if the Settlement Price is greater than the Threshold Price:

$$\frac{\text{Floor Price} + (\text{Settlement Price} - \text{Threshold Price})}{\text{Settlement Price}} \times \text{Number of Shares}$$

Notification Date

In the event Counterparty elects cash settlement instead of physical settlement, the Notification Date shall be the 10th Business Day prior to the Valuation Date.

Settlement Date

3 Business Days after the Valuation Date

Conditions to Physical Settlement

The Shares delivered were either not on the Trade Date "restricted securities" within the meaning of Rule 144(e)(3) promulgated under the 1933 Act or ceased to be "restricted securities" by virtue of this



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Transaction because both the offer and the offer complied with Rule 144 and at the time of settlement, the Shares delivered are in the hands of Deutsche or its designee, as transferee, Free Status (as defined below).

Physical Settlement Fee on Restricted Stock

In the event of physical settlement if Deutsche determines, in its reasonable discretion, that due to the affiliate status of Counterparty (if applicable) or due to restrictions on the stock being delivered as physical settlement (if any), such stock should be sold by Deutsche in the market instead of used by Deutsche to close out its hedge position, Counterparty shall pay to Deutsche on the Settlement Date a physical settlement fee of USD 0.06 per share.

Free Shares

Shares that are not subject to any condition to or restriction on the ability of the holder to sell, assign or otherwise transfer such Shares (or security entitlements in respect thereof) or to enforce the provisions thereof or of any document related thereto whether set forth in such Shares or in any document related thereto.

Disclosed Restrictions

The Disclosed Securities Law Restrictions (if any)

Disclosed Securities Law Restrictions

None

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Dividends

Extraordinary Dividend

As determined by the Calculation Agent, (i) any cash dividend on the Shares at a time when the Issuer has not previously declared or paid dividends on such Shares for the prior four full calendar quarters, (ii) any cash dividend or distribution declared on the Shares in a "Relevant Period" (as specified in the Extraordinary Dividend Schedule below) which exceeds the corresponding number of "Expected Dividend Payments" (as specified in the Extraordinary Dividend Schedule below) or whose value exceeds the corresponding "Dividend Threshold" (as specified in the Extraordinary Dividend Schedule below) or (iii) any other "special" cash or non-cash dividend on or distribution with respect to the Shares which is, by its terms or declared intent, declared and paid outside the normal operations or normal dividend procedures of the Issuer; provided that in all cases, the related ex dividend date occurs during the period from but excluding the Trade Date to and including the Valuation Date.

Extraordinary Dividend Schedule

Relevant Period		Expected Dividend Payments	Dividend Threshold
From but excluding	To and including		
Trade Date	The Valuation Date	4	USD 0.16

Extraordinary Dividend Payment Date

The earlier of (i) the Settlement Date or (ii) two (2) Exchange Business Days following the date on which the Issuer pays the Extraordinary Dividend to holders of the Shares.

Collateral Arrangements

Collateral Method

Share Pledge



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<u>Arrangements</u>	Counterparty hereby pledges the Shares (and all proceeds thereof) to Deutsche to secure this Transaction pursuant to the terms of the Annex.
<u>Securities Control</u>	The Shares shall be deemed to be identified as Account Controls in Attachment 1 of the Account Control Agreement included as Schedule 1 to the Forward Purchase Contract.
<u>Share Repurchase</u>	Counterparty does not consent to rehypothecation of Shares by Deutsche
<u>Other Provisions</u>	
<u>Hedging Disruption Event</u>	Applicable, for purposes of this Transaction, Deutsche, at its election, may treat a Hedging Disruption Event as a Potential Adjustment Event or a Termination Event, provided however, that prior to taking any action, Deutsche shall notify Counterparty of the Hedging Disruption Event For purposes of this Transaction, "Material Increase" shall mean any increase in cost determined to be material by Deutsche in its sole discretion and shall include but not be limited to, the cost of borrow of Shares, as determined by the Calculation Agent, exceeding 50 bps, where the stock remains at or above such increased level for 3 consecutive Business Days
<u>Method of Delivery</u>	Whenever delivery of funds or other assets is required hereunder by or to Counterparty, such delivery shall be effected through DBS. In addition, all notices, demands and communications of any kind relating to this Transaction between Deutsche and Counterparty shall be transmitted through DBS FPM
<u>Miscellaneous</u>	
<u>Time of Execution</u>	Deutsche will supply the time of execution of the Transaction upon the request of the Counterparty
<u>Adverse Regulatory Change</u>	The parties agree that, for the avoidance of doubt, for purposes of the Definition of Adverse Regulatory Change, "any applicable law or regulation" shall include the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, any rules and regulations promulgated thereunder and any similar law or regulation, without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated on or after the Trade Date, and the consequences specified in the Forward Purchase Contract shall apply to any Adverse Regulatory Change arising from any such act, rule or regulation.



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Additional Representations:

The Counterparty hereto affirms and repeats its acknowledgements, representations and warranties set forth in (i) the Forward Purchase Contract, (ii) the Annex thereto and (iii) Schedule A hereto

Counterparty further represents, warrants and agrees with Deutsche as follows

(a) Neither Counterparty nor any of its Affiliates is aware of, or has any special access to, any non public material information regarding the Issuer. Such representation shall be deemed to be a continuous representation made by Counterparty up to and including the date of the signing of this Confirmation.

(b) In connection with any sale of the Shares, Counterparty will satisfy all applicable filing, reporting or other requirements

(c) It intends to treat this Transaction and the stock pledged as collateral in DBS Account # [REDACTED] as positions in an "identified straddle" as defined in Internal Revenue Code Section 1092(a)(2)(B), as currently in effect, and has by separate written communication notified Deutsche of its intention to identify these positions and has directed Deutsche to legend the account holding such positions with the following statement "All positions held in this account are part of an identified straddle for purposes of Section 1092(a)(2)(B) of the Internal Revenue Code of 1986, as amended"

(d) The pledge of the Shares constitutes a bona fide pledge with full recourse to Counterparty. Counterparty agrees not to pledge to any person other than Deutsche any Shares or any securities convertible or exchangeable into Shares, as security for any obligation without the prior written consent of Deutsche, and acknowledges that Deutsche is relying on such agreement

Counterparty Information:

Address for Notices, Payment or Delivery:

Francis F. Maybank
Francis F. Maybank [Sec 1092(a)(2)(B) Straddle Account]
30 Meeting Street
Charleston, SC 29601

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Please confirm by signing below that the foregoing correctly sets out the terms of our Transaction and return by fax to the attention of HNW Desk at (017) 512 9255

Party B Representations Party B represents, warrants and acknowledges that:

The execution, delivery and performance of this Confirmation and the Transactions contemplated hereunder will not violate any applicable law or regulation, including, without limitation, any short selling restrictions and reporting obligations as may be imposed in any relevant jurisdiction from time to time, and that Counterparty is not engaging in the Transactions contemplated hereunder with the intent to impermissibly avoid any such restrictions, reporting or disclosure obligations or any applicable regulatory filings

THIS MESSAGE WILL BE THE ONLY FORM OF CONFIRMATION DISPATCHED BY US. PLEASE EXECUTE AND RETURN IT BY FACSIMILE PROMPTLY TO FAX NUMBER +44 113 338 2009 IF YOU WISH TO EXCHANGE HARD COPY FORMS OF THIS CONFIRMATION PLEASE CONTACT US

Please confirm that the foregoing correctly sets forth the terms of our agreement by sending to us a letter or telex substantially similar to this facsimile, which letter or telex sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms. The time of execution of this Transaction will be made available by Party A upon written request.

FRM

Yours faithfully,
for and on behalf of

Deutsche Bank AG, London Branch

By: *Mark Brown*

Name: Mark Brown
Title: Authorised Signatory

By: *Gaby Bolton*

Name: Gaby Bolton
Title: Authorised Signatory

DEUTSCHE BANK SECURITIES INC

By: *Larisa Besrejeva*

Name: Larisa Besrejeva
Title: Authorised Signatory

By: *Adrian De-Nicola*

Name: Adrian De-Nicola
Title: Authorised Signatory

Confirmed as of the date first above written:

FRANCIS P. MAYBANK{SEC 1002(A)(2)(B)STRADDLE ACCOUNT}

By: *Francis P. Maybank*

Name: Francis P. Maybank
Title: Chairman of the Regulatory Board

By: _____
Name: _____
Title: _____

Chairman of the Regulatory Board: Clement Herrig
Managing Director: Josef Ackermann (Chairman), Hugo Glawatski
Jürgen Fiedler, Antje Heine, Stefan Krieger, Hermann-Josef
Lampert, Rainer Nocke

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Deutsche Bank Group online: <http://www.deutsche-bank.com>



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SCHEDULE A

COUNTERPARTY IS NOT AN AFFILIATE OF THE ISSUER, THE COLLATERAL CONSISTING OF SHARES ARE NOT "RESTRICTED SECURITIES" WITHIN THE MEANING OF RULE 144 AND COUNTERPARTY IS NOT A SECTION 15 FILER UNDER THE 1934 ACT

Freely Transferable. On the date hereof, the Collateral consisting of Shares (the "Collateral Shares") are freely transferable by Counterparty under the 1933 Act without registration thereunder and without any restrictions on transfer whatsoever. Without limiting the foregoing, the Collateral Shares are not "restricted securities" within the meaning of Rule 144(a)(3) promulgated under the 1933 Act, and the Issuer was not at the time the Collateral Shares were initially issued or any previous time an issuer described in Rule 144(b)(1).

The Collateral is not subject to any restrictions on transfer whatsoever, and no Collateral Shares are entitled to the benefits of any registration rights agreement or similar agreement. There are no agreements, contracts, instruments or understandings that relate to the Collateral, other than those specified in the Confirmation, if any.

Non-Affiliate; Non-Insider. Counterparty and its general partner, each of its limited partners and each of their respective Affiliates as applicable is not, has not been during the three months preceding the Trade Date, and will not become during the term of the Transaction, an Affiliate of the Issuer. Counterparty and its general partner, each of its limited partners and each of their respective Affiliates as applicable is not, has not been, and will not become during the term of the Transaction, subject to the reporting and other requirements of Section 16 of the 1934 Act and the rules and regulations promulgated thereunder.

Section 13. If Counterparty is not a Section 13 filer under the 1934 Act then Counterparty and its general partner, each of its limited partners and each of their respective Affiliates as applicable is not, has not been, and will not become during the term of the Transaction, the beneficial owner (as defined in Rule 13d-3 promulgated under the 1934 Act, but treating any securities beneficially owned by Counterparty that are convertible, exchangeable or exercisable into or for equity securities of the Issuer as if they had been converted, exchanged or exercised) of more than five percent of the outstanding shares of any class or series of equity securities issued by the Issuer. For the purposes of this representation, Counterparty shall be deemed to have beneficial ownership of any securities it beneficially owns within the meaning of Rule 13d-3 whether such beneficial ownership is direct or indirect and whether it is based on securities individually owned by Counterparty or securities owned as a member of a "group" within the meaning of Rule 13d-5(b) promulgated under the 1934 Act.

Schedule 13D or 13G. If Counterparty is a Section 13 filer under the 1934 Act, then as of the date of Counterparty's most recent Schedule 13D or 13G, as applicable, filed with the Securities and Exchange Commission, Counterparty was the beneficial owner (as defined in Rule 13d-3 promulgated under the 1934 Act) of less than 10% of the outstanding shares of the Issuer. Counterparty is currently, and in the past has been, in compliance with its reporting obligations under Sections 13(d) and (g) of the 1934 Act. Unless Counterparty is a 13G filer, an amendment to the Schedule 13D (including attaching this Confirmation as an exhibit thereto) will be promptly filed by Counterparty with the Securities and Exchange Commission within one Business Day of the Trade Date.

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Settlement Overview (Frank Maybank)

Underlying Stock: BBT
 Initial Stock Price: \$25.6800
 Number of Shares: 220,000
 Initial Market Value: \$5,649,600

Floor Level: \$25.6800 100.00%
 Cap Level: \$30.8160 120.00%
 Proceeds Upfront: \$4,240,024.80 75.05%
 Term: 2 years

Current Proceeds: \$4,240,024.80
 Previous Liability: ~~(\$3,381,200.00)~~
 Net Cash Flow: (\$1,141,175.20)

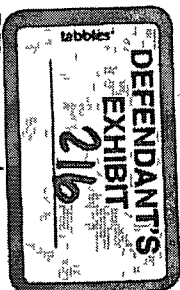
*price of 24.46 odding
 4.75% more than
 underlying
 pr. to
 unwind.*

Stock Price at Maturity	Change from Original Price	Appreciation Retention		Settlement Choices	
		Retained Share Value	Shares Retained	Cash Delivered	Shares Delivered
\$19.2600	-25.00%	\$0	0	\$4,237,200	220,000
\$20.5440	-20.00%	\$0	0	\$4,519,680	220,000
\$21.1860	-17.50%	\$0	0	\$4,660,920	220,000
\$21.8280	-15.00%	\$0	0	\$4,802,160	220,000
\$22.4700	-12.50%	\$0	0	\$4,943,400	220,000
\$23.1120	-10.00%	\$0	0	\$5,084,640	220,000
\$23.7540	-7.50%	\$0	0	\$5,225,880	220,000
\$24.3960	-5.00%	\$0	0	\$5,367,120	220,000
\$25.0380	-2.50%	\$0	0	\$5,508,360	220,000
\$25.6800	0.00%	\$0	0	\$5,649,600	220,000
\$42.7700	66.55%	\$1,129,920	26,419	\$8,279,480	193,581
\$26.9640	5.00%	\$282,480	10,476	\$5,649,600	209,524
\$27.6060	7.50%	\$423,720	15,349	\$5,649,600	204,651
\$28.2480	10.00%	\$564,960	20,000	\$5,649,600	200,000
\$28.8900	12.50%	\$706,200	24,444	\$5,649,600	195,556
\$29.5320	15.00%	\$847,440	28,696	\$5,649,600	191,304
\$30.1740	17.50%	\$988,680	32,766	\$5,649,600	187,234
\$30.8160	20.00%	\$1,129,920	36,667	\$5,649,600	183,333
\$32.1000	25.00%	\$1,129,920	35,200	\$5,932,080	184,800
\$34.6680	35.00%	\$1,129,920	32,593	\$6,497,040	187,407
\$34.6680	35.00%	\$1,129,920	32,593	\$6,497,040	187,407
\$35.9520	40.00%	\$1,129,920	31,429	\$6,779,520	188,571
\$37.2360	45.00%	\$1,129,920	30,345	\$7,062,000	189,655
\$38.5200	50.00%	\$1,129,920	29,333	\$7,344,480	190,667

Floor Level

Ceiling Level

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Settlement Overview (Frank Maybank)

Underlying Stock: BBT
Initial Stock Price: \$19.8434
Number of Shares: 220,000
Initial Market Value: \$4,365,548

Floor Level: \$19.8434 100.00%
Cap Level: \$24.8043 125.00%
Proceeds Upfront: \$3,015,720.56 69.08%
Term: 2 years

Current Proceeds: \$3,015,720.56
Previous Liability: (\$4,301,000.00)
Net Cash Flow: (\$1,285,279.44) ✓

Stock Price at Maturity	Change from Original Price	Appreciation Retention		Settlement Choices	
		Retained Share Value	Shares Retained	Cash Delivered	Shares Delivered
\$14.8826	-25.00%	\$0	0	\$3,274,161	220,000
\$15.8747	-20.00%	\$0	0	\$3,492,438	220,000
\$16.3708	-17.50%	\$0	0	\$3,601,577	220,000
\$16.8669	-15.00%	\$0	0	\$3,710,716	220,000
\$17.3630	-12.50%	\$0	0	\$3,819,855	220,000
\$17.8591	-10.00%	\$0	0	\$3,928,993	220,000
\$18.3551	-7.50%	\$0	0	\$4,038,132	220,000
\$18.8512	-5.00%	\$0	0	\$4,147,271	220,000
\$19.3473	-2.50%	\$0	0	\$4,256,409	220,000
\$19.8434	0.00%	\$0	0	\$4,365,548	220,000
\$20.3395	2.50%	\$109,139	5,366	\$4,365,548	214,634
\$20.8356	5.00%	\$218,277	10,476	\$4,365,548	209,524
\$21.3317	7.50%	\$327,416	15,349	\$4,365,548	204,651
\$21.8277	10.00%	\$436,555	20,000	\$4,365,548	200,000
\$22.3238	12.50%	\$545,694	24,444	\$4,365,548	195,556
\$22.8199	15.00%	\$654,832	28,696	\$4,365,548	191,304
\$23.3160	17.50%	\$763,971	32,766	\$4,365,548	187,234
\$23.8121	20.00%	\$873,110	36,667	\$4,365,548	183,333
\$24.8043	25.00%	\$1,091,387	44,000	\$4,365,548	176,000
\$26.7886	35.00%	\$1,091,387	40,741	\$4,802,103	179,259
\$26.7886	35.00%	\$1,091,387	40,741	\$4,802,103	179,259
\$27.7808	40.00%	\$1,091,387	39,286	\$5,020,380	180,714
\$28.7729	45.00%	\$1,091,387	37,931	\$5,238,658	182,069
\$29.7651	50.00%	\$1,091,387	36,667	\$5,456,935	183,333

Floor Level

Ceiling Level

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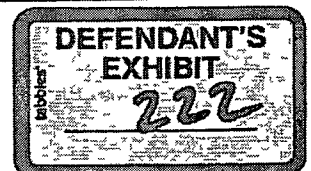
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Date	Price
1/3/2006	\$ 42 31
1/4/2006	\$ 42 64
1/5/2006	\$ 42 64
1/6/2006	\$ 42 53
1/9/2006	\$ 42 63
1/10/2006	\$ 42 58
1/11/2006	\$ 41 94
1/12/2006	\$ 41 36
1/13/2006	\$ 41 87
1/17/2006	\$ 41 67
1/18/2006	\$ 41 75
1/19/2006	\$ 41 08
1/20/2006	\$ 39 63
1/23/2006	\$ 39 59
1/24/2006	\$ 39 39
1/25/2006	\$ 39 30
1/26/2006	\$ 40 03
1/27/2006	\$ 40 04
1/30/2006	\$ 39 58
1/31/2006	\$ 39 04
2/1/2006	\$ 39 03
2/2/2006	\$ 38 37
2/3/2006	\$ 38 63
2/6/2006	\$ 38 58
2/7/2006	\$ 38 43
2/8/2006	\$ 38 88
2/9/2006	\$ 39 02
2/10/2006	\$ 39 29
2/13/2006	\$ 38 91
2/14/2006	\$ 39 59
2/15/2006	\$ 39 41
2/16/2006	\$ 40 08
2/17/2006	\$ 39 73
2/21/2006	\$ 39 62
2/22/2006	\$ 40 48
2/23/2006	\$ 39 94
2/24/2006	\$ 39 94
2/27/2006	\$ 40 04
2/28/2006	\$ 39 53
3/1/2006	\$ 39 70
3/2/2006	\$ 39 45
3/3/2006	\$ 39 10

3/6/2006	\$ 38 93
3/7/2006	\$ 39 34
3/8/2006	\$ 39 62
3/9/2006	\$ 39 26
3/10/2006	\$ 39 49
3/13/2006	\$ 39 71
3/14/2006	\$ 40 38
3/15/2006	\$ 40 55
3/16/2006	\$ 40 34
3/17/2006	\$ 40 57
3/20/2006	\$ 40 60
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3/22/2006	\$ 40 19
3/23/2006	\$ 39 82
3/24/2006	\$ 39 70
3/27/2006	\$ 39 88
3/28/2006	\$ 39 39
3/29/2006	\$ 39 58
3/30/2006	\$ 39 20
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4/21/2006	\$ 41 93
4/24/2006	\$ 41 88
4/25/2006	\$ 41 71
4/26/2006	\$ 41 98
4/27/2006	\$ 42 45
4/28/2006	\$ 42 94
5/1/2006	\$ 42 65
5/2/2006	\$ 42 69
5/3/2006	\$ 42 75
5/4/2006	\$ 42 88

5/5/2006	\$ 43 15
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5/11/2006	\$ 42 60
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5/16/2006	\$ 42 50
5/17/2006	\$ 41 88
5/18/2006	\$ 41 76
5/19/2006	\$ 42 02
5/22/2006	\$ 42 20
5/23/2006	\$ 41 75
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5/26/2006	\$ 42 07
5/30/2006	\$ 41 32
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6/9/2006	\$ 42 76
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6/13/2006	\$ 42 23
6/14/2006	\$ 41 99
6/15/2006	\$ 42 78
6/16/2006	\$ 42 18
6/19/2006	\$ 41 92
6/20/2006	\$ 41 86
6/21/2006	\$ 41 88
6/22/2006	\$ 41 64
6/23/2006	\$ 41 06
6/26/2006	\$ 41 31
6/27/2006	\$ 40 68
6/28/2006	\$ 41 06
6/29/2006	\$ 41 96
6/30/2006	\$ 41 59
7/3/2006	\$ 41 82
7/5/2006	\$ 41 33
7/6/2006	\$ 41 28



BBT

7/7/2006	\$ 41 10
7/10/2006	\$ 41 06
7/11/2006	\$ 41 25
7/12/2006	\$ 40 40
7/13/2006	\$ 39 89
7/14/2006	\$ 40 36
7/17/2006	\$ 40 69
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7/19/2006	\$ 41 92
7/20/2006	\$ 41.74
7/21/2006	\$ 41 97
7/24/2006	\$ 42 20
7/25/2006	\$ 42 28
7/26/2006	\$ 42 11
7/27/2006	\$ 41.58
7/28/2006	\$ 42 46
7/31/2006	\$ 41.99
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8/2/2006	\$ 42 01
8/3/2006	\$ 42 44
8/4/2006	\$ 42 67
8/7/2006	\$ 42 77
8/8/2006	\$ 42 66
8/9/2006	\$ 42 26
8/10/2006	\$ 42.65
8/11/2006	\$ 42 40
8/14/2006	\$ 42.25
8/15/2006	\$ 42 95
8/16/2006	\$ 42.80
8/17/2006	\$ 42.92
8/18/2006	\$ 43.01
8/21/2006	\$ 42 96
8/22/2006	\$ 42.93
8/23/2006	\$ 42 79
8/24/2006	\$ 42 87
8/25/2006	\$ 42 72
8/28/2006	\$ 42 96
8/29/2006	\$ 42 78
8/30/2006	\$ 42 96
8/31/2006	\$ 42 80
9/1/2006	\$ 42 91
9/5/2006	\$ 42 89
9/6/2006	\$ 42 90

9/7/2006	\$ 42 48
9/8/2006	\$ 42 66
9/11/2006	\$ 42 69
9/12/2006	\$ 43 13
9/13/2006	\$ 43.26
9/14/2006	\$ 43 42
9/15/2006	\$ 43 51
9/18/2006	\$ 43 32
9/19/2006	\$ 43 48
9/20/2006	\$ 43 94
9/21/2006	\$ 43 87
9/22/2006	\$ 43 89
9/25/2006	\$ 44 33
9/26/2006	\$ 44 21
9/27/2006	\$ 44 11
9/28/2006	\$ 44 09
9/29/2006	\$ 43.78
10/2/2006	\$ 43 74
10/3/2006	\$ 43 86
10/4/2006	\$ 44 10
10/5/2006	\$ 44 02
10/6/2006	\$ 43.84
10/9/2006	\$ 44 12
10/10/2006	\$ 44 23
10/11/2006	\$ 44 12
10/12/2006	\$ 44 09
10/13/2006	\$ 44 03
10/16/2006	\$ 43 87
10/17/2006	\$ 43 88
10/18/2006	\$ 44 00
10/19/2006	\$ 43 46
10/20/2006	\$ 43 26
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10/25/2006	\$ 42 93
10/26/2006	\$ 43 23
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11/21/2006	\$ 43 39
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11/28/2006	\$ 42 61
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11/30/2006	\$ 43 01
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12/26/2006	\$ 44 26
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12/28/2006	\$ 44 27
12/29/2006	\$ 43 93
1/3/2007	\$ 44 00
1/4/2007	\$ 43 66
1/5/2007	\$ 43 08
1/8/2007	\$ 42 91
1/9/2007	\$ 42 83
1/10/2007	\$ 42 63

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1/18/2007	\$ 43 18
1/19/2007	\$ 42 77
1/22/2007	\$ 42.75
1/23/2007	\$ 42 78
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1/29/2007	\$ 42 05
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1/31/2007	\$ 42 26
2/1/2007	\$ 42 63
2/2/2007	\$ 42.51
2/5/2007	\$ 42.64
2/6/2007	\$ 42 83
2/7/2007	\$ 42 88
2/8/2007	\$ 42 85
2/9/2007	\$ 42 81
2/12/2007	\$ 43 10
2/13/2007	\$ 43 60
2/14/2007	\$ 43 80
2/15/2007	\$ 43 75
2/16/2007	\$ 43 84
2/20/2007	\$ 44 15
2/21/2007	\$ 44 01
2/22/2007	\$ 43 95
2/23/2007	\$ 43.76
2/26/2007	\$ 43 62
2/27/2007	\$ 42 40
2/28/2007	\$ 42.45
3/1/2007	\$ 42 08
3/2/2007	\$ 41 59
3/5/2007	\$ 40 85
3/6/2007	\$ 41 65
3/7/2007	\$ 41 27
3/8/2007	\$ 41 57
3/9/2007	\$ 41 51
3/12/2007	\$ 41 38
3/13/2007	\$ 40 28
3/14/2007	\$ 40 43

3/15/2007	\$ 40 68
3/16/2007	\$ 40 55
3/19/2007	\$ 41.04
3/20/2007	\$ 41.34
3/21/2007	\$ 42 35
3/22/2007	\$ 41 95
3/23/2007	\$ 41.98
3/26/2007	\$ 41 81
3/27/2007	\$ 41 48
3/28/2007	\$ 40 83
3/29/2007	\$ 41 36
3/30/2007	\$ 41 02
4/2/2007	\$ 40 27
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4/4/2007	\$ 40 75
4/5/2007	\$ 40 80
4/9/2007	\$ 40 41
4/10/2007	\$ 40 73
4/11/2007	\$ 39 79
4/12/2007	\$ 39 60
4/13/2007	\$ 39 91
4/16/2007	\$ 40.73
4/17/2007	\$ 40 56
4/18/2007	\$ 41 05
4/19/2007	\$ 41 86
4/20/2007	\$ 42 01
4/23/2007	\$ 41 77
4/24/2007	\$ 41 52
4/25/2007	\$ 41 99
4/26/2007	\$ 41 88
4/27/2007	\$ 42 08
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5/2/2007	\$ 42 17
5/3/2007	\$ 42 43
5/4/2007	\$ 42 45
5/7/2007	\$ 42 74
5/8/2007	\$ 42 60
5/9/2007	\$ 42 85
5/10/2007	\$ 42 14
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5/14/2007	\$ 42 13
5/15/2007	\$ 42 27

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5/17/2007	\$ 42 65
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5/22/2007	\$ 42.57
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6/1/2007	\$ 42 38
6/4/2007	\$ 42 35
6/5/2007	\$ 42 28
6/6/2007	\$ 41.73
6/7/2007	\$ 41.04
6/8/2007	\$ 41 54
6/11/2007	\$ 41 72
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6/13/2007	\$ 41 82
6/14/2007	\$ 41 69
6/15/2007	\$ 41 74
6/18/2007	\$ 41 76
6/19/2007	\$ 42 11
6/20/2007	\$ 41 79
6/21/2007	\$ 41 85
6/22/2007	\$ 41 15
6/25/2007	\$ 41 02
6/26/2007	\$ 40 98
6/27/2007	\$ 41.41
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6/29/2007	\$ 40 68
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7/5/2007	\$ 41 22
7/6/2007	\$ 41 17
7/9/2007	\$ 40 90
7/10/2007	\$ 40 20
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7/12/2007	\$ 41 17
7/13/2007	\$ 41 17
7/16/2007	\$ 41 15
7/17/2007	\$ 41 14

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7/18/2007	\$ 40 61
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7/23/2007	\$ 39 30
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7/25/2007	\$ 38 81
7/26/2007	\$ 38 05
7/27/2007	\$ 37 61
7/30/2007	\$ 38 03
7/31/2007	\$ 37 42
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8/2/2007	\$ 38 51
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8/13/2007	\$ 38 18
8/14/2007	\$ 37 14
8/15/2007	\$ 37 36
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8/20/2007	\$ 39 90
8/21/2007	\$ 40 38
8/22/2007	\$ 40.62
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8/27/2007	\$ 40 26
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8/30/2007	\$ 39 33
8/31/2007	\$ 39 73
9/4/2007	\$ 39 78
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9/6/2007	\$ 39 75
9/7/2007	\$ 38 94
9/10/2007	\$ 39 18
9/11/2007	\$ 39 92
9/12/2007	\$ 39.64
9/13/2007	\$ 40 47
9/14/2007	\$ 40 69
9/17/2007	\$ 40 64

9/18/2007	\$ 42 50
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9/20/2007	\$ 41 95
9/21/2007	\$ 41 57
9/24/2007	\$ 40 68
9/25/2007	\$ 40 68
9/26/2007	\$ 40 79
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9/28/2007	\$ 40 39
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10/2/2007	\$ 41 66
10/3/2007	\$ 41 58
10/4/2007	\$ 42 00
10/5/2007	\$ 42 13
10/8/2007	\$ 42 04
10/9/2007	\$ 42 05
10/10/2007	\$ 41 35
10/11/2007	\$ 40.96
10/12/2007	\$ 40.46
10/15/2007	\$ 39 90
10/16/2007	\$ 38 64
10/17/2007	\$ 38 56
10/18/2007	\$ 37.15
10/19/2007	\$ 36 01
10/22/2007	\$ 36 05
10/23/2007	\$ 36 77
10/24/2007	\$ 36 06
10/25/2007	\$ 36 22
10/26/2007	\$ 37 25
10/29/2007	\$ 37 01
10/30/2007	\$ 36 35
10/31/2007	\$ 36 97
11/1/2007	\$ 35 10
11/2/2007	\$ 34 42
11/5/2007	\$ 34 06
11/6/2007	\$ 34 58
11/7/2007	\$ 32 77
11/8/2007	\$ 33.52
11/9/2007	\$ 34 19
11/12/2007	\$ 34 40
11/13/2007	\$ 35 74
11/14/2007	\$ 35 45
11/15/2007	\$ 34 26

11/16/2007	\$ 33 71
11/19/2007	\$ 33 12
11/20/2007	\$ 33.07
11/21/2007	\$ 32 80
11/23/2007	\$ 34.00
11/26/2007	\$ 32 55
11/27/2007	\$ 33 58
11/28/2007	\$ 36 02
11/29/2007	\$ 35 46
11/30/2007	\$ 36 08
12/3/2007	\$ 35 93
12/4/2007	\$ 35.50
12/5/2007	\$ 36 15
12/6/2007	\$ 36 33
12/7/2007	\$ 36 01
12/10/2007	\$ 36 92
12/11/2007	\$ 33 93
12/12/2007	\$ 33 55
12/13/2007	\$ 33 59
12/14/2007	\$ 32 67
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1/2/2008	\$ 29.55
1/3/2008	\$ 29 12
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1/11/2008	\$ 28 16
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1/16/2008	\$ 28 19
1/17/2008	\$ 28 71
1/18/2008	\$ 29 42

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1/22/2008	\$ 30 51
1/23/2008	\$ 34 14
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2/13/2008	\$ 33 76
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2/20/2008	\$ 33 67
2/21/2008	\$ 32 89
2/22/2008	\$ 33 99
2/25/2008	\$ 34 16
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2/28/2008	\$ 32 74
2/29/2008	\$ 31 13
3/3/2008	\$ 30 60
3/4/2008	\$ 30 71
3/5/2008	\$ 31 15
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3/10/2008	\$ 30 10
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3/13/2008	\$ 31 94
3/14/2008	\$ 31 33
3/17/2008	\$ 31 94
3/18/2008	\$ 33 13
3/19/2008	\$ 33 22
3/20/2008	\$ 35 07
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3/25/2008	\$ 35 08
3/26/2008	\$ 33 53
3/27/2008	\$ 32 66
3/28/2008	\$ 32 46
3/31/2008	\$ 32 06
4/1/2008	\$ 34 18
4/2/2008	\$ 34 17
4/3/2008	\$ 34 24
4/4/2008	\$ 34 04
4/7/2008	\$ 34 28
4/8/2008	\$ 33 63
4/9/2008	\$ 33 44
4/10/2008	\$ 32 50
4/11/2008	\$ 31 93
4/14/2008	\$ 30 45
4/15/2008	\$ 31 33
4/16/2008	\$ 32 60
4/17/2008	\$ 33 56
4/18/2008	\$ 34 53
4/21/2008	\$ 33 50
4/22/2008	\$ 33 34
4/23/2008	\$ 33 27
4/24/2008	\$ 34 67
4/25/2008	\$ 35 28
4/28/2008	\$ 35 65
4/29/2008	\$ 34 79
4/30/2008	\$ 34 29
5/1/2008	\$ 36 79
5/2/2008	\$ 36 49
5/5/2008	\$ 36 34
5/6/2008	\$ 36 27
5/7/2008	\$ 35 15
5/8/2008	\$ 34 50
5/9/2008	\$ 34 06
5/12/2008	\$ 35 30
5/13/2008	\$ 34 88
5/14/2008	\$ 35 38
5/15/2008	\$ 35 82
5/16/2008	\$ 34 28
5/19/2008	\$ 34 46
5/20/2008	\$ 33 66
5/21/2008	\$ 32 83
5/22/2008	\$ 33 44

5/23/2008	\$ 32 73
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5/28/2008	\$ 31 42
5/29/2008	\$ 32 08
5/30/2008	\$ 31 47
6/2/2008	\$ 30 73
6/3/2008	\$ 29 97
6/4/2008	\$ 28 98
6/5/2008	\$ 29 60
6/6/2008	\$ 28 06
6/9/2008	\$ 27 06
6/10/2008	\$ 27 47
6/11/2008	\$ 26 34
6/12/2008	\$ 26 90
6/13/2008	\$ 26 50
6/16/2008	\$ 27 34
6/17/2008	\$ 26 28
6/18/2008	\$ 24 33
6/19/2008	\$ 24 35
6/20/2008	\$ 24 70
6/23/2008	\$ 24 04
6/24/2008	\$ 24 70
6/25/2008	\$ 25 13
6/26/2008	\$ 24 21
6/27/2008	\$ 23 72
6/30/2008	\$ 22 77
7/1/2008	\$ 23 97
7/2/2008	\$ 23 66
7/3/2008	\$ 22 95
7/7/2008	\$ 21 68
7/8/2008	\$ 23 93
7/9/2008	\$ 21 99
7/10/2008	\$ 22 53
7/11/2008	\$ 22 12
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7/16/2008	\$ 24 50
7/17/2008	\$ 27 63
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9/8/2008	\$ 34 27
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9/10/2008	\$ 31 43
9/11/2008	\$ 32 85
9/12/2008	\$ 34.05
9/15/2008	\$ 32 45
9/16/2008	\$ 36 07
9/17/2008	\$ 35 44
9/18/2008	\$ 39 50
9/19/2008	\$ 41 14
9/22/2008	\$ 39 23
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10/1/2008	\$ 39 34
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10/14/2008	\$ 34 40
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10/17/2008	\$ 33 53
10/20/2008	\$ 33 60
10/21/2008	\$ 32 72
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10/29/2008	\$ 33 96
10/30/2008	\$ 34 34
10/31/2008	\$ 35 85
11/3/2008	\$ 35 50
11/4/2008	\$ 36 15
11/5/2008	\$ 33 55
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11/10/2008	\$ 30 81
11/11/2008	\$ 29 85
11/12/2008	\$ 28 58
11/13/2008	\$ 29 89
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11/19/2008	\$ 23 57
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12/9/2008	\$ 29 60
12/10/2008	\$ 29 83
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12/16/2008	\$ 29 70
12/17/2008	\$ 30 24
12/18/2008	\$ 28 32
12/19/2008	\$ 27 40
12/22/2008	\$ 26 78
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12/26/2008	\$ 26 03
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12/30/2008	\$ 26 60
12/31/2008	\$ 27 46
1/2/2009	\$ 26 73
1/5/2009	\$ 25 88
1/6/2009	\$ 25 68
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1/23/2009	\$ 20 04
1/26/2009	\$ 19 72
1/27/2009	\$ 20 55
1/28/2009	\$ 22.55

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3/19/2009	\$ 17.54
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3/24/2009	\$ 18 05
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3/26/2009	\$ 18 59
3/27/2009	\$ 17 77
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3/31/2009	\$ 16 92

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4/7/2009	\$ 16 90
4/8/2009	\$ 16 70
4/9/2009	\$ 20 31
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4/15/2009	\$ 20 55
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4/17/2009	\$ 23 42
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4/22/2009	\$ 21 37
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4/24/2009	\$ 23 42
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5/18/2009	\$ 22 62
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5/20/2009	\$ 21 72
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5/28/2009	\$ 21 99
5/29/2009	\$ 22 42
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6/2/2009	\$ 21 52

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6/4/2009	\$ 22 26
6/5/2009	\$ 21.41
6/8/2009	\$ 21 93
6/9/2009	\$ 22 45
6/10/2009	\$ 22 21
6/11/2009	\$ 22 56
6/12/2009	\$ 23 14
6/15/2009	\$ 22 60
6/16/2009	\$ 22 23
6/17/2009	\$ 21 58
6/18/2009	\$ 22 31
6/19/2009	\$ 22.62
6/22/2009	\$ 21 50
6/23/2009	\$ 21 65
6/24/2009	\$ 21 82
6/25/2009	\$ 22 31
6/26/2009	\$ 22 67
6/29/2009	\$ 22 49
6/30/2009	\$ 21 98
7/1/2009	\$ 21 69
7/2/2009	\$ 20 68
7/6/2009	\$ 21 05
7/7/2009	\$ 20 84
7/8/2009	\$ 20 45
7/9/2009	\$ 20 86
7/10/2009	\$ 20 63
7/13/2009	\$ 21.86
7/14/2009	\$ 21.65
7/15/2009	\$ 22 50
7/16/2009	\$ 22.33
7/17/2009	\$ 20 94
7/20/2009	\$ 20 98
7/21/2009	\$ 20 19
7/22/2009	\$ 20.40
7/23/2009	\$ 21 37
7/24/2009	\$ 21.02
7/27/2009	\$ 21 78
7/28/2009	\$ 21 96
7/29/2009	\$ 22 03
7/30/2009	\$ 22 63
7/31/2009	\$ 22 88
8/3/2009	\$ 22 91

BBT

8/4/2009	\$ 23 66
8/5/2009	\$ 24 17
8/6/2009	\$ 24 65
8/7/2009	\$ 25 82
8/10/2009	\$ 25 91
8/11/2009	\$ 25 18
8/12/2009	\$ 25 71
8/13/2009	\$ 25 80
8/14/2009	\$ 28 23
8/17/2009	\$ 26 43
8/18/2009	\$ 27 53
8/19/2009	\$ 27 47
8/20/2009	\$ 27 78
8/21/2009	\$ 28 03
8/24/2009	\$ 27 42
8/25/2009	\$ 27 49
8/26/2009	\$ 27 64
8/27/2009	\$ 28 01
8/28/2009	\$ 28 39
8/31/2009	\$ 27 94
9/1/2009	\$ 26 64
9/2/2009	\$ 26 12
9/3/2009	\$ 26 37
9/4/2009	\$ 26 51
9/8/2009	\$ 26 52
9/9/2009	\$ 27 00
9/10/2009	\$ 26 99
9/11/2009	\$ 26 77
9/14/2009	\$ 27 34
9/15/2009	\$ 28 24
9/16/2009	\$ 29 53
9/17/2009	\$ 28 90
9/18/2009	\$ 29 25
9/21/2009	\$ 28 60
9/22/2009	\$ 29 03
9/23/2009	\$ 28 34
9/24/2009	\$ 27 80
9/25/2009	\$ 27 17
9/28/2009	\$ 27 97
9/29/2009	\$ 27 43
9/30/2009	\$ 27 24
10/1/2009	\$ 25 53
10/2/2009	\$ 26 71

10/5/2009	\$ 26.93
10/6/2009	\$ 26 63
10/7/2009	\$ 26 92
10/8/2009	\$ 26 71
10/9/2009	\$ 27 30
10/12/2009	\$ 27 77
10/13/2009	\$ 27.77
10/14/2009	\$ 28 53
10/15/2009	\$ 28 61
10/16/2009	\$ 28 25
10/19/2009	\$ 27 03
10/20/2009	\$ 26 46
10/21/2009	\$ 25 56
10/22/2009	\$ 26 34
10/23/2009	\$ 26 07
10/26/2009	\$ 25 51
10/27/2009	\$ 25 39
10/28/2009	\$ 24 76
10/29/2009	\$ 25 45
10/30/2009	\$ 23 91
11/2/2009	\$ 25 06
11/3/2009	\$ 24 87
11/4/2009	\$ 24 02
11/5/2009	\$ 24 57
11/6/2009	\$ 24 47
11/9/2009	\$ 25 23
11/10/2009	\$ 25 08
11/11/2009	\$ 25.20
11/12/2009	\$ 24 80
11/13/2009	\$ 24 45
11/16/2009	\$ 24 83
11/17/2009	\$ 24 91
11/18/2009	\$ 25 09
11/19/2009	\$ 24 68
11/20/2009	\$ 24 60
11/23/2009	\$ 25 07
11/24/2009	\$ 25 08
11/25/2009	\$ 24 99
11/27/2009	\$ 24 26
11/30/2009	\$ 24 90
12/1/2009	\$ 25 60
12/2/2009	\$ 26 19
12/3/2009	\$ 25.57

12/4/2009	\$ 26 61
12/7/2009	\$ 25 86
12/8/2009	\$ 25 86
12/9/2009	\$ 25 84
12/10/2009	\$ 25 91
12/11/2009	\$ 25 88
12/14/2009	\$ 26 23
12/15/2009	\$ 25 83
12/16/2009	\$ 25 65
12/17/2009	\$ 25.37
12/18/2009	\$ 25 53
12/21/2009	\$ 25 88
12/22/2009	\$ 25 74
12/23/2009	\$ 25 62
12/24/2009	\$ 25 87
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12/29/2009	\$ 25 56
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1/6/2010	\$ 26 58
1/7/2010	\$ 27 65
1/8/2010	\$ 27 34
1/11/2010	\$ 27 34
1/12/2010	\$ 27.43
1/13/2010	\$ 27 90
1/14/2010	\$ 28 52
1/15/2010	\$ 27 76
1/19/2010	\$ 28 17
1/20/2010	\$ 28 50
1/21/2010	\$ 29.08
1/22/2010	\$ 28 15
1/25/2010	\$ 27.57
1/26/2010	\$ 26 80
1/27/2010	\$ 28 28
1/28/2010	\$ 28 32
1/29/2010	\$ 27 87
2/1/2010	\$ 28 22
2/2/2010	\$ 28 42
2/3/2010	\$ 27 80
2/4/2010	\$ 26 93
2/5/2010	\$ 27 51

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2/8/2010	\$ 27 13
2/9/2010	\$ 27 20
2/10/2010	\$ 27 37
2/11/2010	\$ 27.19
2/12/2010	\$ 26.92
2/16/2010	\$ 27 41
2/17/2010	\$ 27 22
2/18/2010	\$ 27 25
2/19/2010	\$ 27 31
2/22/2010	\$ 28 21
2/23/2010	\$ 27.75
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2/25/2010	\$ 28 23
2/26/2010	\$ 28 53
3/1/2010	\$ 27 80
3/2/2010	\$ 27 81
3/3/2010	\$ 27 38
3/4/2010	\$ 27 81
3/5/2010	\$ 28 53
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3/9/2010	\$ 28 82
3/10/2010	\$ 29 63
3/11/2010	\$ 30 42
3/12/2010	\$ 30 70
3/15/2010	\$ 30 78
3/16/2010	\$ 31 59
3/17/2010	\$ 32 16
3/18/2010	\$ 31 91
3/19/2010	\$ 31 85
3/22/2010	\$ 32 00
3/23/2010	\$ 32 10
3/24/2010	\$ 32 12
3/25/2010	\$ 32.29
3/26/2010	\$ 32 25
3/29/2010	\$ 32 20
3/30/2010	\$ 31 97
3/31/2010	\$ 32 39
4/1/2010	\$ 32 47
4/5/2010	\$ 32 92
4/6/2010	\$ 33 53
4/7/2010	\$ 33 22
4/8/2010	\$ 33 68
4/9/2010	\$ 33 85

4/12/2010	\$ 34 05
4/13/2010	\$ 33 51
4/14/2010	\$ 34 55
4/15/2010	\$ 34 18
4/16/2010	\$ 33 76
4/19/2010	\$ 34 01
4/20/2010	\$ 34.56
4/21/2010	\$ 35 11
4/22/2010	\$ 34 34
4/23/2010	\$ 34 28
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4/27/2010	\$ 32 56
4/28/2010	\$ 32 70
4/29/2010	\$ 33 52
4/30/2010	\$ 33 24
5/3/2010	\$ 34 17
5/4/2010	\$ 33.54
5/5/2010	\$ 33.20
5/6/2010	\$ 32 22
5/7/2010	\$ 32 24
5/10/2010	\$ 34 02
5/11/2010	\$ 34 82
5/12/2010	\$ 35 61
5/13/2010	\$ 35 17
5/14/2010	\$ 34 05
5/17/2010	\$ 33.73
5/18/2010	\$ 32 54
5/19/2010	\$ 32 29
5/20/2010	\$ 30 42
5/21/2010	\$ 31 36
5/24/2010	\$ 30 10
5/25/2010	\$ 30 52
5/26/2010	\$ 30 12
5/27/2010	\$ 31 08
5/28/2010	\$ 30 24
6/1/2010	\$ 29 77
6/2/2010	\$ 30 73
6/3/2010	\$ 30 46
6/4/2010	\$ 29 23
6/7/2010	\$ 28.84
6/8/2010	\$ 28 98
6/9/2010	\$ 28 71
6/10/2010	\$ 30 13

6/11/2010	\$ 30 21
6/14/2010	\$ 29 80
6/15/2010	\$ 30.35
6/16/2010	\$ 30.30
6/17/2010	\$ 29 72
6/18/2010	\$ 29.57
6/21/2010	\$ 29 43
6/22/2010	\$ 29 06
6/23/2010	\$ 28 82
6/24/2010	\$ 28.17
6/25/2010	\$ 28 76
6/28/2010	\$ 28 53
6/29/2010	\$ 27 28
6/30/2010	\$ 26 31
7/1/2010	\$ 26 43
7/2/2010	\$ 26 02
7/6/2010	\$ 26 53
7/7/2010	\$ 27 35
7/8/2010	\$ 27 54
7/9/2010	\$ 28 18
7/12/2010	\$ 28.12
7/13/2010	\$ 28.59
7/14/2010	\$ 27.92
7/15/2010	\$ 27.69
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7/20/2010	\$ 26 55
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7/22/2010	\$ 25 34
7/23/2010	\$ 25 54
7/26/2010	\$ 25 99
7/27/2010	\$ 26 09
7/28/2010	\$ 25 56
7/29/2010	\$ 25 05
7/30/2010	\$ 24.83
8/2/2010	\$ 25 35
8/3/2010	\$ 24 81
8/4/2010	\$ 25 09
8/5/2010	\$ 25 25
8/6/2010	\$ 25 20
8/9/2010	\$ 25 35
8/10/2010	\$ 25 24
8/11/2010	\$ 24 23

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8/12/2010	\$ 23.84
8/13/2010	\$ 23 83
8/16/2010	\$ 23.80
8/17/2010	\$ 23 85
8/18/2010	\$ 23 84
8/19/2010	\$ 23 28
8/20/2010	\$ 23 11
8/23/2010	\$ 22 62
8/24/2010	\$ 22 40
8/25/2010	\$ 22 26
8/26/2010	\$ 22 27
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8/31/2010	\$ 22 12
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9/2/2010	\$ 23 12
9/3/2010	\$ 23.56
9/7/2010	\$ 22 69
9/8/2010	\$ 23 21
9/9/2010	\$ 23 93
9/10/2010	\$ 23 65
9/13/2010	\$ 24 37
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9/15/2010	\$ 23 60
9/16/2010	\$ 23 28
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9/22/2010	\$ 23 66
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9/28/2010	\$ 24 07
9/29/2010	\$ 24 25
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10/6/2010	\$ 24 30
10/7/2010	\$ 24 07
10/8/2010	\$ 23 58
10/11/2010	\$ 23 50
10/12/2010	\$ 23 82

10/13/2010	\$ 23 38
10/14/2010	\$ 22 88
10/15/2010	\$ 22 64
10/18/2010	\$ 23 13
10/19/2010	\$ 22 92
10/20/2010	\$ 22 92
10/21/2010	\$ 22 62
10/22/2010	\$ 22 62
10/25/2010	\$ 22 32
10/26/2010	\$ 22 50
10/27/2010	\$ 22 54
10/28/2010	\$ 23 20
10/29/2010	\$ 23 41
11/1/2010	\$ 22 74
11/2/2010	\$ 22 91
11/3/2010	\$ 23.05
11/4/2010	\$ 24 20
11/5/2010	\$ 25.58
11/8/2010	\$ 25 27
11/9/2010	\$ 24 85
11/10/2010	\$ 25 36
11/11/2010	\$ 25 27
11/12/2010	\$ 24.82
11/15/2010	\$ 25.05
11/16/2010	\$ 24 45
11/17/2010	\$ 24 25
11/18/2010	\$ 24 41
11/19/2010	\$ 24 48
11/22/2010	\$ 24 18
11/23/2010	\$ 23 59
11/24/2010	\$ 23 73
11/26/2010	\$ 23 34
11/29/2010	\$ 23 70
11/30/2010	\$ 23.20
12/1/2010	\$ 23 75
12/2/2010	\$ 24 71
12/3/2010	\$ 24.71
12/6/2010	\$ 24 55
12/7/2010	\$ 24 70
12/8/2010	\$ 25 57
12/9/2010	\$ 27 10
12/10/2010	\$ 27 15
12/13/2010	\$ 26 88

12/14/2010	\$ 26 58
12/15/2010	\$ 26 16
12/16/2010	\$ 26 40
12/17/2010	\$ 26 16
12/20/2010	\$ 25 92
12/21/2010	\$ 26 18
12/22/2010	\$ 26 49
12/23/2010	\$ 26 34
12/27/2010	\$ 26 52
12/28/2010	\$ 26 44
12/29/2010	\$ 26 44
12/30/2010	\$ 26 40
12/31/2010	\$ 26 29
1/3/2011	\$ 26 87
1/4/2011	\$ 26 84
1/5/2011	\$ 27 47
1/6/2011	\$ 26 89
1/7/2011	\$ 26 33
1/10/2011	\$ 26 44
1/11/2011	\$ 26 53
1/12/2011	\$ 26 85
1/13/2011	\$ 26 87
1/14/2011	\$ 27 78
1/18/2011	\$ 27 49
1/19/2011	\$ 27 29
1/20/2011	\$ 27 08
1/21/2011	\$ 28 39
1/24/2011	\$ 27 79
1/25/2011	\$ 27 90
1/26/2011	\$ 27 36
1/27/2011	\$ 27.79
1/28/2011	\$ 27 26
1/31/2011	\$ 27 64
2/1/2011	\$ 28 50
2/2/2011	\$ 28 31
2/3/2011	\$ 28.38
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2/7/2011	\$ 28 72
2/8/2011	\$ 29 17
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2/10/2011	\$ 28 56
2/11/2011	\$ 29 12
2/14/2011	\$ 29 07

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2/15/2011	\$ 28 74
2/16/2011	\$ 28 77
2/17/2011	\$ 28 40
2/18/2011	\$ 28 41
2/22/2011	\$ 27.73
2/23/2011	\$ 27.69
2/24/2011	\$ 27 69
2/25/2011	\$ 27 65
2/28/2011	\$ 27 60
3/1/2011	\$ 27 02
3/2/2011	\$ 27 06
3/3/2011	\$ 27 07
3/4/2011	\$ 26 37
3/7/2011	\$ 26 35
3/8/2011	\$ 26 98
3/9/2011	\$ 26 99
3/10/2011	\$ 26.54
3/11/2011	\$ 27 10
3/14/2011	\$ 26 83
3/15/2011	\$ 26 83
3/16/2011	\$ 26 74
3/17/2011	\$ 26.87
3/18/2011	\$ 27 01
3/21/2011	\$ 26 88
3/22/2011	\$ 26 63
3/23/2011	\$ 26 59
3/24/2011	\$ 26 67
3/25/2011	\$ 27 07
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3/29/2011	\$ 27 66
3/30/2011	\$ 27 70
3/31/2011	\$ 27 45
4/1/2011	\$ 27 62
4/4/2011	\$ 27 53
4/5/2011	\$ 27 45
4/6/2011	\$ 27 41
4/7/2011	\$ 27 40
4/8/2011	\$ 27 23
4/11/2011	\$ 27 29
4/12/2011	\$ 27 27
4/13/2011	\$ 26 85
4/14/2011	\$ 26.46
4/15/2011	\$ 26 53

4/18/2011	\$ 26 61
4/19/2011	\$ 26 94
4/20/2011	\$ 26 59
4/21/2011	\$ 25 98
4/25/2011	\$ 25 67
4/26/2011	\$ 26.04
4/27/2011	\$ 26.18
4/28/2011	\$ 26 65
4/29/2011	\$ 26 92
5/2/2011	\$ 26.59
5/3/2011	\$ 26.91
5/4/2011	\$ 26 71
5/5/2011	\$ 26 66
5/6/2011	\$ 26 98
5/9/2011	\$ 26 97
5/10/2011	\$ 27 19
5/11/2011	\$ 27 14
5/12/2011	\$ 27 20
5/13/2011	\$ 26 63
5/16/2011	\$ 26 67
5/17/2011	\$ 27.09
5/18/2011	\$ 27 07
5/19/2011	\$ 27.31
5/20/2011	\$ 26 56
5/23/2011	\$ 26 10
5/24/2011	\$ 26 21
5/25/2011	\$ 26 67
5/26/2011	\$ 26 89
5/27/2011	\$ 27 30
5/31/2011	\$ 27 54
6/1/2011	\$ 25 95
6/2/2011	\$ 26 21
6/3/2011	\$ 26 12
6/6/2011	\$ 25 73
6/7/2011	\$ 25 80
6/8/2011	\$ 25 60
6/9/2011	\$ 25 86
6/10/2011	\$ 25.83
6/13/2011	\$ 26 11
6/14/2011	\$ 26 36
6/15/2011	\$ 26 03
6/16/2011	\$ 26 25
6/17/2011	\$ 26 19

6/20/2011	\$ 26 27
6/21/2011	\$ 26 22
6/22/2011	\$ 25.71
6/23/2011	\$ 25 57
6/24/2011	\$ 25 45
6/27/2011	\$ 25 89
6/28/2011	\$ 25 84
6/29/2011	\$ 26 54
6/30/2011	\$ 26.84
7/1/2011	\$ 27 34
7/5/2011	\$ 27.13
7/6/2011	\$ 26 76
7/7/2011	\$ 26.99
7/8/2011	\$ 26.09
7/11/2011	\$ 25 54
7/12/2011	\$ 25 64
7/13/2011	\$ 25 70
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7/15/2011	\$ 25 32
7/18/2011	\$ 24 98
7/19/2011	\$ 25 28
7/20/2011	\$ 25 63
7/21/2011	\$ 26.29
7/22/2011	\$ 26 18
7/25/2011	\$ 26 10
7/26/2011	\$ 26 32
7/27/2011	\$ 25 67
7/28/2011	\$ 25 77
7/29/2011	\$ 25 68
8/1/2011	\$ 25 61
8/2/2011	\$ 24.39
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8/9/2011	\$ 22.23
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8/11/2011	\$ 21 06
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8/15/2011	\$ 21 19
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8/17/2011	\$ 20 98
8/18/2011	\$ 19 79

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8/22/2011	\$ 19 17
8/23/2011	\$ 19.82
8/24/2011	\$ 20 55
8/25/2011	\$ 20 34
8/26/2011	\$ 20 74
8/29/2011	\$ 21 74
8/30/2011	\$ 21.71
8/31/2011	\$ 22 29
9/1/2011	\$ 21 66
9/2/2011	\$ 20 91
9/6/2011	\$ 20 89
9/7/2011	\$ 22 24
9/8/2011	\$ 21 61
9/9/2011	\$ 20 90
9/12/2011	\$ 21 33
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9/14/2011	\$ 22 00
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9/19/2011	\$ 21 88
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9/23/2011	\$ 20 86
9/26/2011	\$ 22.06
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9/28/2011	\$ 21 27
9/29/2011	\$ 22 08
9/30/2011	\$ 21 33
10/3/2011	\$ 20 58
10/4/2011	\$ 21.02
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10/6/2011	\$ 21 88
10/7/2011	\$ 20 93
10/10/2011	\$ 22 02
10/11/2011	\$ 22 40
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10/13/2011	\$ 22 53
10/14/2011	\$ 22 54
10/17/2011	\$ 21 66
10/18/2011	\$ 22 90
10/19/2011	\$ 22 30

10/20/2011	\$ 22 53
10/21/2011	\$ 23 05
10/24/2011	\$ 23 68
10/25/2011	\$ 22 87
10/26/2011	\$ 23 13
10/27/2011	\$ 24 05
10/28/2011	\$ 23.91
10/31/2011	\$ 23 34
11/1/2011	\$ 22 48
11/2/2011	\$ 23 34
11/3/2011	\$ 23 85
11/4/2011	\$ 23 37
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11/8/2011	\$ 24 19
11/9/2011	\$ 22 83
11/10/2011	\$ 23 06
11/11/2011	\$ 23 58
11/14/2011	\$ 23 13
11/15/2011	\$ 23 39
11/16/2011	\$ 22 95
11/17/2011	\$ 22 67
11/18/2011	\$ 22 68
11/21/2011	\$ 22 06
11/22/2011	\$ 21 90
11/23/2011	\$ 21 04
11/25/2011	\$ 21 17
11/28/2011	\$ 21 83
11/29/2011	\$ 21 67
11/30/2011	\$ 23 17
12/1/2011	\$ 23 06
12/2/2011	\$ 23 40
12/5/2011	\$ 23.70
12/6/2011	\$ 23 54
12/7/2011	\$ 23 88
12/8/2011	\$ 23.06
12/9/2011	\$ 23 79
12/12/2011	\$ 23 31
12/13/2011	\$ 23 13
12/14/2011	\$ 23 20
12/15/2011	\$ 23 66
12/16/2011	\$ 24 05
12/19/2011	\$ 23 56
12/20/2011	\$ 24 54

12/21/2011	\$ 24 75
12/22/2011	\$ 25 34
12/23/2011	\$ 25 48
12/27/2011	\$ 25 36
12/28/2011	\$ 24 98
12/29/2011	\$ 25 36
12/30/2011	\$ 25 17
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1/4/2012	\$ 25 92
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1/6/2012	\$ 25 79
1/9/2012	\$ 26 40
1/10/2012	\$ 26 73
1/11/2012	\$ 26 76
1/12/2012	\$ 27 05
1/13/2012	\$ 27 23
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1/18/2012	\$ 27 44
1/19/2012	\$ 27 12
1/20/2012	\$ 27 49
1/23/2012	\$ 27 74
1/24/2012	\$ 27 75
1/25/2012	\$ 27.70
1/26/2012	\$ 27.04
1/27/2012	\$ 26 95
1/30/2012	\$ 27.21
1/31/2012	\$ 27 19
2/1/2012	\$ 27 95
2/2/2012	\$ 28 02
2/3/2012	\$ 29 12
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2/7/2012	\$ 29.52
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2/13/2012	\$ 29 65
2/14/2012	\$ 29.60
2/15/2012	\$ 29 38
2/16/2012	\$ 30 19
2/17/2012	\$ 30 33
2/21/2012	\$ 30 09
2/22/2012	\$ 29 47
2/23/2012	\$ 29 81

BBT

2/24/2012	\$ 29 48
2/27/2012	\$ 29 76
2/28/2012	\$ 29 45
2/29/2012	\$ 29.25
3/1/2012	\$ 29.22
3/2/2012	\$ 29.31
3/5/2012	\$ 28 96
3/6/2012	\$ 28 31
3/7/2012	\$ 28 74
3/8/2012	\$ 29 10
3/9/2012	\$ 29.46
3/12/2012	\$ 29 31
3/13/2012	\$ 30 40
3/14/2012	\$ 30 42
3/15/2012	\$ 31 20
3/16/2012	\$ 31 06
3/19/2012	\$ 31 38
3/20/2012	\$ 31 37
3/21/2012	\$ 31 07
3/22/2012	\$ 30 83
3/23/2012	\$ 30 99
3/26/2012	\$ 31 42
3/27/2012	\$ 31 08
3/28/2012	\$ 31 88
3/29/2012	\$ 31 47
3/30/2012	\$ 31 39
4/2/2012	\$ 31.34
4/3/2012	\$ 31 69
4/4/2012	\$ 31 37
4/5/2012	\$ 31 30
4/9/2012	\$ 30 63
4/10/2012	\$ 29 96
4/11/2012	\$ 30.58
4/12/2012	\$ 31.18
4/13/2012	\$ 30 49
4/16/2012	\$ 30 83
4/17/2012	\$ 31 26
4/18/2012	\$ 31 28
4/19/2012	\$ 31.10
4/20/2012	\$ 31 58
4/23/2012	\$ 31 64
4/24/2012	\$ 31 95
4/25/2012	\$ 32 44

4/26/2012	\$ 32 49
4/27/2012	\$ 32 63
4/30/2012	\$ 32 04
5/1/2012	\$ 32.38
5/2/2012	\$ 32.19
5/3/2012	\$ 32 04
5/4/2012	\$ 31 57
5/7/2012	\$ 31 87
5/8/2012	\$ 31 63
5/9/2012	\$ 31.23
5/10/2012	\$ 31 77
5/11/2012	\$ 31 75
5/14/2012	\$ 31 14
5/15/2012	\$ 30 74
5/16/2012	\$ 30 64
5/17/2012	\$ 30 11
5/18/2012	\$ 29.68
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5/22/2012	\$ 30 10
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8/27/2012	\$ 31 19

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12/6/2013	\$ 34 95
12/9/2013	\$ 34 84
12/10/2013	\$ 34 56
12/11/2013	\$ 34 68
12/12/2013	\$ 35 36
12/13/2013	\$ 35 34

From Miller, Edward W Law Clerk (Courtney S Camferdam) <emillerlc@sccourts.org>
Sent Friday, July 26, 2013 2 17 PM
To Mitchell Willoughby
Cc Larry Kristinik, Elizabeth Zeck, Chad Johnston, William Brown, Jones, Dale, Coker, Lyndall
Subject RE Maybank v BB&T Corporation, et al , CASE NO 2011-CP-23-8578

Dear all,
Judge Miller would like to set this status conference for Tuesday, August 6th at 9 30am in the courtroom
Thanks,

Courtney Camferdam
Law Clerk to the Honorable Edward W Miller
305 E North Street, Suite 219
Greenville, South Carolina 29601
(864) 467-8558
(864) 233-4173 Fax
emillerlc@sccourts.org

From: Mitchell Willoughby [mailto:MWilloughby@Willoughbyhoefer.com]
Sent: Friday, July 26, 2013 12 08 PM
To: Miller, Edward W Law Clerk (Courtney S Camferdam)
Cc: 'Larry Kristinik', Elizabeth Zeck, Chad Johnston, 'William Brown', Miller, Edward W Secretary (Karen W Pitts)
Subject: RE Maybank v BB&T Corporation, et al , CASE NO 2011-CP-23-8578

Dear Ms Camferdam

I have consulted with Mr. Kristinik and the lawyers for both sides of this case are available for a status conference at 9 30 a m on Tuesday, August 6. If this time works for Judge Miller, please advise if he wishes to hold the status conference in his chambers or one of the courtrooms. Thank you very much for coordinating the scheduling. Regards,

Mitch

Mitchell Willoughby, Esquire
WILLOUGHBY & HOEFER, P A
930 Richland Street
Post Office Box 8416
Columbia, South Carolina 29202
Telephone # (803) 252-3300
Facsimile # (803) 256-8062
E-mail address mwilloughby@willoughbyhoefer.com

From: Mitchell Willoughby
Sent: Thursday, July 25, 2013 4 51 PM
To: 'Miller, Edward W Law Clerk (Courtney S Camferdam)'
Cc: 'Larry Kristinik', Elizabeth Zeck, Chad Johnston, 'William Brown'
Subject: RE Maybank v BB&T Corporation, et al , CASE NO 2011-CP-23-8578

Thank you I will consult with Mr Kristinik and propose a date and time hopefully convenient to us all In the meantime there is any other information needed, please advise

Mitch

From: Miller, Edward W Law Clerk (Courtney S Camferdam) [<mailto:emillerlc@sccourts.org>]
Sent: Thursday, July 25, 2013 4 44 PM
To: Mitchell Willoughby
Cc: 'Larry Kristinik', Elizabeth Zeck, Chad Johnston, 'William Brown'
Subject: RE Maybank v BB&T Corporation, et al , CASE NO 2011-CP-23-8578

Dear All,

Judge Miller is not able to hold the status conference next week as he will be in General Sessions in Pickens However, we would like to schedule the status conference to address the scheduling order issue the week of August 5th Please let me know what day and time works best

Thanks,

Courtney Camferdam
Law Clerk to the Honorable Edward W Miller
305 E North Street, Suite 219
Greenville, South Carolina 29601
(864) 467-8558
(864) 233-4173 Fax
emillerlc@sccourts.org

From: Mitchell Willoughby [<mailto:MWilloughby@Willoughbyhoefer.com>]
Sent: Thursday, July 25, 2013 2 08 PM
To: Miller, Edward W
Cc: Miller, Edward W Law Clerk (Courtney S Camferdam), Miller, Edward W Secretary (Karen W Pitts), 'Larry Kristinik', Elizabeth Zeck, Chad Johnston, 'William Brown'
Subject: RE Maybank v BB&T Corporation, et al , CASE NO 2011-CP-23-8578

Judge Miller

One amendment to my previous e-mail Mr Kristinik will not be available either Monday or Tuesday of next week, but would be available Wednesday, Thursday or Friday, as will I, except for Thursday afternoon

Thank you for your consideration

Mitch

Mitchell Willoughby, Esquire
WILLOUGHBY & HOEFER, P A
930 Richland Street
Post Office Box 8416
Columbia, South Carolina 29202
Telephone # (803) 252-3300

Facsimile # (803) 256-8062
E-mail address mwilloughby@willoughbyhoefer.com

From: Mitchell Willoughby
Sent: Thursday, July 25, 2013 1 47 PM
To: 'emillerj@sccourts.org'
Cc: 'emillerlc@sccourts.org', 'emillersc@sccourts.org', 'Larry Kristnik', Elizabeth Zeck, Chad Johnston, 'William Brown'
Subject: Maybank v BB&T Corporation, et al, CASE NO 2011-CP-23-8578

Judge Miller

As you will recall, the above-captioned case has been assigned to you as the Business Court Judge in Greenville County. We are in need of a status conference with Your Honor to resolve the final details of a proposed scheduling order for the administration of this case. Thus, the purpose of this e-mail is to seek time on Your Honor's calendar for such a status conference. Please advise if your schedule would accommodate such a status conference next week. I understand that Mr. Kristnik may be unavailable on Thursday and Friday of next week. I am unsure of Mr. Brown's schedule. I believe 20 minutes of the Court's time would be adequate to address the scheduling order issue, subject of course to the Court's interests at this time in receiving details about the lawsuit.

For this initial status conference, we plan to appear before Your Honor in person.

Thank you in advance for your attention to this important case and for making time on your calendar for a brief status conference. If there are any questions or if further information is needed, please advise. Regards,

Mitch

Mitchell Willoughby, Esquire
WILLOUGHBY & HOEFER, P A
930 Richland Street
Post Office Box 8416
Columbia, South Carolina 29202
Telephone # (803) 252-3300
Facsimile # (803) 256-8062
E-mail address mwilloughby@willoughbyhoefer.com

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT

FRANCIS P. MAYBANK and JANE) Civil Action No. 2011-CP-23-8578
H P MAYBANK, as TRUSTEE for the)
FRANCIS P MAYBANK FAMILY)
INSURANCE TRUST,)

Plaintiffs,)

vs)

BB&T CORPORATION, BRANCH)
BANKING AND TRUST COMPANY,)
Successor in merger to BRANCH)
BANKING AND TRUST COMPANY)
OF SC, and STERLING CAPITAL)
MANAGEMENT, LLC, Successor in)
merger to BB&T ASSET)
MANAGEMENT LLC,)

Defendants.)

**DEFENDANTS'
SUPPLEMENTAL
REQUESTED JURY CHARGES**

Defendants BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management, LLC (the "the Defendants"), by and through their undersigned counsel, submit the following requested Jury Charges

SIGNATURE PAGE ATTACHED

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

William S. Brown
SC Bar No. 064164
E-Mail: william.brown@nelsonmullins.com
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

D. Larry Kristink
SC Bar No. 064983
E-Mail: larry.kristink@nelsonmullins.com
Kristen E. Horne
SC Bar No. 75151
E-Mail: kristen.horne@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

*Attorneys for Defendants BB&T Corporation, Branch
Banking and Trust Company, Sterling Capital Management,
LLC, Ross Walters, and Anthony Mahfood*

Greenville, South Carolina
_____, 2014

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Defendants' Request to Charge No. 22 – Breach of a Fiduciary Duty

The normal bank-depositor arrangement creates a creditor-debtor relationship rather than a fiduciary one. In limited circumstances, a fiduciary relationship may be created between a bank and a customer if the bank undertakes to advise the customer as a part of the services the bank offers. Such a relationship charges the bank with a duty to disclose material facts that may affect its customer's interests. On the other hand, no fiduciary relationship between a bank and its depositor exists when the bank is unaware of any special trust reposed in it. When determining the existence or effect of a fiduciary relationship, you are free to take into account the sophistication and expertise of the Plaintiffs in financial matters, as well as their wealth, age, education, professional status, investment experience, business background, and any other factors you deem relevant.

The term "fiduciary" implies that one party is in a superior position to the other and that such a position enables him to exercise influence over one who reposes special trust and confidence in him. As a general rule, mere respect for another's judgment or trust in his character is usually not sufficient to establish such a relationship. The facts and circumstances must indicate that the one reposing the trust has foundation for his belief that the one giving the advice or presenting arguments is acting not in his own behalf, but in the interests of the other party.

One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of a specific duty imposed by the relation. In a breach of fiduciary duty case, the plaintiff is entitled to damages for harm caused by the breach of a fiduciary duty owed to him or her. Damages in an action for breach of a fiduciary duty are those proximately resulting from the wrongful conduct of the defendant.

Anderson, South Carolina Requests to Charge – Civil § 17-6, 17-9; *Lesesne v Lesesne*, 307 S.C. 67, 68, 413 S.E.2d 847, 848 (Ct. App. 1991) (taking into account the education and sophistication of the plaintiff who had past experience in the field when determining whether the plaintiff had a right to rely)

Defendants' Request to Charge No. 24. – South Carolina Unfair Trade Practices Act

Section 39-5-20(a) of the Unfair Trade Practices Act provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . unlawful.” The Act authorizes recovery only when the plaintiff has suffered “any ascertainable loss of money or property . . . as a result of the use or employment by another person of an unfair or deceptive method, act or practice.”

To recover pursuant to the Unfair Trade Practices Act, the plaintiff must prove by the preponderance of the evidence:

- (1) a violation of the Unfair Trade Practices Act,
- (2) proximate cause; and
- (3) damages

The act or practice complained of must be unfair or deceptive, however, proof of common law fraud is not required to establish a violation. To be actionable under the Act, the unfair or deceptive act or practice complained of must have an impact on the public interest. The plaintiff must present proof of specific facts disclosing that members of the public were adversely affected by the unfair conduct or that they were likely to be. Unfair or deceptive acts or practices in the conduct of trade or commerce have an impact upon the public interest if the acts or practices have the potential for repetition. The potential for repetition may be shown in two ways:

- (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence, or
- (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts.

These are not the only means for showing potential repetition. Thus, a deliberate or intentional breach of a valid contract is not in and of itself a violation of the Unfair Trade Practices Act. The act complained of should be deceptive or actually approach deception and have a potential for repetition such that the public is or is likely to be adversely effected.

Next, the Plaintiffs must prove the unfair or deceptive acts or practices proximately caused the damages. For an act to be a proximate cause of the injury, the injury must be a foreseeable consequence of the act. Foreseeability is not determined from hindsight, but rather from the defendant's perspective at the time of the complained of act. The law requires only reasonable foresight. When the injury complained of is not reasonably foreseeable in the exercise of due care, there is no liability. It is not necessary for the Plaintiffs to demonstrate the defendant should have foreseen the particular event that occurred, but merely that the Defendants should have foreseen his negligence would probably cause injury to someone. While it is not necessary that the Defendants must have contemplated or could have anticipated the particular event which occurred, liability cannot rest on mere possibilities. The Defendants cannot be charged with that which is unpredictable or that which could not be expected to happen.

Lastly, the Plaintiffs must prove damages. Actual damages include special or consequential damages which are the natural and proximate result of the deceptive conduct. Any person is liable for damages resulting from their use or employment of unfair trade practices.

Anderson, South Carolina Requests to Charge – Civil § 34-1, 34-4, 20-2, 34-5

Defendants' Request to Charge No. 25. – SCUTPA: Damages

Under the Unfair Trade Practices Act, any person who suffers any ascertainable loss of money or property as a result of the use or employment by another person of an unfair or deceptive method, act or practice may recover actual damages.

Actual damages or compensatory damages are damages in satisfaction of, or in recompense for, loss or injury sustained. Actual damages include special or consequential damages which are the natural and proximate result of the deceptive conduct. The phrase "actual damages" refers to common law damages, or the difference in value between that with which the plaintiff parted and that which he received.

Anderson, South Carolina Requests to Charge – Civil § 34-9

Defendants' Request to Charge No. 26. – SCUTPA: Regulated Industry Exception

Section 39-5-40 of the South Carolina Code states, in pertinent part, that the Unfair Trade Practices Act does not apply to “[a]ctions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law” Securities transactions are exempt from claims under the Unfair Trade Practices Act.

Ward v. Dick Dyer & Assoc., Inc., 304 S.C. 152, 155 n.1, 403 S.E.2d 310, 312 n.1 (1991).

Defendants' Request to Charge No. 51. – Consequential Damages

The existence or amount of damages cannot be left to conjecture, guess or speculation. However, proof of amount of loss with absolute or mathematical certainty is not required. Damages must be susceptible of ascertainment with a reasonable degree of certainty.

Recovery of consequential damages is restricted to such damages as were the natural and proximate consequence of the act causing the injury and such as can be clearly defined and ascertained, including those which were actually or presumptively within the contemplation of the parties when the act causing the injury occurred.

Damages, which depend upon the fluctuations of the markets and the hazards and chances of business, are considered too contingent and speculative to be compensable as damages. Thus, damages depending on contingencies of skill to be exercised or success to be attained cannot be a part of any damage award because of their speculative nature, and because it cannot be presumed that they were sufficiently concrete to have been considered by the parties at the time of contracting.

Parties to a contract may agree in advance to limit or eliminate the right to recover consequential damages. The contract must contain express language clearly indicating that it was the parties' intent to limit or eliminate the right to recover consequential damages. If you find that the contract in this case expressly eliminates the Plaintiffs' right to recover consequential damages, you should not award any consequential damages.

Anderson, South Carolina Requests to Charge – Civil § 13-10, Carrigg v Blue, 283 S C 494, 323 S E 2d 787 (Ct. App 1984), *Drews Co, Inc v Ledwith-Wolfe Associates, Inc*, 296 S C 207, 213, 371 S.E 2d 532, 535 (1988), *Hays v W Union Tel Co.*, 70 S C 16, 27, 48 S E. 608, 611 (1904) (Gary, J, dissenting), *Bud v Western Union Tel Co*, 76 S.C. 345, 348, 56 S E 973, 973-

74 (1907), *Pride v Southern Bell Tel & Tel Co*, 244 S C 615, 619-22, 138 S E 2d 155, 157-58 (1964), *S.C Elec & Gas Co v Combustion Eng'g, Inc*, 283 S C 182, 191, 322 S.E 2d 453, 458 (Ct. App 1984) (noting that exculpatory clause can insulate defendant from liability for negligence so long as clause uses explicit language indicating that was intent of the parties), *Seaside Resorts, Inc v Club Car, Inc.*, 308 S C 47, 416 S E.2d 655 (Ct App 1992) (noting that limitation on consequential damages is enforceable if made part of parties' contract), *Eaton Corp v Triane Carolina Plains*, 350 F Supp 2d 699, 705-06 (D S C 2004) (granting defendant's motion for partial summary judgment on consequential damages, which were expressly excluded by contract on which parties' relationship was based)

From William Brown
Sent Wednesday, April 30, 2014 1 21 PM
To 'Miller, Edward W Law Clerk (Courtney S Camferdam)', Larry Kristinik, Mitchell Willoughby
Cc Miller, Edward W , Elizabeth Zeck, Chad Johnston, Jack Slosson, Kristen Horne, Tonya Macaulay
Subject Maybank vs BB&T, et al , Case No 2011-CP-23-8578
Attachments Proposed Third Amended Scheduling Order (Clean 04-30-2014) docx

Courtney,

One of the experts for the Defendants was required to have an emergency medical procedure. Because of this, the parties have agreed to the attached proposed third amended scheduling order in the case. It only changes two dates: (1) extending the time for defendants to produce the report of that one expert in paragraph 2 and (2) extending discovery by one week in paragraph 5. Based upon consultation between counsel, the parties are all in agreement to this amendment.

If you or the judge have any questions, please do not hesitate to contact the counsel in the case.

Thank you

William S Brown

William S Brown
Nelson Mullins Riley & Scarborough, LLP
(864) 250-2297
william.brown@nelsonmullins.com

From Miller, Edward W <emillerj@sccourts.org>
Sent Wednesday, October 15, 2014 1:42 PM
To Mitchell Willoughby, Miller, Edward W Law Clerk (Carter Massingill)
Cc Larry Kristinik, William Brown, bbannister@bannisterwyatt.com, Chad Johnston, Elizabeth Zeck
Subject RE Maybank and Maybank Family Trust v BB&T

Mr Willoughby

Thank you for the well written proposed orders. I am not awarding the plaintiff pre-judgment interest and therefore have not reviewed that order. With respect to the other proposed order, while it is well written, coherent and complete, there is too much of it. Please reduce the length of the order by at least half. Appellate rule 208(b)(5) does not provide for briefs longer than 50 pages so reducing this order will be good practice. I note that it reads much like an appellate brief and this case is not at that stage yet. The findings and conclusions are in line with my decision so please keep them in tact but the voluminous arguments must be pared down.

Thank you, Ned Miller

~~~~~ CONFIDENTIALITY NOTICE ~~~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**RECEIVED**

DEC 09 2014

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**SC Court of Appeals**

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2011-CP-23-8578

Francis P. Maybank and Jane H. P. Maybank, as trustee  
for the Francis P. Maybank Family Insurance Trust, Plaintiffs,

Of whom Francis P. Maybank is Respondent,

v

BB&T Corporation, Branch Banking and Trust  
Company, Successor in merger to Branch Banking and  
Trust Company of SC, and Sterling Capital  
Management, LLC, Successor in merger to BB&T  
Asset Management, LLC, Appellants

NOTICE OF APPEAL

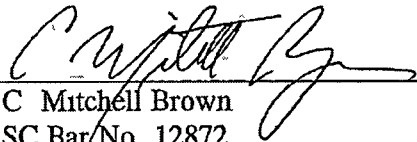
BB&T Corporation, Branch Banking and Trust Company, successor in merger  
to Branch Banking and Trust Company of SC, and Sterling Capital Management, LLC,  
successor in merger to BB&T Asset Management, LLC, hereby appeal

- (a) The Order of the Honorable Edward W. Miller filed June 6, 2014 regarding  
the Defendant's Motion to Amend Scheduling Order (attached as Exhibit A),
- (b) The Verdict in this matter dated June 30, 2014, which was filed on  
November 10, 2014 with Notice of Judgment, received by Appellants on  
November 10, 2014 (attached as Exhibit B),

- (c) The Order and Final Judgment of the Honorable Edward W. Miller filed November 10, 2014 on post trial motions, received by Appellants on November 10, 2014 (attached as Exhibit C), and
- (d) The Order of the Honorable Edward W. Miller filed December 4, 2014 on the Motion to Alter or Amend Final Order and Judgment, received by Appellants on December 5, 2014 (attached as Exhibit D)

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By.

  
C. Mitchell Brown

SC Bar No. 12872

D. Larry Kristinik

SC Bar No. 64983

Michael J. Anzelmo

SC Bar No. 72933

Kristen E. Horne

SC Bar No. 75151

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

William S. Brown

SC Bar No. 064164

104 South Main Street / Ninth Floor

Post Office Box 10084 (29603-0084)

Greenville, SC 29601

(864) 250-2300

*Attorneys for Appellants BB&T Corporation, Branch  
Banking and Trust Company, and Sterling Capital  
Management, LLC*

Columbia, South Carolina

December 9, 2014

Other Counsel of Record

Mitchell Willoughby, Esquire  
Elizabeth Zeck, Esquire  
Chad Johnston, Esquire  
Willoughby & Hoefer, P A  
930 Richland Street  
P O Box 8416  
Columbia, SC 29202

Bruce Bannister, Esquire  
Bannister, Wyatt & Stalvey, LLC  
401 Pettigru Street  
P O Box 10007 (29603)  
Greenville, SC 29601

*Attorneys for Francis P Maybank and  
Jane H P Maybank, as trustee for the  
Francis P Maybank Family Insurance Trust.*

# *Exhibit A*

## FORM 4

rec'd 6/4/2014 BUS  
04490/01520

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE FILED - CLERK OF COURT  
IN THE COURT OF COMMON PLEAS GREENVILLE CO S.C.

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2011CP2308578

|                                         |                    |                                                                                                                  |                                                                                           |
|-----------------------------------------|--------------------|------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| Francis P Maybank<br>2014 JUN 6 PM 4 18 | PAUL B WICKENSIMER | BB&T Corporation<br>Branch Banking And<br>Trust Company of SC<br>BB&T Asset<br>Management LLC<br>Anthony Mahfood | Branch Banking and<br>Trust Company<br>Sterling Capital<br>Management LLC<br>Ross Walters |
| PLAINTIFF(S)                            |                    | DEFENDANT(S)                                                                                                     |                                                                                           |

|               |                                                                                                                                           |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Submitted by: | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br><input type="checkbox"/> Self-Represented Litigant |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------|

## DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC (Vol Nonsuit),  
☐ Rule 43(k), SCRPC (Settled); ☐ Other \_\_\_\_\_
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC, ☐ Bankruptcy,  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other \_\_\_\_\_
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order, (formal order to follow) ☒ Statement of Judgment by the Court

- 1 Defendant's First Motion for Summary Judgment as to Securities Act Claims is hereby **DENIED**.
- 2 Defendant's Second Motion for Summary Judgment as to Request for Consequential and Punitive Damages is hereby **DENIED**.
- 3 Defendant's Third Motion for Summary Judgment as to Insurance Related Damages by Francis Maybank and all Claims asserted by Jane H P Maybank for the Francis P Maybank Family Trust is hereby **DENIED**.
- 4 Defendant's Fourth Motion for Summary Judgment as to tax damages is hereby **GRANTED**.
- 5 Defendant's Fifth Motion for Summary Judgment as to Managed Portfolio Damages is hereby **DENIED**.
- 6 Defendant's Sixth Motion for Summary Judgment and Motion to Dismiss Related to BB&T Corporation is hereby **DENIED**.
- 7 Defendant's Seventh Motion for Summary Judgment as to Unfair Trade Practices Act Claims is hereby **DENIED**.
- 8 Defendant's Eighth Motion for Summary Judgment as to Breach of Contract Accompanied by a Fraudulent Act is hereby **DENIED**.

CPFORM4M  
SCCA SCRPC Form 4C (Revised 10/2011)

ROA 5464

- 9 Defendant's Motion to Amend Scheduling Order is hereby **DENIED**  
10 Plaintiff's Motion for Summary Judgment is hereby **DENIED**

### ORDER INFORMATION

This order ☐ ends ☒ does not end the case

Additional Information for the Clerk

| INFORMATION FOR THE PUBLIC INDEX                                                                                                                                                                             |                                          |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                          |                                                          |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|                                                                                                                                                                                                              |                                          |                                                          |
|                                                                                                                                                                                                              |                                          |                                                          |
|                                                                                                                                                                                                              |                                          |                                                          |
|                                                                                                                                                                                                              |                                          |                                                          |

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

ED. / W. M. Lee  
Circuit Court Judge

2130

Judge Code

6/6/14  
Date

### For Clerk of Court Office Use Only

This judgment was entered on 6/6/14, and a copy mailed first class or placed in the appropriate attorney's box on 6/6/14, to attorneys of record or to parties (when appearing pro se) as follows

Mitchell Willoughby PO Box 8416 Columbia, SC 29202-8416

Bruce Wyche Bannister Bannister & Wyatt, LLC P O Box 10007 Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

D. Lawrence Kristinik III PO Box 11070 Columbia, SC 29211

William Stevens Brown V Nelson Mullins Riley & Scarborough LLP P O Box 10084 Greenville, SC 29603-0084

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

# *Exhibit B*

rec'd 11/17/14  
4490/1520

FILED-CLERK OF COURT  
STATE OF SOUTH CAROLINA GREENVILLE CO S C JUDGMENT IN A CIVIL CASE  
COUNTY OF GREENVILLE PAUL B WICKENSIMER  
IN THE COURT OF COMMON PLEAS CASE NO. 2011CP2308578  
2014 NOV 10 AM 10 12

Francis P Maybank vs. BB&T Corporation

CHECK ONE

- ☐ JURY VERDICT This action came before the court for a trial by jury The issues have been tried and a verdict rendered
- ☐ DECISION BY THE COURT This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered
- ☐ ACTION DISMISSED (CHECK REASON) ☐ Rule 12(b), SCRCP, ☐ Rule 41(a),  
SCRCP (Vol. Nonsuit), ☐ Rule 43(k), SCRCP (Settled), ☐ Other \_\_\_\_\_
- ☐ ACTION STRICKEN (CHECK REASON). ☐ Rule 40(j) SCRCP, ☐ Bankruptcy.  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award,  
☐ Other \_\_\_\_\_
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)  
☐ Affirmed; ☐ Reversed, ☐ Remanded,  
☐ Other \_\_\_\_\_

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED. ☐ See attached order, ☐ Statement of Judgment by the Court

Dated at Greenville, South Carolina, this

Court Reporter

PRESIDING JUDGE -

This judgment was entered on the 10th day of November, 2014, and a copy mailed first class this 10th day of November, 2014, to attorneys of record or to parties (when appearing pro se) as follows

Mitchell Willoughby PO Box 8416 Columbia, SC 29202-8416  
Bruce Wyche Bannister PO Box 10007 Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

D. Lawrence Kristinik III PO Box 11070 Columbia, SC 29211  
William Stevens Brown V PO Box 10084 Greenville, SC 29603

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL CIRCUIT

FRANCIS P MAYBANK and JANE  
H P MAYBANK, as TRUSTEE for the  
FRANCIS P. MAYBANK FAMILY  
INSURANCE TRUST,

Plaintiffs,

vs.

BB&T CORPORATION, BRANCH  
BANKING AND TRUST COMPANY,  
Successor in merger to BRANCH  
BANKING AND TRUST COMPANY  
OF SC, and STERLING CAPITAL  
MANAGEMENT, LLC, Successor in  
merger to BB&T ASSET  
MANAGEMENT LLC,

Defendants.

Civil Action No. 2011-CP-23-8578

VERDICT

FILED-CLERK OF COURT  
GREENVILLE CO SC  
PAUL B WICKET-SHIFER  
2014 NOV 10 AM 10 12

TO THE FOREPERSON OF THE JURY.

Please mark the answers of the jury to the following special interrogatories. You are required to consider questions 1-9 before you move to question 10. Each answer must be the unanimous answer of the jury.

**1. BREACH OF CONTRACT**

On the claim of breach of contract, we the jury find as follows

|                                  | For Plaintiff Francis P. Maybank        |                             | For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust |                                        |
|----------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------------------------------------------------------------|----------------------------------------|
| BB&T Corporation                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Branch Banking and Trust Company | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Sterling Capital Management, LLC | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |

## 2. BREACH OF FIDUCIARY DUTY

On the claim of breach of fiduciary duty, we the jury find as follows.

|                                  | For Plaintiff Francis P. Maybank        |                             | For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust |                                        |
|----------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------------------------------------------------------------|----------------------------------------|
| BB&T Corporation                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Branch Banking and Trust Company | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Sterling Capital Management, LLC | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |

## 3. BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT

On the claim of breach of contract accompanied by a fraudulent act, we the jury find as follows.

|                                  | For Plaintiff Francis P. Maybank |                                        | For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust |                                        |
|----------------------------------|----------------------------------|----------------------------------------|-----------------------------------------------------------------------------------------------|----------------------------------------|
| BB&T Corporation                 | Yes <input type="checkbox"/>     | No <input checked="" type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Branch Banking and Trust Company | Yes <input type="checkbox"/>     | No <input checked="" type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Sterling Capital Management, LLC | Yes <input type="checkbox"/>     | No <input checked="" type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |

## 4. VIOLATION OF SOUTH CAROLINA UNIFORM SECURITIES ACT

On the claim of violation of the South Carolina Securities Act, we the jury find as follows:

|                                  | For Plaintiff Francis P. Maybank |                                        | For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust |                                        |
|----------------------------------|----------------------------------|----------------------------------------|-----------------------------------------------------------------------------------------------|----------------------------------------|
| BB&T Corporation                 | Yes <input type="checkbox"/>     | No <input checked="" type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Branch Banking and Trust Company | Yes <input type="checkbox"/>     | No <input checked="" type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Sterling Capital Management, LLC | Yes <input type="checkbox"/>     | No <input checked="" type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |

**5. VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT**

On the claim of violation of the South Carolina Unfair Trade Practices Act, we the jury find as follows.

|                                  | For Plaintiff Francis P. Maybank        |                             | For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust |                                        |
|----------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------------------------------------------------------------|----------------------------------------|
| BB&T Corporation                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Branch Banking and Trust Company | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Sterling Capital Management, LLC | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |

**6. AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

On the claim of aiding and abetting breach of fiduciary duty, we the jury find as follows

|                                  | For Plaintiff Francis P. Maybank |                                        | For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust |                                        |
|----------------------------------|----------------------------------|----------------------------------------|-----------------------------------------------------------------------------------------------|----------------------------------------|
| BB&T Corporation                 | Yes <input type="checkbox"/>     | No <input checked="" type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Branch Banking and Trust Company | Yes <input type="checkbox"/>     | No <input checked="" type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Sterling Capital Management, LLC | Yes <input type="checkbox"/>     | No <input checked="" type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |

**7. FRAUDULENT MISREPRESENTATION**

On the claim of fraudulent misrepresentation, we the jury find as follows:

|                                  | For Plaintiff Francis P. Maybank |                                        | For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust |                                        |
|----------------------------------|----------------------------------|----------------------------------------|-----------------------------------------------------------------------------------------------|----------------------------------------|
| BB&T Corporation                 | Yes <input type="checkbox"/>     | No <input checked="" type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Branch Banking and Trust Company | Yes <input type="checkbox"/>     | No <input checked="" type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Sterling Capital Management, LLC | Yes <input type="checkbox"/>     | No <input checked="" type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |

## 8. CONSTRUCTIVE FRAUD

On the claim of constructive fraud, we the jury find as follows

|                                  | For Plaintiff Francis P. Maybank        |                             | For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust |                                        |
|----------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------------------------------------------------------------|----------------------------------------|
| BB&T Corporation                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Branch Banking and Trust Company | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Sterling Capital Management, LLC | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |

## 9. NEGLIGENT MISREPRESENTATION

On the claim of negligent misrepresentation, we the jury find as follows:

|                                  | For Plaintiff Francis P. Maybank        |                             | For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust |                                        |
|----------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------------------------------------------------------------|----------------------------------------|
| BB&T Corporation                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Branch Banking and Trust Company | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |
| Sterling Capital Management, LLC | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Yes <input type="checkbox"/>                                                                  | No <input checked="" type="checkbox"/> |

10. If you answered No to all of the parts in Questions 1 through 9, please sign the form and notify the bailiff

11. If you answered Yes to any of the parts in Questions 1 through 9, what amount of actual damages do you award? (Please respond in writing and numerically)

(a) For Plaintiff Frank Maybank?

\$ Three million one hundred thousand dollars

(\$ 3,100,000)

(b) For Plaintiff Maybank Family Insurance Trust?

\$ None

(\$ 0.00).

12. If you answered Yes to Questions 2, 3, 6, 7, 8, or 9, do you find by clear and convincing evidence that the acts of the defendant(s) warrant payment of punitive damages? If so, indicate Yes in the Yes blank below for the respective Defendant(s)

BB&T Corporation

Yes ☒

No ☐

Branch Banking and Trust Company

Yes ☒

No ☐

Sterling Capital Management, LLC

Yes ☒

No ☐

13. If you answered Yes to Question 12, what amount, if any, punitive damages do you award? (Please respond in writing and numerically)

(a) For Plaintiff Frank Maybank?

\$ Five million dollars

(\$ 5 million).

(b) For Plaintiff Maybank Family Insurance Trust?

\$ None

(\$ 0.00)

Once complete, sign the form and notify the bailiff.

Patrick Moore  
Foreman

6/30

, 2014

# *Exhibit C*

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO 2011 CP-23-8578

FRANCIS P. MAYBANK, ~~and LANE BANK OF SOUTH~~  
MAYBANK, as TRUSTEE for the FRANCIS P. MAYBANK FAMILY INSURANCE TRUST,  
2014 NOV 10 AM 4 49

BB&T CORPORATION, BRANCH  
BANKING AND TRUST COMPANY,  
Successor in merger to BRANCH  
BANKING AND TRUST COMPANY OF  
SC, and STERLING CAPITAL  
MANAGEMENT, LLC, Successor in  
merger to BB&T ASSET  
MANAGEMENT LLC  
DEFENDANT(S)

PLAINTIFF(S)

Submitted by Submitted by Mitchell Willoughby of Willoughby &  
Hoefler, P A and Bruce Bannister of Bannister, Wyatt & Stalvey, LLC

Attorney for: ☒ Plaintiff ☐ Defendant  
Or  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ JURY VERDICT This action came before the court for a trial by jury. The issues have been tried and a verdict rendered
- ☒ DECISION BY THE COURT Post-trial motions were heard before the Court and the attached order reflects the Court's decision and entry of judgment ☒ See Page 2 for additional information
- ☐ ACTION DISMISSED (CHECK REASON) ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC, ☐ Bankruptcy, ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)  
☐ Affirmed, ☐ Reversed; ☐ Remanded, ☐ Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED ☒ See attached order ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☒ ends ☐ does not end the case  
Additional Information for the Clerk

This judgment to be filed in the Greenville County, SC

Date 11/10/14

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below)                                                             | Judgment Against<br>(List name(s) below)                                                                                                                                                                  | Judgment Amount To be Enrolled<br>(List amount(s) below)                                                       |
|----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| FRANCIS P MAYBANK                                                                                        | BB&T Corporation, Branch Banking and Trust Company, Successor in merger to Branch Banking and Trust Company of SC, and Sterling Capital Management, LLC, Successor in merger to BB&T Asset Management LLC | Seventeen Million, One Hundred Ninety Nine Thousand, Three Hundred Six and 00/100ths dollars (\$17,199,306 00) |
| If applicable, describe the property, including tax map information and address, referenced in the order |                                                                                                                                                                                                           |                                                                                                                |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note Title abstractors and researchers should refer to the official court order for judgment details.

Edward W Miller  
Edward W Miller, Circuit Court Judge

2130  
Judge Code

11/10/14  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the  
appropriate attorney's box on this  
pro se) as follows.

day of October, 2014 and a copy mailed first class or placed in the  
day of October, 2014 to attorneys of record or to parties (when appearing

**Mitchell Willoughby, Esquire**  
**Elizabeth Zeck, Esquire**  
**Chad Johnston, Esquire**  
**Willoughby & Hoefer, P.A.**  
**930 Richland Street**  
**Post Office Box 8416**  
**Columbia, SC 29202**

**D. Larry Kristinik, Esquire**  
**Kristen E. Horne**  
**Nelson Mullins Riley &**  
**Scarborough LLP**  
**1320 Main Street / Seventeenth Floor**  
**Post Office Box 11070 (29211-1070)**  
**Columbia, SC 29201**

**Bruce Bannister, Esquire**  
**Bannister, Wyatt & Stalvey LLC**  
**401 Pettigru Street**  
**Post Office Box 10007 (29603)**  
**Greenville, SC 29601**

**William S. Brown, Esquire**  
**Nelson Mullins Riley &**  
**Scarborough LLP**  
**104 South Main Street / Ninth Floor**  
**Post Office Box 10084 (29603-0084)**  
**Greenville, SC 29601**

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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CLERK OF COURT

Court Reporter.

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON  
PAGE 1.**

This action came to hearing before the court on post trial motions. The issues have been heard and a decision rendered.

This case was tried to a jury from June 16 through June 30, 2014. Following a hearing on all post-trial motions, the Court rules on such post-trial motions as set forth in the attached order and orders entry of judgment as set forth in the attached Order and this Form 4.

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**FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE**  
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.  
  
The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.
3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means)
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block

- 9 If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title
- 10 When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code
- 11 If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
- 12 Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF GREENVILLE ) FOR THE THIRTEENTH JUDICIAL CIRCUIT

FRANCIS P. MAYBANK,  
and JANE H.P. MAYBANK, as  
TRUSTEE for the FRANCIS  
P. MAYBANK FAMILY  
INSURANCE TRUST,

Plaintiffs,

vs

BB&T CORPORATION,  
BRANCH BANKING AND TRUST  
COMPANY, Successor in merger to  
BRANCH BANKING AND TRUST  
COMPANY OF SC, and  
STERLING CAPITAL  
MANAGEMENT, LLC, Successor in  
merger to BB&T ASSET  
MANAGEMENT LLC

Defendants

Civil Action No 2011-CP-23-8578

ORDER AND FINAL JUDGMENT

FILED-CLERK OF COURT  
GREENVILLE CO SC  
PAUL B WICKENSIMER  
2014 NOV 10 AM 4 49

This matter is before the Court on post-trial motions of Plaintiff Francis P Maybank and Defendants BB&T Corporation, Branch Banking and Trust Company ("BB&T Bank"), and Sterling Capital Management, LLC (referred to as its predecessor entity, "BB&T Asset Management") (collectively referred to as "BB&T" or "Defendants")

### Background and Summary

This case was tried before a jury for two weeks beginning June 16, 2014. After deliberating Friday, June 27 and Monday, June 30, the jury awarded Mr. Maybank actual damages of \$3,100,000 and punitive damages of \$5,000,000 for breach of contract, breach of

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fiduciary duty, constructive fraud, negligent misrepresentation, and a violation of the South Carolina Unfair Trade Practices Act ("UTPA"), S.C. Code Ann. §§ 39-5-10 *et seq.* The jury did not return a verdict for any claims of the Francis P. Maybank Family Insurance Trust. I observed the jury and found the panel to be attentive, thoughtful, diligent, and deliberate in its consideration of the evidence presented during this lengthy trial.

Plaintiff moved post-trial for attorneys' fees and costs and to treble actual damages under the UTPA, and for prejudgment interest. Defendants moved substantively for judgment notwithstanding the verdict ("JNOV"), new trial absolute, or, in the alternative, new trial *nisi remittitur*. Defendants also sought to require Mr. Maybank to elect a remedy. Following an August 19, 2014 hearing, I took the issues under advisement.

After careful review of the verdict and the parties' post-trial motions and argument of counsel, I deny Defendants' motions for JNOV, new trial absolute, and new trial *nisi remittitur*. I find that the award of punitive damages in the amount of \$5,000,000 is appropriate. I treble the actual damage award of \$3,100,000 to \$9,300,000 because I find Defendants' conduct, which the jury found to be an unfair and deceptive business practice in violation of the UTPA, was knowing and willful. I find that no election is required because Defendants' unfair and deceptive conduct in violation of the UTPA was separate and distinct from that supporting the common law causes of action for which punitive damages were awarded. I therefore find Plaintiff is entitled to both treble and punitive damages. I award \$2,654,295 in attorneys' fees and \$245,011 in costs. I deny the motion for prejudgment interest.

### **Analysis**

#### **Motion for Judgment Notwithstanding the Verdict**

I deny Defendants' motion for JNOV because the evidence supports the jury's verdict in favor of Mr. Maybank. "A motion for JNOV may be granted *only if no reasonable jury could*

*have reached the challenged verdict” Gastineau v Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998) (emphasis added) In ruling on the motion, I view the evidence and the reasonable inferences in the light most favorable to the non-moving party *RTF Mgmt Co., LLC v Tinsely & Adams LLP*, 399 S.C. 322, 732 S.E.2d 166 (2012) To the extent a ground for relief in the JNOV motion is not addressed below, I expressly deny relief on that ground

**I. South Carolina Unfair Trade Practices Act.**

I find that the evidence showed actions by Defendants other than the sale of a security, that Defendants’ activities are not exempt from the UTPA, and that Defendants failed to prove their entitlement to any exemption under the UTPA

**A. Legal background.**

UTPA’s prohibitions do not apply to “[a]ctions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law.” S.C. Code Ann. § 39-5-40(a) This exemption requires a case-by-case analysis of the alleged misconduct. See *Ward v Dick Dyer*, 304 S.C. 152, 155, 403 S.E.2d 310, 312 (1991) (“The exemption is intended to exclude those actions or transactions which are allowed or authorized by regulatory agencies or other statutes.”) Section 39-5-40 also imposes “the burden of proving exemption upon the person claiming the exemption.”

**B Discussion**

I find that the jury’s verdict that Defendants violated the UTPA was supported by at least three separate instances of unfair and deceptive business practices by Defendants, none of which involved a public offering, registration, or sale of a security, and all of which are separate from the bases of liability for the common law causes of action

I first find that the jury reasonably could conclude that Defendants violated the Act by their admitted misuse of their form Wealth Management Agreement ("WMA"). There was evidence that Defendants knew when they presented the WMA to Mr. Maybank that it contained deliberate misrepresentations and that BB&T would not fulfill the promised duties, which were the basis of the bargain and the crux of the fiduciary relationship. The evidence also showed that Defendants presented the same form document to all clients of the Wealth Management Division from at least 2006 into 2009. BB&T's corporate representative admitted that Defendants did not notify Mr. Maybank or any customer that the WMA would not be fulfilled as promised.

I further find that the evidence showed Defendants misled Mr. Maybank and approximately 130 other customers regarding a fee refund. Although BB&T's letter claimed that the fee refund was "a reflection of [BB&T's] corporate values," Ex. 50, evidence showed that the fee refund resulted from criticism by the Securities and Exchange Commission ("SEC") of charging transaction-based "broker-esque" fees by BB&T Asset Management, which was not a registered broker-dealer. The jury reasonably could have concluded that Defendants' statements unfairly, deliberately, and deceptively hid the truth about BB&T's actions, and was designed to lull clients into complacency, discouraging investigation of BB&T's business practices and allowing BB&T to possibly avoid civil liability.

I also find that the evidence showed that Defendants knowingly misrepresented that an individualized assessment of Mr. Maybank's financial situation had been performed. *See* Ex. 7 (August 11, 2006 General Counsel "Approval Letter"). Although Mr. Maybank relied upon the Approval Letter, believing it to be specifically tailored for him, the letter was merely a "fill-in-the-blank" form letter extolling the suitability of the variable prepaid forward contract ("VPFC") for concentrated positions in BB&T stock, no matter the client's financial situation. *Cf* Ex. 91.

I find Defendants' use of this form letter deliberately, unfairly, and deceptively misrepresented the services provided to Mr Maybank and other customers because promising specialized or individualized treatment while actually providing only stock services violates the UTPA See *deBondt v Carlton Motorcars, Inc.*, 342 S C 254, 270-71, 536 S E 2d 399, 407 (Ct App 2000)

I find the jury verdict was supported by evidence that Defendants knowingly and deliberately engaged in unfair and deceptive practices in each of these three ways and that Defendants failed to meet their burden to prove that each of these practices involved a security or securities transaction and was authorized under laws administered by any regulatory body or permitted by any other South Carolina law

I further reject Defendants' argument based upon a generalized banking industry exemption to the UTPA *Ward*, 304 S C at 155, 403 S E 2d at 312<sup>1</sup> However, the UTPA exemption only excludes "from the UTPA those actions or transactions which are allowed or authorized by a regulatory agency or other statutes" See *Taylor v Medemica*, 324 S C 200, 218, 479 S E 2d 35, 44 (1996) (citing *Ward*) I further find that Defendants' unfair and deceptive practices were not authorized by any federal or state securities acts or regulations I also find that Defendants' argument fails to acknowledge that they were not registered to sell securities as broker-dealers, that they presented no evidence that the VPFC was a registered security much less that it was an initial public offering of a security, and that the jury rejected Plaintiffs' claim for recovery under the Uniform Securities Act

Defendants waived any argument that BB&T Asset Management and BB&T Bank are exempt from the UTPA by operating in regulated industries because they did not move for a

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<sup>1</sup> *Ward* involved an exemption to the UTPA, but not for the banking industry The Court overruled its prior holding in *State ex rel McLeod v Rhoades*, 275 S C 104, 267 S E 2d 539 (1980), which had applied a general activity test

directed verdict on this ground. *See In re McCracken*, 346 S.C. 87, 93, 551 S.E.2d 235, 238 (2001). I further find that Defendants' argument is based upon an erroneous interpretation of the record and the stipulated fact that these Defendants were not registered as broker-dealers with the SEC or the State of South Carolina. I also find that, even under Defendants' general regulation theory, their unfair and deceptive business practices as exposed in this case were not authorized or required by banking regulations. I find Defendants failed to meet their burden to present evidence proving an exemption from the UTPA and that Defendants presented no evidence that the two VPFCs sold to Mr. Maybank were initial public offerings of securities or were even securities as contemplated by the exemption recognized in *Rhoades and Ward*. Finally, the jury rejected any argument that Defendants were entitled to an exemption, and I concur with that finding.

## II. Punitive Damages.

Prior to addressing Defendants' argument that a so-called exculpatory clause insulates them from punitive damages, I will first evaluate Defendants' arguments for JNOV on the common law causes of action and the propriety of the jury's award of punitive damages.

### A. Common Law Causes of Action.

Defendants contend that judgment should be entered in their favor on the common law claims of breach of contract, breach of fiduciary duty, constructive fraud, and negligent misrepresentation. I find that there is ample evidence from which this very reasonable and thoughtful jury could have rendered its verdict. I further find that, for each element on the causes of action submitted to the jury, there was sufficient evidence upon which a reasonable jury could return a verdict for Mr. Maybank on these causes of action. I therefore deny Defendants' motion.

**B. *Review of the Jury's punitive damages award.***

I must consider whether punitive damages are warranted and, if so, whether the amount is appropriate based on (1) the degree of reprehensibility of Defendants' conduct, (2) the disparity between actual or potential harm suffered by the plaintiff and the amount of the punitive damages award, and (3) the difference between the punitive damages award and civil penalties authorized or imposed in comparable cases *Mitchell v Fortis Ins Co.*, 385 S C 570, 587-89, 686 S.E 2d 176, 185-86 (2009) I find the punitive damages award is constitutional and proper

**1. Reprehensibility.**

In evaluating reprehensibility, "perhaps the most important indicium of the reasonableness," I must consider whether (1) the harm was physical or economic, (2) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (3) the target of the conduct had financial vulnerability, (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit rather than mere accident. *Id* at 587, 686 S.E.2d at 185 I find ample, clear and convincing evidence supporting the jury's finding of reprehensibility The harm was economic, and Defendants demonstrated indifference to and/or reckless disregard for Mr Maybank's financial health and well-being, as well as the safety of his irreplaceable retirement assets

I find clear and convincing evidence of Mr. Maybank's financial vulnerability as a 74-year old, soon-to-be retiree, which was known to Defendants who were acting as his advisor and fiduciary. Defendants' conduct was not an isolated incident but instead involved repeated acts of indifference to Mr Maybank and others Defendants' representatives were financially incentivized to sell alternative investment strategies, which they viewed as a fee-generating

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"revenue opportunity" for BB&T.<sup>2</sup> BB&T sold Mr Maybank a strategy based upon a VPFC which was speculative, costly, and unsuitable, and anchored by a complex derivative product that actually increased risk, rather than minimizing it. BB&T further increased the risk by using the cash generated to fund a 100% equity "Aggressive Growth" portfolio. Defendants' self-serving strategy moved Mr Maybank's assets from a non-fee generating account to accounts that provided Defendants and their incentivized employees with an up-front fee of \$32,614 as well as a stream of annual management fees.

The evidence showed that, in 2009, Defendants compounded their initial flawed and self-serving advice by recommending the roll-over of the first VPFC into a second VPFC, which they presented to clients as the "ideal choice." Instead, the roll-over was "ideal" only for Defendants, as it generated additional up-front transaction and annual management fees. For their faithless and self-serving advice, Defendants charged Mr Maybank a fee of \$43,655. Mr Maybank was locked into Defendants' self-serving scheme of fee-producing, costly roll-overs that over time would deplete a client's assets. I find that Defendants' conduct was not isolated, but part of a scheme to generate fees and bonuses for Defendants and its representatives without regard to the best interests of Mr Maybank, their principal to whom they owed fiduciary duties.

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<sup>2</sup> Defendants' internal sales practices were demonstrated at trial. For example, Exhibits 55, 89, 92, 100, 103, 104, and 106, taken together, show that Defendants initiated a sales program to generate revenue through the sale of alternative (derivative) products and associated strategies, while the needs and best interests of Mr Maybank were sacrificed by untrained, bonus-driven representatives incentivized to sell products. Exhibit 92 in fact calls it a "revenue opportunity."

**Pre-Paid Variable Forwards**

- Revenue Opportunity
- Up-front fee of 50-100 basis points
- Annual management fees up 1% or more
- This could generate well over \$100K over 3 years

See also Ex 100 (same). These exhibits, along with other exhibits and testimony in the record, support the reasonable conclusion that the motivation to sell the VPFC strategy was for the substantial revenues that it generated, not because it was in Mr Maybank's best interest.

Based on these examples and the record as a whole, I find that the evidence shows that Defendants acted with malice, trickery, or deceit rather than mere accident. I find that the jury could have reasonably found that Defendants, notwithstanding their position as Mr Maybank's fiduciary, breached their duties in at least one or more of the following ways.

- i. By failing to perform an individualized analysis of the suitability of the investment strategy for Mr. Maybank;
- ii. By failing to perform a thorough financial analysis or to develop a comprehensive financial plan,
- iii. By failing to advise Mr Maybank about the significant conflict of interest against providing advice about BB&T Corporation stock;
- iv. By failing to advise Mr. Maybank about the reasonable amount of annual revenue to be generated by BB&T's investment strategy and to counsel him about restricting his spending to the assured income level,
- v. By misrepresenting that BB&T had expertise in VPFCs and the associated strategy;
- vi. By permitting untrained and misinformed representatives to sell a product and strategy which they were unqualified to sell,
- vii. By failing to explain that the strategy substantially increased Mr Maybank's investment risk,
- viii. By failing to explain that the strategy placed the client into a never-ending cycle of periodic and costly roll-overs,
- ix. By failing to fully explain the true costs of this complex strategy and the derivative contract upon which it was based;
- x. By misrepresenting to Mr Maybank that his best interests were being served when, in actuality, the strategy was nothing more than a fee-driven sales program for Defendants and their representatives,
- xi. By failing to place Mr Maybank's best interest ahead of the interest of BB&T, and
- xii. By representing that the VPFC and associated strategy would protect Mr Maybank's retirement savings, when in actuality it substantially increased the risk of loss

I concur and find that Defendants' conduct was reprehensible and warrants the imposition of punitive damages as awarded by the jury

2. Ratio between actual and punitive damages.

The ratio between the award of \$5 million in punitive damages and the award of \$3.1 million in actual damages is 1.61 to 1. This ratio is at the low, or readily sustainable, end of the reasonableness spectrum. See, e.g., *Cody P v Bank of Am, NA*, 395 S.C. 611, 720 S.E.2d 473 (Ct. App. 2011) (upholding a 7.69 to 1 ratio where improper safeguards by bank permitted co-

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conservator to steal a child's funds); *Mitchell*, 385 S.C. at 593-94, 686 S.E.2d at 188 (ratio of 9 to 2 to 1 in insurance bad faith case)<sup>3</sup> Based on the Defendants' conduct, I find the ratio of punitive to actual damages to be both reasonable and proportionate to the harm suffered by Mr. Maybank.

I further consider "the likelihood that the award will deter the defendant from like conduct, whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay." *Id.* at 588, 686 S.E.2d at 185. I find that a \$5,000,000 punitive damages award is likely to deter Defendants from similar conduct in the future and will likely encourage better training of employees, result in improved suitability analysis and increased competence of investment advice, and lead to true protection of a client's irreplaceable retirement assets. Further, I find that the award is reasonably related to the financial harm likely to result from such conduct, which can be significant and large as seen in Mr. Maybank's case. The potential harm to a senior citizen of self-serving and deceitful investment advice can be catastrophic, leading to financial ruin and a life of dependency in a person's twilight years. Corporations managing money for South Carolina's elderly citizens must know that their conduct and advice must be faithful, prudent, trustworthy, non-conflicted, and free from deceit, tricks, and misrepresentations. Finally, based on the record, including but not limited to the testimony and evidence of Mr. Maybank's expert witness Dr. Oliver Wood, I find that Defendants have the ability to pay the punitive damages award.

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<sup>3</sup> South Carolina courts have upheld ratios across the spectrum in cases involving "merely" economic harm. See, e.g., *Jenkins v. Few*, 391 S.C. 209, 705 S.E.2d 457 (Ct. App. 2012) (3.6 to 1 ratio for conversion, trespass, and civil conspiracy), *Duncan v. Ford Motor Co.*, 385 S.C. 119, 682 S.E.2d 877 (Ct. App. 2009) (ratio of 5.087 to 1 upheld against vehicle manufacturer when defective switch destroyed owners' home and personal belongings), *Collins Entm't Corp. v. Coats & Coats Rental Amusement*, 355 S.C. 125, 584 S.E.2d 120 (Ct. App. 2003) (upholding a 9.9 to 1 ratio on an intentional interference with contract claim), *Cock-N-Bull Steak House, Inc. v. General Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996) (affirming a 28 to 1 ratio for breach of contract and bad faith insurance claim).

3. *The difference between punitive damages and civil penalties.*

Lastly, I find that there are no comparable civil penalties that are applicable to Defendants' breaches of their fiduciary duties, misrepresentations, and fraudulent actions to Mr. Maybank. See, e.g., *Cody P*, 395 S.C. at 632, 720 S.E.2d at 484. As discussed above, I find consideration of the punitive awards in comparable cases to be appropriate. Like *Cody P*, this case involves economic harm caused by a bank's failure to safeguard a client's funds. The reprehensibility is greater here because the bank in *Cody P* merely failed to prevent misconduct by a third party, the harm in this case was caused by Defendants' own intentional and deliberate misconduct, which was found by the jury to be grossly negligent, reckless, and/or willful and to constitute constructive fraud, breaches of fiduciary duty, and breaches of the contract. The ratio here is lower than in *Cody P*, which upheld a 7.69 to 1 ratio despite a lack of any findings of intentional wrongdoing by that bank defendant. I therefore find that the award of punitive damages by this jury is reasonable, especially in comparison with comparable cases.

4. *Conclusion*

I find that the punitive damages award by this jury is supported by clear and convincing evidence; that Defendants' conduct is reprehensible; and that the award is directly proportionate to the harm caused by Defendants. I therefore affirm the award of punitive damages.

C. *The exculpatory clause does not apply.*

I find that the exculpatory clause contained in the WMA does not preclude the award of punitive damages. In pretrial proceedings, Defendants' corporate representative, Mr. Ross Walters, admitted that the WMA had been incorrectly drafted by their lawyers, that it had been tendered to Mr. Maybank despite these errors, and that no one had explained or disclosed the errors to Mr. Maybank, even though Defendants were then his fiduciary. Defendants'

counterclaim for reformation also constituted an admission of the errors in the contract. I denied Plaintiff's motion for partial summary judgment because the real terms of the parties' agreement were in doubt based on Defendants' own admissions and actions. At trial, the question of the real and enforceable terms of the contract remained hotly contested. Consequently, I found that the determination of the terms of the WMA was a question of fact for the jury to decide. The jury considered the contract, the evidence of record, argument of counsel, and the Court's charges and rejected Defendants' version of the events and characterizations of their conduct. The jury also awarded punitive damages and therefore determined that the exculpatory clause did not preclude an award of such damages.

I further find that, as a matter of law, the exculpatory clause is inapplicable to Defendants' misconduct under the common law causes of action of breach of fiduciary duty, constructive fraud, and negligent misrepresentation.<sup>4</sup> The exculpatory clause applies only "with respect to [Bank and Investment Advisor's] services under this Agreement." I find that the services as described in Sections I, II, and III of the contract do not include making misrepresentations or material omissions of relevant information or failing to disclose or concealing material information. Thus, as a matter of law, I find that the common law causes of

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<sup>4</sup> While Defendants argue that the exculpatory clause is unambiguous and its terms are derived from the clear intent of the parties, I note that the clause is in the very same form agreement that Defendants sought to reform by mutual mistake. When it came to their admitted breach of the WMA, Defendants contended that certain language in the contract should be amended to support their favored construction even though they drafted the erroneous contract. Defendants' counterclaim for reformation is denied because there is no evidence of mutual mistake. Although they had the burden of proving mutual mistake by clear and convincing evidence, Defendants failed to prove that they were entitled to reformation. See *Crosby v Protective Life Ins Co*, 293 S C 203, 206, 359 S.E 2d 298, 300 (Ct App 1987). Defendants own actions demonstrate that the contract terms and applications are in doubt, and the rules of contract construction therefore require the exculpatory clause to be narrowly interpreted in favor of the client and against BB&T, which drafted the contract. See *McPherson v Michigan Mut Ins Co*, 310 S C 316, 319, 426 S E 2d 770, 771 (1993).

action of breach of fiduciary duty, constructive fraud, and negligent misrepresentation arise outside of the "services" set forth in the WMA. Defendants provided no authority for the proposition that they may be relieved from intentional, reckless, and fraudulent conduct.

I find that BB&T Corporation and Mr. Maybank are not in equal bargaining positions, particularly where there is a form agreement drafted and presented by a multi-billion dollar fiduciary to an individual client. South Carolina courts have gone to "extremes" to avoid enforcing exculpatory clauses where the parties have substantially different bargaining power. *Cooke v Allstate Mgmt Corp*, 741 F Supp 1205, 1207 (D S C 1990); see also *Anthony v Atlantic Group, Inc*, 909 F Supp 2d 455 (D S.C. 2009). I find that enforcement of the exculpatory clause in the WMA would be against public policy. I therefore deny Defendants' motion to construe the so-called exculpatory clause so as to bar the jury's award of punitive damages.

I further find that the exculpatory clause is unenforceable here because BB&T was Mr. Maybank's fiduciary when the misconduct occurred and the WMA was executed. As his fiduciary, BB&T had an absolute duty of disclosure and the obligation to ensure that Mr. Maybank understood the terms of the entire WMA, including the exculpatory clause. Further, Mr. Maybank had an absolute right to rely upon BB&T's representations and to expect that his fiduciary would fully disclose any terms adverse to his interests, which they admittedly failed to do. See *Regions Bank v Schmauch*, 354 S.C. 648, 672-74, 582 S.E.2d 432, 444-46 (Ct. App. 2003) (fiduciaries have absolute obligation of disclosure of material facts and, clients have right to rely upon the representations by their fiduciaries). The evidence demonstrated that Mr. Maybank was not provided a copy of the WMA—and, necessarily, the exculpatory clause—until nearly two weeks after the failed investment strategy was set into motion through the first VPFC,

and even then the adverse terms of the exculpatory clause were not discussed with him. When presented with the full contract, and all of the evidence and circumstances surrounding the execution of the WMA, the jury found that punitive damages were warranted. I find that the exculpatory clause is unenforceable based on the jury's findings and my own weighing of the evidence.

### III BB&T Corporation.

#### A. *The Court properly exercised jurisdiction over BB&T Corporation.*

This Court properly exercised personal jurisdiction over BB&T Corporation. "A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's .. transacting any business in this State [or] entry into a contract to be performed in whole or in part by either party in this State." S.C. Code Ann. § 36-2-803(A)(1), (7). BB&T Corporation's General Counsel expressly authorized the investment strategy recommended to Mr. Maybank in South Carolina, which permitted Mr. Maybank to continue to hold a concentrated position in BB&T stock even though it was a conflict of interest for BB&T Corporation to make representations and give advice regarding its own stock.<sup>5</sup> Without the approval and validation of the transaction by BB&T Corporation, the strategy would not have been implemented and the fee opportunity would have been lost for Defendants.<sup>6</sup> I therefore reject Defendants' argument that BB&T Corporation was "a mere

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<sup>5</sup> BB&T Corporation knowingly and willingly authorized, approved, and facilitated an investment relationship with a South Carolina resident involving the ownership of and dividends from BB&T Corporation stock. That alone establishes minimum contacts sufficient to support exercising personal jurisdiction over BB&T Corporation. *Fields v. INA Filtration Corp.*, 292 S.C. 614, 618, 358 S.E.2d 160, 163 (Ct. App. 1987) ("The length and duration of the nonresident's activity in this State need only be minimal when the plaintiff lives in this State and the cause of action arose out of the defendant's activities in this State").

<sup>6</sup> Defendants ignore the Corporation's critical role in establishing duties to clients and customers of its subsidiaries. BB&T Corporation promulgated a Code of Ethics governing its

holding company for other BB&T entities and that none of its employees had any direct involvement with Mr Maybank," and instead find that the character and circumstances of the corporation's actions and the State's interest weigh in favor of exercising personal jurisdiction.

**B. Defendant waived any objections to the exercise of jurisdiction over BB&T Corporation.**

BB&T Corporation waived its right to seek dismissal. The defense of personal jurisdiction "may be lost by failure to assert it seasonably, by formal submission in a cause, or by submission through conduct." *Neirbo Co. v Bethlehem Shipbuilding Corp*, 308 U.S. 165, 168 (1939). Simply articulating the defense in an answer without promptly advancing it may waive that defense. *Yeldell v. Tutt*, 913 F.2d 533, 539 (8<sup>th</sup> Cir. 1990) BB&T Corporation made only a perfunctory defense under Rule 12(h)<sup>7</sup> by stating in the Answer that it "reserves its objection based on the Court's lack of *in personam* jurisdiction." See Ans. 1st Am Compl p 1. BB&T Corporation then fully participated in litigating this case without advancing that objection or otherwise moving for dismissal at any time until shortly before trial. See *Hamilton v Atlas Turner, Inc*, 197 F.3d 58, 62 (2d Cir 1999) (defendant forfeited defense of personal jurisdiction by not moving to assert it until four years after filing answer) I find that BB&T Corporation waived the defense by "provid[ing] no more than a bald assertion in [the] answer that the court lacked personal jurisdiction" and then proceeded to participate in discovery, make court appearances, and file numerous pleadings without ever again presenting the defense. I therefore deny Defendants' motions for JNOV, new trial, and new trial *nisi remittitur* on this ground

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subsidiaries intended to enhance the operations of the corporation and its subsidiaries by ensuring that these entities "continue to earn our client's trust and respect by always upholding the highest standards of ethical and professional conduct in all that we do" See Ex 6, BB&T Code of Ethics, § I ("The Code applies equally to all employees of BB&T and its subsidiaries.").

<sup>7</sup> Rule 12(h), SCRPC, merely "specifies the minimum steps that a party must take in order to preserve [the] defense, not the outer limits of a possible waiver" *Peterson v Highland Music, Inc*, 140 F.3d 1313, 1318 (9th Cir 1998)

#### IV. Statute of Limitations

The statute of limitations does not bar Mr. Maybank's causes of actions and Defendants' motion on this ground is denied. "The burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide." *Brown v Finger*, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962) (citation omitted)

#### V. Insufficient Evidence of Damages

Defendants argue that Mr. Maybank did not present sufficient evidence on damages. However, the jury clearly found damages were warranted based on the testimony of Mr. Maybank as well as his expert witnesses, Dr. Craig McCann and Professor John Freeman. Although Defendants may disagree with the weight given to the evidence, my responsibility is limited to determining if any evidence existed to support the verdict. I deny Defendants' motion on this ground because I find the damages are fully supported by ample evidence.

#### VI. Grounds for JNOV

Defendants argue over 40 additional grounds<sup>8</sup> in their motion for JNOV, *see* Mot pp 18-24, Nos. 12-54, that I find forfeited because they were neither advanced in Defendants' 31 page written directed verdict motion nor argued orally to the Court. "[A] motion for JNOV must be based on the same grounds as those raised in a motion for a directed verdict motion made at the close of all the evidence." *RFT Mgmt Co v Tinsley & Adams L.L.P.*, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012). However, I further have considered each of these issues to the extent the substance can be gleaned from the conclusory arguments and I find that they do not warrant granting JNOV. I therefore deny Defendants' motion on these and all other additional grounds.

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<sup>8</sup> Regardless of the number, I deny each of the additional grounds as meritless.

## Motion for New Trial Absolute

Although a new trial absolute may be granted if the verdict is excessive or inadequate, "[t]he jury's determination of damages is entitled to substantial deference." *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S E 2d 802, 805 (1993) I have considered the testimony and reasonable inferences therefrom most favorable to Mr Maybank as the nonmoving party I deny Defendants' motion because I find the evidence presented at trial fully supports the jury's verdict and further find that the verdict is neither grossly excessive nor the result of passion, caprice, prejudice, partiality, corruption, or some other improper motive.<sup>9</sup>

### I. Challenges to the Court's evidentiary rulings.

I find that Defendants have not established that any of the challenged evidentiary rulings were erroneous because, in each instance, the evidence was relevant and properly admissible *State v Douglas*, 367 S C. 498, 508, 626 S E 2d 59, 64 (Ct App 2006) I further find that Defendants failed to show the challenged rulings were unfairly prejudicial *See Fields v. Reg'l Med Ctr Orangeburg*, 363 S C 19, 26, 609 S E 2d 506, 509 (2005) I therefore deny the motion on these grounds.

### II. Challenges to the Court's Jury Instructions.

Defendants also assign error to the Court's compilation and delivery of jury charges following the close of evidence I find that Defendants made no valid contemporaneous objections *See Murray v. Bank of Am, NA*, 354 S C. 337, 346, 580 S E 2d 194, 199 (Ct App 2003) I further find that, after careful review, the instructions adequately charge the applicable law in this case. I therefore deny Defendants' motion on this ground

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<sup>9</sup> Defendants assert, by my count, 54 distinct grounds in support of their motion for new trial absolute To the extent a ground is not specifically discussed, it is denied Additionally, to the extent a ground is identical to one raised in the JNOV motion, I expressly incorporate those rulings to the extent applicable in denying the motion for new trial absolute.

### III Challenges to the Jury Verdict Form.

I find that Defendants' challenge to various parts of the jury verdict form is without merit and has been waived. The verdict form I ultimately adopted and submitted to the jury was, with minor exception, the form proposed by Defendants. The return of a general verdict for a total amount of damages on all causes of action means that each cause of action independently supports the entire award of actual damages. I find that Defendants waived any objection related to the verdict form and deny their motion on this ground. See *Johnson v Hoechst Celanese Corp*, 317 S C 415, 421, 453 S E 2d 908, 912 (Ct. App 1995)

### IV. Thirteenth Juror Doctrine.

Defendants also seek to have this Court grant a new trial as the thirteenth juror. I decline to interfere with the jury's verdict because I find that the record fully supports the verdict. I observed the jury to be very diligent, thoughtful and attentive in its work. After two weeks of receiving testimony and documentary evidence, listening attentively to arguments of counsel and jury charges, and deliberating for two days, the jury found Defendants' conduct was in violation of law, reprehensible, and otherwise deserving of punishment. Defendants' motion for a new trial on this ground is denied.<sup>10</sup>

### New Trial *Nisi Remittitur*

I deny Defendants' motion for a new trial *nisi remittitur* because I find there is no compelling reason to reduce the jury's verdict. Based on the evidence, applicable law, and the arguments of the parties, I find that the jury's verdict is fully supported by the evidence and is not excessive, arbitrary, or capricious. Having closely observed the evidence and the jury over the course of the two week trial, I find the verdict was based on neither emotion nor improper

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<sup>10</sup> Because I find no merit to Defendants' motion for new trial absolute, I deny relief on any and all grounds raised in that motion not specifically discussed in this Order.

sentiment and was supported by the evidence of record I accept and concur with the jury's finding that Defendants' conduct was reprehensible, which justifies and supports the award of actual and punitive damages I therefore deny the motion for new trial *nisi remittitur*

### **Treble Damages under the Unfair Trade Practices Act**

Mr. Maybank moves to treble the jury's award of actual damages on the UTPA verdict because Defendants' conduct was willful or knowing S C Code Ann § 39-5-140(a). Conduct is willful if a reasonable person could have ascertained that their conduct violated the UTPA *State ex rel. Medlock v. Nest Egg Soc Today, Inc*, 290 S.C 124, 128, 348 S.E.2d 381, 384 (Ct App 1986). Relying on and incorporating here the evidence discussed above, which I find supports the jury's verdict under the UTPA, I further find that, having observed the testimony at trial and reviewed the evidence, Defendants' conduct in employing an unfair or deceptive method, act, or practice in commerce was both willful and knowing. I therefore treble the actual damages of \$3,100,000 to \$9,300,000.

### **Election of Remedies**

Defendants moved to require Mr Maybank to elect between recovery of punitive damages awarded by the jury on the common law causes of action and treble damages under the UTPA I find no election is required because, as stated, the evidence supported at least three theories for relief under the UTPA that were separate and distinct from the theories supporting the common law claims 1) BB&T's presentation of a deceptive and misleading form contract that the Bank had no intention of fulfilling as written; 2) use of a form letter purporting to provide Mr. Maybank with personalized research and analysis of the investment strategy but that in fact was a generic, fill-in-the-blank form document in which Defendants pre-cleared the use of these risky investment strategies, and 3) Defendants' deceptive letter to at least 130 clients in

which it misrepresented that a fee refund was made to reflect BB&T's corporate values when in actuality it obscured its legal liability for having charged those fees at all. In contrast, the jury found for Mr. Maybank on the common law causes of action of breach of fiduciary duty, constructive fraud, and negligent misrepresentation and awarded \$5 million in punitive damages on those claims.<sup>11</sup> Each of these causes of action was based on a breach of the professional duties, trusted advisor status, and fiduciary duties undertaken by Defendants as Mr. Maybank's fiduciary and was fully supported by evidence admitted at trial. The jury found that Defendants' conduct was reprehensible and warranted punishment based on evidence that Defendants provided imprudent, unsuitable, uninformed, deceitful, and reckless advice and made misrepresentations to Mr. Maybank while acting as his fiduciary.

Taken in the light most favorable to the non-moving party, the record supports a reasonable conclusion that Defendants' liability under the UTPA is separate from that for the common law causes of action. See *Taylor*, 324 S.C. at 218, 479 S.E.2d at 44-45 ("Election of remedies is not applicable where there are two separate causes of action, each based on different facts") (citing *Jones v Winn-Dixie Greenville*, 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995) (holding that "the principle [of election of remedies] has no application where two separate causes of action, each based on different facts, exists")). Moreover, the UTPA by its clear and unambiguous language is "cumulative and supplementary to all powers and remedies otherwise provided by law" S.C. Code Ann. § 39-5-160. I find that the common law causes of action for which punitive damages were awarded were based on evidence demonstrating Defendants'

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<sup>11</sup> The verdict form differentiated the causes of action for which punitive damages could be awarded from those that could not, including the UTPA cause of action, providing in pertinent part as follows: "12. If you answer Yes to Questions 2 [Breach of Fiduciary Duty], 3, 6, 7, 8 [Constructive Fraud], or 9 [Negligent Misrepresentation], do you find by clear and convincing evidence that the acts of the defendant(s) warrant payment of punitive damages?" The jury also was instructed as to the standards for imposing punitive damages.

imprudent, unsuitable, and risky investment advice to Mr Maybank, representations to him that the recommended strategy would protect his assets and was well-researched and tailored to his specific investment needs. In contrast, Defendants' practice of presenting the false and deceptive contracts and letters to Mr. Maybank, while deliberately hiding their falsity, is an independent, separate unfair and deceptive business practice. I therefore deny Defendants' motion to require election because, based on the facts and Defendants' actions in this case, there is no double recovery for a single wrong. *Taylor*, 324 S.C. at 218, 479 S.E.2d at 44-45.<sup>12</sup>

I deny Defendants' motion for election of remedies on all other grounds. Many of these grounds were not raised at trial. For instance, although pled in their Answer, Defendants waived their arguments on the economic loss rule by failing to raise it in any of their eight summary judgment motions, or during trial in their 31-page motion for directed verdict. *Patterson v Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995) (post-trial motion cannot be used to raise an issue that could have been raised at trial). Regardless, I reject their argument on the economic loss rule, which in South Carolina is primarily limited to the products liability arena. See *Kennedy v. Columbia Lumber Mfg. Co.* 299 S.C. 335, 345-46, 384 S.E.2d 730 (1989). Moreover, even Defendants' cited authority expressly rejects the economic loss rule when Defendants owe an independent duty. *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 56, 463 S.E.2d 85, 89 (1995). Defendants acted to become Mr Maybank's fiduciary and well knew that he would suffer economic losses if they breached their duties to him.

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<sup>12</sup> See also, e.g., *Freeman v. A & M Mobile Home Sales, Inc.*, 293 S.C. 255, 359 S.E.2d 532, 536 (Ct. App. 1987) (upholding both punitive and treble damages).

I also reject Defendants' argument that the claims for constructive fraud and negligent misrepresentation are inconsistent. I expressly instructed the jury that Mr. Maybank was not entitled to multiple damages based on the number of causes of action.

The plaintiff has asserted multiple causes of action against the defendant. In other words, the plaintiff believes he is entitled to recover against the defendant under multiple, different legal theories. If you find that the plaintiff has met their burden of proof as to more than one cause of action and you consider awarding damages, you should not increase the amount of actual damages simply based on the number of different causes of action, if any, upon which you find the plaintiff has prevailed.

Following these instructions, the jury in this case returned a verdict against Defendants for \$3.1 million on all causes of action on a verdict form proposed by Defendants. I therefore deny Defendants' motion on this ground.<sup>13</sup> I also deny Defendant's motion to require Mr. Maybank to elect a single cause of action on which to proceed because I find that there is no possibility of double recovery of actual damages in this case. See *Taylor*, 324 S.C. at 203, 479 S.E.2d at 44-45 (election of remedies is the act of choosing between inconsistent remedies allowed by law on the same set of facts).<sup>14</sup>

#### **Motion for Attorneys' Fees and Costs under the Unfair Trade Practices Act**

Mr. Maybank has moved for an award of attorneys' fees of \$3,317,868.70 and costs of \$306,264.10. See S.C. Code Ann. § 39-5-140(a). In rendering my decision, I have relied upon my own knowledge and observations in the case as well as the affidavits submitted by Mr.

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<sup>13</sup> This conclusion is not changed by the fact that the jury returned a single award of \$3.1 million on five causes of action, including the UTPA violation. The jury's award of a single amount of actual damages is not indicative of a finding that no distinct damages flow from the jury's determination of a violation of the UTPA. To the contrary, a general verdict form is indicative of the fact that any or all of the causes of action returned by the jury sustain the full amount of the actual damages. The question is not whether there is a separate award of damages for that violation, but whether separate facts and actions of the Defendants support each of the treble and punitive damage awards.

<sup>14</sup> To the extent not expressly addressed in this Order, Defendants' arguments nevertheless are denied.

Maybank, including the affidavit of Professor John Freeman.<sup>15</sup> Although Plaintiff's request for attorneys' fees and costs is reasonable, I nevertheless find it appropriate to reduce the total hours and costs by 20% in order to limit the fees to the UTPA claim. I therefore award as reasonable and appropriate attorneys' fees of \$2,654,295 and costs of \$245,011.<sup>16</sup>

**I. Introduction and background.**

The specific award of attorneys' fees and costs is left to the discretion of this Court, and must be determined using a lodestar analysis. *Layman v State*, 376 S.C. 434, 444, 457-58, 658 S.E.2d 320, 325, 332-33 (2008). This analysis requires determining a reasonable hourly rate and hours worked and then considering any exceptional circumstances justifying an enhancement of the lodestar figure. *Id.* at 458-61, 658 S.E.2d at 33-35. This requires considering the following: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. *Id.* at 458, 658 S.E.2d at 333 (citing *Jackson*, 326 S.C. at 308, 486 S.E.2d at 760).

I start with my familiarity with this extremely complicated case and the fine, well-prepared, and knowledgeable counsel representing both sides. The parties appeared before me on four separate occasions to resolve pre-trial issues and dispositive motions, with most hearings lasting several hours. These motions involved substantial written submissions, which I observed

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<sup>15</sup> I find Professor Freeman's affidavit to be appropriate and consistent with the parameters of expert testimony established by the case law. *See, e.g., Vortex Sports & Entm't, Inc v Ware*, 378 S.C. 197, 208, 662 S.E.2d 444, 450 (Ct. App. 2008). Professor Freeman is qualified to render an opinion assisting the Court in exercising its discretion. *See* Rule 702, SCRE. I therefore deny the motion to strike Professor Freeman's affidavit.

<sup>16</sup> Defendants filed two additional post-trial motions beyond the deadline of July 10, 2014, seeking to compel the submission of additional documentation from Mr. Maybank in support of his request for attorneys' fees and costs under the UTPA, as well as to postpone consideration of the motion for attorneys' fees, costs, and treble damages. I have considered these motions, find them to be without merit, and therefore deny them.

to be of the highest quality. The trial itself lasted two weeks, during which time I closely observed Mr Maybank's counsel first-hand. Finally, the parties appeared before me on August 19 to argue post-trial motions. I have reviewed the fee affidavit of Plaintiff's counsel detailing the hours worked by each attorney and submitting their current hourly market rates. I also have reviewed the cost affidavit detailing the costs and expenses paid and advanced in the litigation.

## **II. Reasonableness factors.**

### **A. *The nature, extent, and difficulty of the case.***

I find that the nature, extent, and difficulty of this case weighs heavily in favor of awarding attorneys' fees. Although this case was extremely difficult to litigate, involving complex investment products and strategies, both sides were represented by excellent attorneys who were strong advocates for their clients. Plaintiffs in investment litigation, like here, are often single individuals bringing claims against well financed, multi-billion dollar institutions with the very best defense lawyers available. The difficulty of an individual plaintiff litigating against a multi-billion dollar corporate entity is enormous. Moreover, as true here, the subject matter of investment cases is often quite complicated, providing counsel with the enormous challenge of explaining the issues and investment strategies and products in clear and understandable ways. Due to these factors, litigating this jury trial required substantial experience, knowledge, and expertise by Mr Maybank's counsel, requiring them to know and understand the complicated legal and factual issues involved and to present those issues in a manner comprehensible to lay persons. Mr. Maybank's counsel were excellent in this regard.

### **B. *The time necessarily devoted to the case.***

Advancing this case to trial involved successfully gaining remand to this court following Defendants' removal to federal court, extensive discovery including 32 depositions, review of

60,000 pages of discovery, and responding to eight substantive motions for summary judgment. In light of this immense and time-intensive task, I find that the time identified by Plaintiff's counsel was fairly expended in the development of the core set of facts that supported all of the claims.<sup>17</sup> According to Mr. Willoughby's affidavit, almost 6,700 hours have been devoted to handling Mr. Maybank's case through June 30, 2014, excluding post-trial issues. As was their right, Defendants vigorously defended each point and issue in this case. In light of the comprehensive, "challenge every issue" defense employed by Defendants, which I observed firsthand, I find Mr. Maybank's counsel were required to invest time and resources in mounting an effective response. I therefore find the time devoted by Mr. Maybank's counsel in litigating this case was necessary, essential, and reasonable. The fact that Mr. Maybank's counsel produced a successful result weighs heavily in favor of the requested attorneys' fees.

However, the UTPA verdict is the only one for which attorneys' fees and costs are recoverable. Plaintiff's counsel asserts and Professor Freeman opined that the amount of fees allocable to this cause of action cannot be separately determined because all of the causes of action are based upon a core set of intertwined facts and no deduction to the fee request is warranted based on the amount of time expended by Mr. Maybank's counsel. *See Hensley v Eckhart*, 461 U.S. 424, 435 (1983) (noting that, in litigation based on "a common core of facts," an attorney's time "will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis") and *Austin*, 387 S.C. at 57, 691 S.E.2d at 153 (declining to dissect a counsel's fee affidavit where violations under the statutory claim were

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<sup>17</sup> Defendants were Mr. Maybank's trusted fiduciary. As a consequence, all of their activities were inextricably intertwined. I find that it was necessary to conduct discovery and extensive pretrial work to understand all facets of the parties' lengthy and complex fiduciary relationship and delineate which acts and conduct of Defendants constituted violations of which causes of action.

based on the same body of evidence underlying the claims for fraud and constructive fraud). I find that the causes of action are based upon a core set of common and intertwined facts <sup>18</sup> However, out of an abundance of caution, I find that a 20% reduction in the number of hours will fairly reflect the time expended by Plaintiffs' counsel in investigating, developing, advancing, and litigating the UTPA claim while at the same time protecting Defendants against being charged for work that did not serve to develop the UTPA claim. See *Layman*, 376 S.C. at 460; 658 S.E.2d at 333 (reducing total hours by percentage). The implementation of this reduction is set forth below.

**C. Professional standing of counsel.**

Both Mr. Willoughby's firm and Mr. Bannister's firm have high standing and regard in the legal community and are respected members of the South Carolina Bar and the Richland and Greenville County Bars, respectively. I saw first-hand the high level of written and oral advocacy demonstrated by Mr. Maybank's counsel throughout this complex case. Litigating and trying this case involved the command of thousands of documents, numerous lay and expert witnesses, the experience and expertise of knowing the specialized area of investment strategies and products and the law related thereto, and the ability to conduct effective legal combat with a team of highly skilled attorneys for the defense. Despite the complexities of this case, Plaintiff's counsel litigated it with an exceptionally high degree of competence and skill. I therefore find

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<sup>18</sup> As an example that the work on the UTPA claim continued throughout the pendency of this case from start to finish, a key document that formed one of the foundations of the UTPA claim as presented to the jury was not produced by Defendants until late on the Friday before the trial began on Monday, June 16, 2014. Ex 91

the professional standing of Mr Maybank's counsel militates heavily in favor of the award of attorneys' fees.<sup>19</sup>

**D. Contingency of compensation.**

The fee arrangement in this case was blended, with a reduced hourly fee coupled with a contingency if beneficial results were obtained. This blended fee recognizes the significant risk and difficulty of litigating such a complex case. Although this arrangement required Mr. Maybank to bear a significant portion of ongoing litigation expenses, the law firms shared a substantial portion of the entire burden. The "contingency of compensation" factor is *not* a check to see whether a contingency contract exists, but rather to consider whether the plaintiff can pay the fees if a beneficial result is not obtained. See *Glasscock v Glasscock*, 304 S C 158, 161, 403 S E 2d 313, 315 (1991) ("In making this determination, the abilities of the parties to pay, their respective financial conditions, and the effect of the attorney's fees on each party's standard of living are also to be considered") Because this case involved substantial financial losses by Mr. Maybank, there was a substantial risk that he would be unable to pay even the reduced rate as the case progressed through protracted litigation.<sup>20</sup> Consequently, Plaintiff's counsel bore a significant risk in light of the complexity of the issues and the uncertainty of success. Plaintiff's counsel also incurred a significant opportunity risk because they devoted substantial time and effort to this case at reduced rates versus those that could be obtained on

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<sup>19</sup> As with most issues in this case, Defendants did not concede the professional standing of Mr Maybank's counsel

<sup>20</sup> Mr Maybank testified that Mr. David Fisher, a senior executive with Defendants, ridiculed and attempted to intimidate him for even contemplating making a claim, saying words to the effect of "You are an embarrassment to yourself, it will be expensive, and it will end badly." From the time devoted to this case as reflected in Mr Willoughby's affidavit, BB&T indeed made sure it was most expensive to litigate this case

other work. I find that the risk to Plaintiffs' counsel of not being fully and fairly compensated was substantial and that this factor weighs in favor of awarding attorneys' fees

**E: *Beneficial results obtained.***

Plaintiff's counsel obtained beneficial results for Mr Maybank, which is "the most critical factor in determining the reasonableness of a fee award is the degree of success obtained" *Farrar v Hobby*, 506 U.S. 103, 114 (1992). The success achieved was a direct result of the facts developed and the legal theories advanced by seasoned and experienced counsel with expertise in investment strategies and products. Counsel's trial advocacy with the jury was exceptional and their professionalism toward this Court and their respect for the judicial process noteworthy. The effective presentation by Mr Maybank's counsel coupled with well-developed evidence of deception and unfair business practices resulted in one of the largest jury verdicts in Greenville County to date. I find that the fifth factor heavily militates in favor of the reasonable attorneys' fee awarded herein.

**F: *Customary legal fees for similar services.***

I find that the legal fees requested in this case are in line with the legal fees customarily charged for similar services in this type of litigation in Greenville and this State. Moreover, for the reasons detailed below, I find this case exhibits the type of exceptional circumstances warranting the application of a multiplier to the fee request

**III *Hours worked, billing rates, and propriety of a multiplier***

The amount of time devoted to this case by Mr Maybank's counsel is entirely reasonable given the complexity and difficulty of the issues involved in this case and the comprehensive defense. I find that the rates submitted by Mr. Willoughby and his team are reasonable, customary, and appropriate in Greenville and in this State given the complexity of this case and

investment-related cases in general, as well as the professional standing of Mr. Maybank's counsel. The reasonableness of the rates is supported by the expert testimony of Professor Freeman, who opined that the current hourly rates charged by Mr. Maybank's counsel are actually *below* fair market levels for the specialized type of legal work involved in this case. I find that this evidence militates in favor of the use of a multiplier, as discussed below.

#### IV. Calculation of fee award.

With these findings in mind, I calculate the lodestar fee<sup>21</sup> in this case as follows.

|                                            | Hourly<br>Rate | Hours<br>Expended | 20%<br>Reduction | Adjusted<br>Hours | Totals         |
|--------------------------------------------|----------------|-------------------|------------------|-------------------|----------------|
| <u>Willoughby &amp; Hoefer, P.A.</u>       |                |                   |                  |                   |                |
| Mitchell Willoughby                        | \$500 00       | 1,792 10          | (358.42)         | 1,433 68          | \$716,840 00   |
| Elizabeth Zeck                             | \$400.00       | 691.80            | (138.36)         | 553.44            | \$221,376 00   |
| ElizabethAnn Loadholt Carroll              | \$400 00       | 514.10            | (102.82)         | 411 28            | \$164,512 00   |
| Tracey C Green                             | \$400 00       | 76 80             | (15 36)          | 61 44             | \$24,576 00    |
| Chad N. Johnston                           | \$300.00       | 2,361.90          | (472 38)         | 1,889 52          | \$566,856 00   |
| John W Roberts                             | \$300.00       | 103 30            | (20.66)          | 82 64             | \$24,792.00    |
| Andrew MacLeod                             | \$300 00       | 25 70             | (5 14)           | 20 56             | \$6,168.00     |
| <u>Bannister, Wyatt &amp; Stalvey, LLC</u> |                |                   |                  |                   |                |
| Bruce Bannister                            | \$325.00       | 90 00             | (18 00)          | 72 00             | \$23,400 00    |
| Jim Bannister                              | \$450.00       | 20 75             | (4.15)           | 16 60             | \$7,470.00     |
| Alex Stalvey                               | \$300 00       | 46 00             | (9 20)           | 36 80             | \$11,040 00    |
| Luke Burke                                 | \$250 00       | 12 50             | (2 50)           | 10 00             | \$2,500 00     |
| Total Fee Award for Attorneys              |                |                   |                  |                   | \$1,769,530 00 |

I find that enhancing the lodestar calculation of \$1,769,530 in attorneys' fees with a multiplier is necessary in order to reflect the exceptional circumstances in recovering damages under the UTPA in this case. See *Layman*, 658 S E 2d at 334 (citing *Blum v Stenson*, 465 U S

<sup>21</sup> Mr. Willoughby's fee affidavit lists Attorney Luke Burke's hourly rate as \$400 00, however, based on the attachment B to the fee affidavit, the Court finds that the listed rate was a scrivener's error and the rate should be \$250 00, which is reflected in the lodestar calculation.

886, 897 (1984) (recognizing that an enhanced lodestar award may be justified "in some cases of exceptional success")

Based on my familiarity with the nature, extent, and difficulty of this complex case, I find the quality of service rendered by Mr. Maybank's counsel was superb and that the success achieved was "exceptional." In undertaking this difficult case in the face of a substantial risk of receiving compensation, Mr. Maybank's counsel exposed unfair and deceptive business practices by Defendants against clients whom they served as trusted fiduciary as well as their misrepresentations to conceal those acts. I find all of these factors constitute significant and exceptional circumstances that warrant applying a multiplier of 1.5 to the current hourly rates to reflect the difficulty and exceptional circumstances of this case:

|                        |                |
|------------------------|----------------|
| Base Attorneys' Fees:  | \$1,769,530.00 |
| Multiplier:            | x 1.5          |
| <hr/>                  |                |
| Total Attorneys' Fees: | \$2,654,295.00 |

I therefore find that, based on the exercise of my informed discretion, Plaintiff is entitled to attorneys' fees of \$2,654,295 as a reasonable and a fair reflection of the exceptional circumstances involved in recovering damages under the UTPA.

**V. Award of costs.**

Mr. Maybank also is entitled to costs reasonably incurred in litigating and trying the UTPA claim. See S.C. Code Ann. § 39-5-140(a). Mr. Maybank's counsel submitted a cost affidavit detailing the costs and expenses actually paid and advanced in pursuit of the litigation, requesting costs of \$306,264.10. This Court has broad discretion to award costs to the prevailing party. *Peterson v. Nat'l R.R. Passenger Corp.*, 365 S.C. 391, 402, 618 S.E.2d 903, 908 (2005). Extending beyond the recovery of costs allowed as a matter of course to a prevailing party, fee-

shifting statutes like the UTPA contemplate reimbursement of all reasonable expenses incurred  
*See Layman*, 376 S C at 461, 658 S E 2d at 334.

After reviewing the affidavit and costs claimed by Mr Maybank, I find the costs and expenses incurred, while significant, were reasonable in the context of this case. As Professor Freeman testified, expenses such as expert witness fees, online research, electronic document hosting fees, and trial preparation expenses are common, if not required, in cases of this size and complexity. The copying charges, while substantial, also are reasonable given that this case involved more than 60,000 pages of documents. Because the facts supporting the substantive claims were largely intertwined and developed throughout the lengthy discovery process, I find that no reduction of the costs and expenses is required due to Mr. Maybank's failure to win on every claim advanced. I also note that the costs of the expert witness of the Family Insurance Trust have already been excluded due to the lack of success in recovering damages for the trust. However, I find that the total amount should be further reduced by 20% to limit costs to the UTPA claim alone. I therefore award \$245,011 ( $\$306,264 \times (1 - .20)$ ) in costs and expenses as reasonable and appropriate.

### **Prejudgment Interest**

Mr Maybank also has moved for an award of prejudgment interest based on the jury's award of actual damages under S C Code Ann § 34-31-20(A). I find that Mr. Maybank's damages were not a sum certain as required by S C. Code Ann § 34-31-20(A) and I therefore deny Mr. Maybank's motion for prejudgment interest on that ground.

NOW, THEREFORE, based upon the foregoing findings and conclusions, IT IS  
HEREBY ORDERED, ADJUDGED AND DECREED that

1 Defendants' motions for Judgment Notwithstanding the Verdict, New Trial  
Absolute, New Trial *Nisi Remittitur*, and Election of Remedies are DENIED;

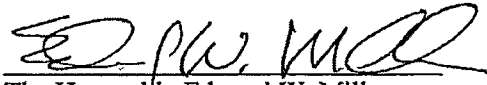
2. All other motions advanced by Defendants are also DENIED.

3. Plaintiff's motions for Treble Damages and for Attorneys' Fees and Costs are  
GRANTED

4 Plaintiff's motion for prejudgment interest is DENIED

5. Judgment in favor of Plaintiff Francis P Maybank is hereby ENTERED against  
all Defendants in the amount of Seventeen Million, One Hundred Ninety Nine Thousand,  
Three Hundred Six Dollars (\$17,199,306)

AND IT IS SO ORDERED.

  
The Honorable Edward W. Miller  
Business Court Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina  
This 10 day of October, 2014

*NOVEMBER*

A Certified Copy  
Paul B. Williamson  
Clerk of Court C.P. & G.S.  
Greenville County, SC  
Dated 11/10/14

# *Exhibit D*

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

JUDGMENT CIVIL CASE

CASE NO 2011 CP-23-8578

FILED-CLERK OF COURT  
GREENVILLE CO  
PAUL B WICKENS  
2014 DEC 4 AM 10:02

FRANCIS P. MAYBANK, and JANE ALP  
MAYBANK, as TRUSTEE for the FRANCIS  
P. MAYBANK FAMILY INSURANCE  
TRUST,

BB&T CORPORATION, BRANCH  
BANKING AND TRUST COMPANY,  
Successor in merger to BRANCH  
BANKING AND TRUST COMPANY OF  
SC, and STERLING CAPITAL  
MANAGEMENT, LLC, Successor in  
merger to BB&T ASSET  
MANAGEMENT LLC

PLAINTIFF(S) DEFENDANT(S)

Submitted by: Mitchell Willoughby of Willoughby & Hoefer, P.A.  
and Bruce Bannister of Bannister, Wyatt & Stalvey, LLC

Attorney for ☒ Plaintiff ☐ Defendant  
Or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT This action came before the court for a trial by jury The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT Post-trial motions were heard before the Court and the attached order reflects the Court's decision and entry of judgment ☒ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON) ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC (Vol. Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON) ☐ Rule 40(j), SCRPC, ☐ Bankruptcy, ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)  
☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other

NOTE. ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: ☐ See attached order ☒ Statement of Judgment by the Court

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case

Additional Information for the Clerk Motion to Alter or Amend Final Order and Judgment DENIED

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(Last name(s) below) | Judgment Against<br>(Last name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) Below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          |                                                          |

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk Note. Title abstractors and researchers should refer to the official court order for judgment details.

Edward W. Miller  
Edward W Miller, Circuit Court Judge

2130  
Judge Code

12/3/14  
Date

For Clerk of Court Office Use Only

This judgment was entered on the appropriate attorney's box on ( ) day of December, 2014 and a copy mailed first class or placed in the appropriate attorney's box on ( ) day of December, 2014 to attorneys of ( ) or to parties (when appearing pro se) as follows

day of December, 2014 and a copy mailed first class or placed in the appropriate attorney's box on ( ) day of December, 2014 to attorneys of ( ) or to parties (when appearing pro se) as follows

**Mitchell Willoughby, Esquire**  
**Elizabeth Zeck, Esquire**  
**Chad Johnston, Esquire**  
**Willoughby & Hoefler, P.A.**  
**930 Richland Street**  
**Post Office Box 8416**  
**Columbia, SC 29202**

**D Larry Kristinik, Esquire**  
**Kristen E. Horne**  
**Nelson Mullins Riley &**  
**Scarborough LLP**  
**1320 Main Street / Seventeenth Floor**  
**Post Office Box 11070 (29211-1070)**  
**Columbia, SC 29201**

**Bruce Bannister, Esquire**  
**Bannister, Wyatt & Stalvey LLC**  
**401 Pettigru Street**  
**Post Office Box 10007 (29603)**  
**Greenville, SC 29601**

**William S. Brown, Esquire**  
**Nelson Mullins Riley &**  
**Scarborough LLP**  
**104 South Main Street / Ninth Floor**  
**Post Office Box 10084 (29603-0084)**  
**Greenville, SC 29601**

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

---

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1**

This is before the court on a post-trial motion to alter or amend the Final Order and Judgment entered on November 10, 2014. The issues have been considered without an oral hearing and a decision rendered.

The Court has considered the arguments advanced in Defendants' Rule 59(e), SCRCF Motion to Alter or Amend the Final Order and Judgment, entered by the Court on November 10, 2014. The Court finds that the Motion to Alter or Amend is essentially a recapitulation of the arguments advanced by Defendants in their prior post-trial motions. While the Motion seeks reconsideration and reversal of the Final Order and Judgment, Defendants provide no additional and/or persuasive assertions of fact or arguments of law in support of the positions advanced. Accordingly, the Court finds that Defendants' Motion should be and hereby is DENIED.

---

**FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE**  
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
- 10 When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
- 11 If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
- 12 Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
- 13 When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them
- 14 Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

DEC 09 2014

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

SC Court of Appeals

Edward W. Miller, Circuit Court Judge

Case No 2011-CP-23-8578

Francis P Maybank and Jane H P Maybank, as trustee  
for the Francis P Maybank Family Insurance Trust, Plaintiffs,  
Of whom Francis P Maybank is Respondent,

v

BB&T Corporation, Branch Banking and Trust  
Company, Successor in merger to Branch Banking and  
Trust Company of SC, and Sterling Capital  
Management, LLC, Successor in merger to BB&T  
Asset Management, LLC, Appellants

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson  
Mullins Riley & Scarborough LLP, attorneys for Appellants, do hereby certify that I  
have served all counsel in this action with a copy of the pleading(s) hereinbelow  
specified by mailing a copy to the following address(es)

Pleadings Notice of Appeal

Counsel Served

Mitchell M Willoughby, Esquire  
Elizabeth Zeck, Esquire  
Chad Johnston, Esquire  
Willoughby & Hoefer, P A.  
Post Office Box 8416  
Columbia, SC 29202

Bruce W. Bannister, Esquire  
Bannister, Wyatt & Stalvey LLC  
Post Office Box 10007  
Greenville, SC 29603

Lisa P. Whitehurst  
Lisa P. Whitehurst  
Administrative Assistant

December 9, 2014

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
In the Court of Common Pleas

Edward W. Miller, Circuit Court Judge

---

Case No. 2011-CP-23-8578

---

Francis P. Maybank, ... Respondent-Appellant,

v

BB&T Corporation, Branch Banking and Trust Company,  
*Successor in merger to Branch Banking and Trust Company of SC,*  
and Sterling Capital Management, LLC, *Successor in merger to*  
BB&T Asset Management, LLC,

Appellants-Respondents

---

NOTICE OF CROSS-APPEAL

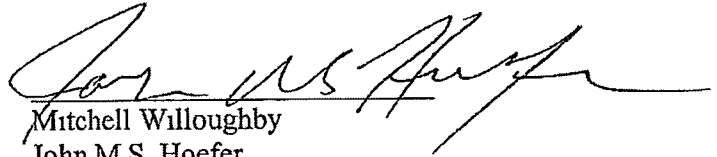
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Pursuant to Rule 203(c) of the South Carolina Appellate Court Rules, Respondent-Appellant Francis P. Maybank cross-appeals from the order of the Honorable Edward W. Miller in the above-referenced case on the sole issue of the denial of Respondent-Appellant's post-trial motion for the award of prejudgment interest. The Circuit Court's Order and Final Judgment was entered on November 10, 2014. Appellants-Respondents filed a motion to alter or amend the Order and Final Judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure on November 20, 2014. Thereafter, the Circuit Court entered an Order denying Appellants-Respondents' motion to alter or amend on December 4, 2014. On or about December

9, 2014, Appellants-Respondents mailed a Notice of Appeal to this Court and to the undersigned that was received by Respondent-Appellant's counsel on December 11, 2014. The Order from which Respondent-Appellant appeals is attached as Exhibit A.<sup>1</sup>

Respectfully submitted,

Bruce W. Bannister  
**BANNISTER, WYATT & STALVEY, LLC**  
P O Box 10007 (29603)  
401 Pettigru Street (29601)  
Greenville, South Carolina  
(864) 298-0084



Mitchell Willoughby  
John M S Hoefer  
Tracey C Green  
Chad N Johnston  
**WILLOUGHBY & HOEFER, P.A**  
930 Richland Street  
Post Office Box 8416  
Columbia, SC 29202-8416  
(803) 252-3300

**Attorneys for Respondent-Appellant**  
**Francis P. Maybank**

December 16, 2014  
Columbia, South Carolina

---

<sup>1</sup> The Order also is attached as Exhibit C to Appellants-Respondents' Notice of Appeal

Other Counsel of Record

C Mitchell Brown

D. Larry Kristinik

Michael J Anzelmo

Kristen E Horne

**NELSON MULLINS RILEY &  
SCARBOROUGH, LLP**

1320 Main Street / 17<sup>th</sup> Floor

Post Office Box 11070 (29211-1070)

Columbia, South Carolina 29201

(803) 799-2000

William S Brown

**NELSON MULLINS RILEY &  
SCARBOROUGH, LLP**

104 South Main Street / 9<sup>th</sup> Floor

Post Office Box 10084 (29603-10084)

Greenville, South Carolina 29601

(864) 250-2300

**Attorneys for Appellants-Respondents**

**BB&T Corporation, Branch**

**Banking and Trust Company, and**

**Sterling Capital Management, LLC**

# EXHIBIT A

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-23-8578

FRANCIS P. MAYBANK, HILAND PARK OF COURT  
MAYBANK, as TRUSTEE for the FRANKLIN CO, S.C.  
P. MAYBANK FAMILY INSTANTANCE WICKENSIMER  
TRUST,

BB&T CORPORATION, BRANCH  
BANKING AND TRUST COMPANY,  
Successor in merger to BRANCH  
BANKING AND TRUST COMPANY OF  
SC, and STERLING CAPITAL  
MANAGEMENT, LLC, Successor in  
merger to BB&T ASSET  
MANAGEMENT LLC

2014 NOV 10 AM 4 49

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Submitted by Mitchell Willoughby of Willoughby &  
Hoefer, P A and Bruce Bannister of Bannister, Wyatt & Stalvey, LLC

Attorney for ☒ Plaintiff ☐ Defendant  
Or  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ JURY VERDICT This action came before the court for a trial by jury The issues  
have been tried and a verdict rendered
- ☒ DECISION BY THE COURT Post-trial motions were heard before the Court and the attached  
order reflects the Court's decision and entry of judgment. ☒ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON) ☐ Rule 12(b), SCRPC, ☐ Rule 41(a),  
SCRPC (Vol. Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON) ☐ Rule 40(j), SCRPC, ☐ Bankruptcy,  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify  
arbitration award, ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX).  
☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR  
ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED. ☒ See attached order ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☒ ends ☐ does not end the case  
Additional Information for the Clerk

This judgment to be filed in the Judgment Index

A Certified Copy  
of the Court's Order  
Clerk of Court C.P. & G.S.  
Greenville County, SC

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount  
should be enrolled If there is no judgment information, indicate "N/A" in one of the boxes below

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below)                                                                                                                                                                                    | Judgment Amount To be Enrolled<br>(List amount(s) below)                                                                |
|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| FRANCIS P MAYBANK                            | BB&T Corporation, Branch Banking<br>and Trust Company, Successor in<br>merger to Branch Banking and Trust<br>Company of SC, and Sterling<br>Capital Management, LLC,<br>Successor in merger to BB&T Asset<br>Management LLC | Seventeen Million, One Hundred<br>Ninety Nine Thousand, Three<br>Hundred Six and 00/100ths dollars<br>(\$17,199,306 00) |

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party Disputes concerning the amounts contained in this  
form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure Amounts to be computed such as interest  
or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the  
clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details

Edward W Miller, Circuit Court Judge

2130  
Judge Code

11/10/14  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the appropriate attorney's box on this (pro se) as follows

day of October, 2014 and a copy mailed first class or placed in the day of October, 2014 to attorneys of record or to parties (when appearing

Mitchell Willoughby, Esquire  
Elizabeth Zeck, Esquire  
Chad Johnston, Esquire  
Willoughby & Hoefer, P.A.  
930 Richland Street  
Post Office Box 8416  
Columbia, SC 29202

D. Larry Kristinik, Esquire  
Kristen E. Horne  
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1320 Main Street / Seventeenth Floor  
Post Office Box 11070 (29211-1070)  
Columbia, SC 29201

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Bannister, Wyatt & Stalvey LLC  
401 Pettigru Street  
Post Office Box 10007 (29603)  
Greenville, SC 29601

William S. Brown, Esquire  
Nelson Mullins Riley &  
Scarborough LLP  
104 South Main Street / Ninth Floor  
Post Office Box 10084 (29603-0084)  
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

---

CLERK OF COURT

Court Reporter

---

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON  
PAGE 1**

This action came to hearing before the court on post trial motions. The issues have been heard and a decision rendered

This case was tried to a jury from June 16 through June 30, 2014. Following a hearing on all post-trial motions, the Court rules on such post-trial motions as set forth in the attached order and orders entry of judgment as set forth in the attached Order and this Form 4.

---

**FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE**  
(Instructions for Information Only—Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
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The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

- 9 If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title
- 10 When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code
- 11 If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box
- 12 Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
- 14 Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF GREENVILLE ) FOR THE THIRTEENTH JUDICIAL CIRCUIT

FRANCIS P. MAYBANK,  
and JANE H.P. MAYBANK, as  
TRUSTEE for the FRANCIS  
P MAYBANK FAMILY  
INSURANCE TRUST,  
  
Plaintiffs,

vs.

BB&T CORPORATION,  
BRANCH BANKING AND TRUST  
COMPANY, Successor in merger to  
BRANCH BANKING AND TRUST  
COMPANY OF SC, and  
STERLING CAPITAL  
MANAGEMENT, LLC, Successor in  
merger to BB&T ASSET  
MANAGEMENT LLC

Defendants

Civil Action No 2011-CP-23-8578

FILED-CLERK OF COURT  
GREENVILLE CO S.C.  
PAUL B WICKENSIMMER  
2011 NOV 10 PM 4 49

ORDER AND FINAL JUDGMENT

This matter is before the Court on post-trial motions of Plaintiff Francis P Maybank and Defendants BB&T Corporation, Branch Banking and Trust Company ("BB&T Bank"), and Sterling Capital Management, LLC (referred to as its predecessor entity, "BB&T Asset Management") (collectively referred to as "BB&T" or "Defendants")

### Background and Summary

This case was tried before a jury for two weeks beginning June 16, 2014. After deliberating Friday, June 27 and Monday, June 30, the jury awarded Mr Maybank actual damages of \$3,100,000 and punitive damages of \$5,000,000 for breach of contract, breach of

fiduciary duty, constructive fraud, negligent misrepresentation, and a violation of the South Carolina Unfair Trade Practices Act ("UTPA"), S.C. Code Ann. §§ 39-5-10 *et seq.* The jury did not return a verdict for any claims of the Francis P. Maybank Family Insurance Trust. I observed the jury and found the panel to be attentive, thoughtful, diligent, and deliberate in its consideration of the evidence presented during this lengthy trial.

Plaintiff moved post-trial for attorneys' fees and costs and to treble actual damages under the UTPA, and for prejudgment interest. Defendants moved substantively for judgment notwithstanding the verdict ("JNOV"), new trial absolute, or, in the alternative, new trial *nisi remittitur*. Defendants also sought to require Mr. Maybank to elect a remedy. Following an August 19, 2014 hearing, I took the issues under advisement.

After careful review of the verdict and the parties' post-trial motions and argument of counsel, I deny Defendants' motions for JNOV, new trial absolute, and new trial *nisi remittitur*. I find that the award of punitive damages in the amount of \$5,000,000 is appropriate. I treble the actual damage award of \$3,100,000 to \$9,300,000 because I find Defendants' conduct, which the jury found to be an unfair and deceptive business practice in violation of the UTPA, was knowing and willful. I find that no election is required because Defendants' unfair and deceptive conduct in violation of the UTPA was separate and distinct from that supporting the common law causes of action for which punitive damages were awarded. I therefore find Plaintiff is entitled to both treble and punitive damages. I award \$2,654,295 in attorneys' fees and \$245,011 in costs. I deny the motion for prejudgment interest.

#### Analysis

#### Motion for Judgment Notwithstanding the Verdict

I deny Defendants' motion for JNOV because the evidence supports the jury's verdict in favor of Mr. Maybank. "A motion for JNOV may be granted *only if no reasonable jury could*

*have reached the challenged verdict.” Gastineau v Murphy, 331 S C 565, 568, 503 S E.2d 712, 713 (1998) (emphasis added) In ruling on the motion, I view the evidence and the reasonable inferences in the light most favorable to the non-moving party. RTF Mgmt Co, LLC v. Tinsely & Adams LLP, 399 S C 322, 732 S E.2d 166 (2012) To the extent a ground for relief in the JNOV motion is not addressed below, I expressly deny relief on that ground.*

**I. South Carolina Unfair Trade Practices Act.**

I find that the evidence showed actions by Defendants other than the sale of a security, that Defendants’ activities are not exempt from the UTPA, and that Defendants failed to prove their entitlement to any exemption under the UTPA.

**A. Legal background.**

UTPA’s prohibitions do not apply to “[a]ctions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law” S C Code Ann § 39-5-40(a) This exemption requires a case-by-case analysis of the alleged misconduct. See *Ward v Dick Dyer*, 304 S C 152, 155, 403 S E 2d 310, 312 (1991) (“The exemption is intended to exclude those actions or transactions which are allowed or authorized by regulatory agencies or other statutes”) Section 39-5-40 also imposes “the burden of proving exemption upon the person claiming the exemption.”

**B. Discussion.**

I find that the jury’s verdict that Defendants violated the UTPA was supported by at least three separate instances of unfair and deceptive business practices by Defendants, none of which involved a public offering, registration, or sale of a security, and all of which are separate from the bases of liability for the common law causes of action

I first find that the jury reasonably could conclude that Defendants violated the Act by their admitted misuse of their form Wealth Management Agreement ("WMA"). There was evidence that Defendants knew when they presented the WMA to Mr. Maybank that it contained deliberate misrepresentations and that BB&T would not fulfill the promised duties, which were the basis of the bargain and the crux of the fiduciary relationship. The evidence also showed that Defendants presented the same form document to all clients of the Wealth Management Division from at least 2006 into 2009. BB&T's corporate representative admitted that Defendants did not notify Mr. Maybank or any customer that the WMA would not be fulfilled as promised.

I further find that the evidence showed Defendants misled Mr. Maybank and approximately 130 other customers regarding a fee refund. Although BB&T's letter claimed that the fee refund was "a reflection of [BB&T's] corporate values," Ex. 50, evidence showed that the fee refund resulted from criticism by the Securities and Exchange Commission ("SEC") of charging transaction-based "broker-esque" fees by BB&T Asset Management, which was not a registered broker-dealer. The jury reasonably could have concluded that Defendants' statements unfairly, deliberately, and deceptively hid the truth about BB&T's actions, and was designed to lull clients into complacency, discouraging investigation of BB&T's business practices and allowing BB&T to possibly avoid civil liability.

I also find that the evidence showed that Defendants knowingly misrepresented that an individualized assessment of Mr. Maybank's financial situation had been performed. See Ex. 7 (August 11, 2006 General Counsel "Approval Letter"). Although Mr. Maybank relied upon the Approval Letter, believing it to be specifically tailored for him, the letter was merely a "fill-in-the-blank" form letter extolling the suitability of the variable prepaid forward contract ("VPFC") for concentrated positions in BB&T stock, no matter the client's financial situation. Cf. Ex. 91.

I find Defendants' use of this form letter deliberately, unfairly, and deceptively misrepresented the services provided to Mr Maybank and other customers because promising specialized or individualized treatment while actually providing only stock services violates the UTPA See *deBondt v Carlton Motorcars, Inc*, 342 S C 254, 270-71, 536 S E 2d 399, 407 (Ct. App 2000)

I find the jury verdict was supported by evidence that Defendants knowingly and deliberately engaged in unfair and deceptive practices in each of these three ways and that Defendants failed to meet their burden to prove that each of these practices involved a security or securities transaction and was authorized under laws administered by any regulatory body or permitted by any other South Carolina law

I further reject Defendants' argument based upon a generalized banking industry exemption to the UTPA *Ward*, 304 S.C at 155, 403 S E 2d at 312 <sup>1</sup> However, the UTPA exemption only excludes "from the UTPA those actions or transactions which are allowed or authorized by a regulatory agency or other statutes" See *Taylor v Medenica*, 324 S.C. 200, 218, 479 S E 2d 35, 44 (1996) (citing *Ward*) I further find that Defendants' unfair and deceptive practices were not authorized by any federal or state securities acts or regulations I also find that Defendants' argument fails to acknowledge that they were not registered to sell securities as broker-dealers, that they presented no evidence that the VPFC was a registered security much less that it was an initial public offering of a security, and that the jury rejected Plaintiffs' claim for recovery under the Uniform Securities Act.

Defendants waived any argument that BB&T Asset Management and BB&T Bank are exempt from the UTPA by operating in regulated industries because they did not move for a

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<sup>1</sup> *Ward* involved an exemption to the UTPA, but not for the banking industry The Court overruled its prior holding in *State ex rel McLeod v Rhoades*, 275 S C. 104, 267 S E 2d 539 (1980), which had applied a general activity test

directed verdict on this ground. See *In re McCracken*, 346 S.C. 87, 93, 551 S.E.2d 235, 238 (2001). I further find that Defendants' argument is based upon an erroneous interpretation of the record and the stipulated fact that these Defendants were not registered as broker-dealers with the SEC or the State of South Carolina. I also find that, even under Defendants' general regulation theory, their unfair and deceptive business practices as exposed in this case were not authorized or required by banking regulations. I find Defendants failed to meet their burden to present evidence proving an exemption from the UTPA and that Defendants presented no evidence that the two VPFCs sold to Mr. Maybank were initial public offerings of securities or were even securities as contemplated by the exemption recognized in *Rhoades* and *Ward*. Finally, the jury rejected any argument that Defendants were entitled to an exemption, and I concur with that finding.

## **II Punitive Damages.**

Prior to addressing Defendants' argument that a so-called exculpatory clause insulates them from punitive damages, I will first evaluate Defendants' arguments for JNOV on the common law causes of action and the propriety of the jury's award of punitive damages.

### **A. Common Law Causes of Action.**

Defendants contend that judgment should be entered in their favor on the common law claims of breach of contract, breach of fiduciary duty, constructive fraud, and negligent misrepresentation. I find that there is ample evidence from which this very reasonable and thoughtful jury could have rendered its verdict. I further find that, for each element on the causes of action submitted to the jury, there was sufficient evidence upon which a reasonable jury could return a verdict for Mr. Maybank on these causes of action. I therefore deny Defendants' motion.

**B. Review of the Jury's punitive damages award.**

I must consider whether punitive damages are warranted and, if so, whether the amount is appropriate based on (1) the degree of reprehensibility of Defendants' conduct, (2) the disparity between actual or potential harm suffered by the plaintiff and the amount of the punitive damages award, and (3) the difference between the punitive damages award and civil penalties authorized or imposed in comparable cases *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587-89, 686 S.E.2d 176, 185-86 (2009). I find the punitive damages award is constitutional and proper.

**1 Reprehensibility.**

In evaluating reprehensibility, "perhaps the most important indicium of the reasonableness," I must consider whether (1) the harm was physical or economic, (2) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (3) the target of the conduct had financial vulnerability, (4) the conduct involved repeated actions or was an isolated incident, and (5) the harm was the result of intentional malice, trickery, or deceit rather than mere accident. *Id.* at 587; 686 S.E.2d at 185. I find ample, clear and convincing evidence supporting the jury's finding of reprehensibility. The harm was economic, and Defendants demonstrated indifference to and/or reckless disregard for Mr. Maybank's financial health and well-being, as well as the safety of his irreplaceable retirement assets.

I find clear and convincing evidence of Mr. Maybank's financial vulnerability as a 74-year old, soon-to-be retiree, which was known to Defendants who were acting as his advisor and fiduciary. Defendants' conduct was not an isolated incident but instead involved repeated acts of indifference to Mr. Maybank and others. Defendants' representatives were financially incentivized to sell alternative investment strategies, which they viewed as a fee-generating

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"revenue opportunity" for BB&T<sup>2</sup> BB&T sold Mr Maybank a strategy based upon a VPFC which was speculative, costly, and unsuitable, and anchored by a complex derivative product that actually increased risk, rather than minimizing it. BB&T further increased the risk by using the cash generated to fund a 100% equity "Aggressive Growth" portfolio. Defendants' self-serving strategy moved Mr Maybank's assets from a non-fee generating account to accounts that provided Defendants and their incentivized employees with an up-front fee of \$32,614 as well as a stream of annual management fees.

The evidence showed that, in 2009, Defendants compounded their initial flawed and self-serving advice by recommending the roll-over of the first VPFC into a second VPFC, which they presented to clients as the "ideal choice." Instead, the roll-over was "ideal" only for Defendants, as it generated additional up-front transaction and annual management fees. For their faithless and self-serving advice, Defendants charged Mr Maybank a fee of \$43,655. Mr. Maybank was locked into Defendants' self-serving scheme of fee-producing, costly roll-overs that over time would deplete a client's assets. I find that Defendants' conduct was not isolated, but part of a scheme to generate fees and bonuses for Defendants and its representatives without regard to the best interests of Mr Maybank, their principal to whom they owed fiduciary duties.

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<sup>2</sup> Defendants' internal sales practices were demonstrated at trial. For example, Exhibits 55, 89, 92, 100, 103, 104, and 106, taken together, show that Defendants initiated a sales program to generate revenue through the sale of alternative (derivative) products and associated strategies, while the needs and best interests of Mr. Maybank were sacrificed by untrained, bonus-driven representatives incentivized to sell products. Exhibit 92 in fact calls it a "revenue opportunity."

**Pre-Paid Variable Forwards**

- Revenue Opportunity
- Up-front fee of 50-100 basis points
- Annual management fees up 1% or more
- This could generate well over \$100K over 3 years

See also Ex 100 (same). These exhibits, along with other exhibits and testimony in the record, support the reasonable conclusion that the motivation to sell the VPFC strategy was for the substantial revenues that it generated, not because it was in Mr. Maybank's best interest.

Based on these examples and the record as a whole, I find that the evidence shows that Defendants acted with malice, trickery, or deceit rather than mere accident. I find that the jury could have reasonably found that Defendants, notwithstanding their position as Mr. Maybank's fiduciary, breached their duties in at least one or more of the following ways:

- i. By failing to perform an individualized analysis of the suitability of the investment strategy for Mr. Maybank;
- ii. By failing to perform a thorough financial analysis or to develop a comprehensive financial plan;
- iii. By failing to advise Mr. Maybank about the significant conflict of interest against providing advice about BB&T Corporation stock;
- iv. By failing to advise Mr. Maybank about the reasonable amount of annual revenue to be generated by BB&T's investment strategy and to counsel him about restricting his spending to the assured income level;
- v. By misrepresenting that BB&T had expertise in VPFCs and the associated strategy;
- vi. By permitting untrained and misinformed representatives to sell a product and strategy which they were unqualified to sell;
- vii. By failing to explain that the strategy substantially increased Mr. Maybank's investment risk;
- viii. By failing to explain that the strategy placed the client into a never-ending cycle of periodic and costly roll-overs;
- ix. By failing to fully explain the true costs of this complex strategy and the derivative contract upon which it was based;
- x. By misrepresenting to Mr. Maybank that his best interests were being served when, in actuality, the strategy was nothing more than a fee-driven sales program for Defendants and their representatives;
- xi. By failing to place Mr. Maybank's best interest ahead of the interest of BB&T; and
- xii. By representing that the VPFC and associated strategy would protect Mr. Maybank's retirement savings, when in actuality it substantially increased the risk of loss.

I concur and find that Defendants' conduct was reprehensible and warrants the imposition of punitive damages as awarded by the jury.

2. Ratio between actual and punitive damages.

The ratio between the award of \$5 million in punitive damages and the award of \$3.1 million in actual damages is 1.61 to 1. This ratio is at the low, or readily sustainable, end of the reasonableness spectrum. See, e.g., *Cody P v Bank of Am, NA*, 395 S.C. 611, 720 S.E.2d 473 (Ct. App. 2011) (upholding a 7.69 to 1 ratio where improper safeguards by bank permitted co-

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conservator to steal a child's funds); *Mitchell*, 385 S C at 593-94, 686 S E 2d at 188 (ratio of 9:2 to 1 in insurance bad faith case)<sup>3</sup> Based on the Defendants' conduct, I find the ratio of punitive to actual damages to be both reasonable and proportionate to the harm suffered by Mr. Maybank

I further consider "the likelihood that the award will deter the defendant from like conduct, whether the award is reasonably related to the harm likely to result from such conduct, and the defendant's ability to pay." *Id* at 588, 686 S.E 2d at 185. I find that a \$5,000,000 punitive damages award is likely to deter Defendants from similar conduct in the future and will likely encourage better training of employees, result in improved suitability analysis and increased competence of investment advice, and lead to true protection of a client's irreplaceable retirement assets. Further, I find that the award is reasonably related to the financial harm likely to result from such conduct, which can be significant and large as seen in Mr. Maybank's case. The potential harm to a senior citizen of self-serving and deceitful investment advice can be catastrophic, leading to financial ruin and a life of dependency in a person's twilight years. Corporations managing money for South Carolina's elderly citizens must know that their conduct and advice must be faithful, prudent, trustworthy, non-conflicted, and free from deceit, tricks, and misrepresentations. Finally, based on the record, including but not limited to the testimony and evidence of Mr Maybank's expert witness Dr Oliver Wood, I find that Defendants have the ability to pay the punitive damages award.

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<sup>3</sup> South Carolina courts have upheld ratios across the spectrum in cases involving "merely" economic harm. *See, e.g., Jenkins v Few*, 391 S C 209, 705 S E 2d 457 (Ct App 2012) (3.6 to 1 ratio for conversion, trespass, and civil conspiracy); *Duncan v Ford Motor Co*, 385 S C 119, 682 S E 2d 877 (Ct App 2009) (ratio of 5.087 to 1 upheld against vehicle manufacturer when defective switch destroyed owners' home and personal belongings); *Collins Entm't Corp v Coats & Coats Rental Amusement*, 355 S C 125, 584 S E 2d 120 (Ct. App 2003) (upholding a 9.9 to 1 ratio on an intentional interference with contract claim); *Cock-N-Bull Steak House, Inc v. General Ins Co*, 321 S C 1, 466 S E 2d 727 (1996) (affirming a 28 to 1 ratio for breach of contract and bad faith insurance claim)

3. *The difference between punitive damages and civil penalties.*

Lastly, I find that there are no comparable civil penalties that are applicable to Defendants' breaches of their fiduciary duties, misrepresentations, and fraudulent actions to Mr Maybank. See, e.g., *Cody P*, 395 S.C. at 632, 720 S.E.2d at 484. As discussed above, I find consideration of the punitive awards in comparable cases to be appropriate. Like *Cody P*, this case involves economic harm caused by a bank's failure to safeguard a client's funds. The reprehensibility is greater here because the bank in *Cody P* merely failed to prevent misconduct by a third party; the harm in this case was caused by Defendants' own intentional and deliberate misconduct, which was found by the jury to be grossly negligent, reckless, and/or willful and to constitute constructive fraud, breaches of fiduciary duty, and breaches of the contract. The ratio here is lower than in *Cody P*, which upheld a 7.69 to 1 ratio despite a lack of any findings of intentional wrongdoing by that bank defendant. I therefore find that the award of punitive damages by this jury is reasonable, especially in comparison with comparable cases.

4. *Conclusion.*

I find that the punitive damages award by this jury is supported by clear and convincing evidence, that Defendants' conduct is reprehensible, and that the award is directly proportionate to the harm caused by Defendants. I therefore affirm the award of punitive damages.

C. *The exculpatory clause does not apply.*

I find that the exculpatory clause contained in the WMA does not preclude the award of punitive damages. In pretrial proceedings, Defendants' corporate representative, Mr. Ross Walters, admitted that the WMA had been incorrectly drafted by their lawyers, that it had been tendered to Mr. Maybank despite these errors, and that no one had explained or disclosed the errors to Mr. Maybank, even though Defendants were then his fiduciary. Defendants'

counterclaim for reformation also constituted an admission of the errors in the contract. I denied Plaintiff's motion for partial summary judgment because the real terms of the parties' agreement were in doubt based on Defendants' own admissions and actions. At trial, the question of the real and enforceable terms of the contract remained hotly contested. Consequently, I found that the determination of the terms of the WMA was a question of fact for the jury to decide. The jury considered the contract, the evidence of record, argument of counsel, and the Court's charges and rejected Defendants' version of the events and characterizations of their conduct. The jury also awarded punitive damages and therefore determined that the exculpatory clause did not preclude an award of such damages.

I further find that, as a matter of law, the exculpatory clause is inapplicable to Defendants' misconduct under the common law causes of action of breach of fiduciary duty, constructive fraud, and negligent misrepresentation.<sup>4</sup> The exculpatory clause applies only "with respect to [Bank and Investment Advisor's] services under this Agreement." I find that the services as described in Sections I, II, and III of the contract do not include making misrepresentations or material omissions of relevant information or failing to disclose or concealing material information. Thus, as a matter of law, I find that the common law causes of

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<sup>4</sup> While Defendants argue that the exculpatory clause is unambiguous and its terms are derived from the clear intent of the parties, I note that the clause is in the very same form agreement that Defendants sought to reform by mutual mistake. When it came to their admitted breach of the WMA, Defendants contended that certain language in the contract should be amended to support their favored construction even though they drafted the erroneous contract. Defendants' counterclaim for reformation is denied because there is no evidence of mutual mistake. Although they had the burden of proving mutual mistake by clear and convincing evidence, Defendants failed to prove that they were entitled to reformation. See *Crosby v Protective Life Ins Co*, 293 S.C. 203, 206, 359 S.E.2d 298, 300 (Ct. App. 1987). Defendants own actions demonstrate that the contract terms and applications are in doubt, and the rules of contract construction therefore require the exculpatory clause to be narrowly interpreted in favor of the client and against BB&T, which drafted the contract. See *McPherson v Michigan Mut Ins Co*, 310 S.C. 316, 319, 426 S.E.2d 770, 771 (1993).

action of breach of fiduciary duty, constructive fraud, and negligent misrepresentation arise outside of the "services" set forth in the WMA. Defendants provided no authority for the proposition that they may be relieved from intentional, reckless, and fraudulent conduct.

I find that BB&T Corporation and Mr. Maybank are not in equal bargaining positions, particularly where there is a form agreement drafted and presented by a multi-billion dollar fiduciary to an individual client. South Carolina courts have gone to "extremes" to avoid enforcing exculpatory clauses where the parties have substantially different bargaining power. *Cooke v Allstate Mgmt Corp*, 741 F. Supp. 1205, 1207 (D S C 1990), *see also Anthony v Atlantic Group, Inc.*, 909 F Supp. 2d 455 (D S C 2009). I find that enforcement of the exculpatory clause in the WMA would be against public policy. I therefore deny Defendants' motion to construe the so-called exculpatory clause so as to bar the jury's award of punitive damages.

I further find that the exculpatory clause is unenforceable here because BB&T was Mr. Maybank's fiduciary when the misconduct occurred and the WMA was executed. As his fiduciary, BB&T had an absolute duty of disclosure and the obligation to ensure that Mr. Maybank understood the terms of the entire WMA, including the exculpatory clause. Further, Mr. Maybank had an absolute right to rely upon BB&T's representations and to expect that his fiduciary would fully disclose any terms adverse to his interests, which they admittedly failed to do. *See Regions Bank v Schmauch*, 354 S C. 648, 672-74, 582 S.E 2d 432, 444-46 (Ct. App 2003) (fiduciaries have absolute obligation of disclosure of material facts and, clients have right to rely upon the representations by their fiduciaries). The evidence demonstrated that Mr. Maybank was not provided a copy of the WMA—and, necessarily, the exculpatory clause—until nearly two weeks after the failed investment strategy was set into motion through the first VPFC,

and even then the adverse terms of the exculpatory clause were not discussed with him. When presented with the full contract, and all of the evidence and circumstances surrounding the execution of the WMA, the jury found that punitive damages were warranted. I find that the exculpatory clause is unenforceable based on the jury's findings and my own weighing of the evidence.

### III. BB&T Corporation.

#### A. *The Court properly exercised jurisdiction over BB&T Corporation.*

This Court properly exercised personal jurisdiction over BB&T Corporation. "A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's . . . transacting any business in this State . . . [or] entry into a contract to be performed in whole or in part by either party in this State" S C Code Ann § 36-2-803(A)(1), (7). BB&T Corporation's General Counsel expressly authorized the investment strategy recommended to Mr. Maybank in South Carolina, which permitted Mr. Maybank to continue to hold a concentrated position in BB&T stock even though it was a conflict of interest for BB&T Corporation to make representations and give advice regarding its own stock.<sup>5</sup> Without the approval and validation of the transaction by BB&T Corporation, the strategy would not have been implemented and the fee opportunity would have been lost for Defendants.<sup>6</sup> I therefore reject Defendants' argument that BB&T Corporation was "a mere

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<sup>5</sup> BB&T Corporation knowingly and willingly authorized, approved, and facilitated an investment relationship with a South Carolina resident involving the ownership of and dividends from BB&T Corporation stock. That alone establishes minimum contacts sufficient to support exercising personal jurisdiction over BB&T Corporation. *Fields v. INA Filtration Corp.*, 292 S C 614, 618, 358 S E 2d 160, 163 (Ct. App. 1987) ("The length and duration of the nonresident's activity in this State need only be minimal when the plaintiff lives in this State and the cause of action arose out of the defendant's activities in this State").

<sup>6</sup> Defendants ignore the Corporation's critical role in establishing duties to clients and customers of its subsidiaries. BB&T Corporation promulgated a Code of Ethics governing its

holding company for other BB&T entities and that none of its employees had any direct involvement with Mr. Maybank," and instead find that the character and circumstances of the corporation's actions and the State's interest weigh in favor of exercising personal jurisdiction.

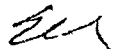
**B Defendant waived any objections to the exercise of jurisdiction over BB&T Corporation.**

BB&T Corporation waived its right to seek dismissal. The defense of personal jurisdiction "may be lost by failure to assert it seasonably, by formal submission in a cause, or by submission through conduct." *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 168 (1939). Simply articulating the defense in an answer without promptly advancing it may waive that defense. *Yeldell v. Tutt*, 913 F.2d 533, 539 (8<sup>th</sup> Cir. 1990). BB&T Corporation made only a perfunctory defense under Rule 12(h)<sup>7</sup> by stating in the Answer that it "reserves its objection based on the Court's lack of *in personam* jurisdiction." See Ans. 1st Am. Compl. p. 1. BB&T Corporation then fully participated in litigating this case without advancing that objection or otherwise moving for dismissal at any time until shortly before trial. See *Hamilton v. Atlas Turner, Inc.*, 197 F.3d 58, 62 (2d Cir. 1999) (defendant forfeited defense of personal jurisdiction by not moving to assert it until four years after filing answer). I find that BB&T Corporation waived the defense by "provid[ing] no more than a bald assertion in [the] answer that the court lacked personal jurisdiction" and then proceeded to participate in discovery, make court appearances, and file numerous pleadings without ever again presenting the defense. I therefore deny Defendants' motions for JNOV, new trial, and new trial *nisi remittitur* on this ground.

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subsidiaries intended to enhance the operations of the corporation and its subsidiaries by ensuring that these entities "continue to earn our client's trust and respect by always upholding the highest standards of ethical and professional conduct in all that we do." See Ex. 6, BB&T Code of Ethics, § I ("The Code applies equally to all employees of BB&T and its subsidiaries.")

<sup>7</sup> Rule 12(h), SCRCP, merely "specifies the minimum steps that a party must take in order to preserve [the] defense, not the outer limits of a possible waiver." *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1318 (9<sup>th</sup> Cir. 1998).



#### IV Statute of Limitations

The statute of limitations does not bar Mr Maybank's causes of actions and Defendants' motion on this ground is denied "The burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide." *Brown v Finger*, 240 S.C. 102, 113, 124 S E 2d 781, 786 (1962) (citation omitted)

#### V. Insufficient Evidence of Damages

Defendants argue that Mr Maybank did not present sufficient evidence on damages. However, the jury clearly found damages were warranted based on the testimony of Mr Maybank as well as his expert witnesses, Dr Craig McCann and Professor John Freeman. Although Defendants may disagree with the weight given to the evidence, my responsibility is limited to determining if any evidence existed to support the verdict. I deny Defendants' motion on this ground because I find the damages are fully supported by ample evidence.

#### VI. Grounds for JNOV

Defendants argue over 40 additional grounds<sup>8</sup> in their motion for JNOV, *see* Mot. pp 18-24, Nos. 12-54, that I find forfeited because they were neither advanced in Defendants' 31 page written directed verdict motion nor argued orally to the Court. "[A] motion for JNOV must be based on the same grounds as those raised in a motion for a directed verdict motion made at the close of all the evidence." *RFT Mgmt Co v Tinsley & Adams LLP*, 399 S C, 322, 332, 732 S E 2d 166, 171 (2012). However, I further have considered each of these issues to the extent the substance can be gleaned from the conclusory arguments and I find that they do not warrant granting JNOV. I therefore deny Defendants' motion on these and all other additional grounds.

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<sup>8</sup> Regardless of the number, I deny each of the additional grounds as meritless.

## Motion for New Trial Absolute

Although a new trial absolute may be granted if the verdict is excessive or inadequate, "[t]he jury's determination of damages is entitled to substantial deference." *Rush v Blanchard*, 310 S C 375, 379, 426 S E 2d 802, 805 (1993) I have considered the testimony and reasonable inferences therefrom most favorable to Mr. Maybank as the nonmoving party I deny Defendants' motion because I find the evidence presented at trial fully supports the jury's verdict and further find that the verdict is neither grossly excessive nor the result of passion, caprice, prejudice, partiality, corruption, or some other improper motive<sup>9</sup>

### I. Challenges to the Court's evidentiary rulings.

I find that Defendants have not established that any of the challenged evidentiary rulings were erroneous because, in each instance, the evidence was relevant and properly admissible *State v Douglas*, 367 S C 498, 508, 626 S E 2d 59, 64 (Ct App 2006) I further find that Defendants failed to show the challenged rulings were unfairly prejudicial *See Fields v Reg'l Med Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S E.2d 506, 509 (2005) I therefore deny the motion on these grounds.

### II Challenges to the Court's Jury Instructions.

Defendants also assign error to the Court's compilation and delivery of jury charges following the close of evidence I find that Defendants made no valid contemporaneous objections. *See Murray v Bank of Am, NA*, 354 S C. 337, 346, 580 S E.2d 194, 199 (Ct. App 2003). I further find that, after careful review, the instructions adequately charge the applicable law in this case I therefore deny Defendants' motion on this ground

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<sup>9</sup> Defendants assert, by my count, 54 distinct grounds in support of their motion for new trial absolute To the extent a ground is not specifically discussed, it is denied. Additionally, to the extent a ground is identical to one raised in the JNOV motion, I expressly incorporate those rulings to the extent applicable in denying the motion for new trial absolute

### III. Challenges to the Jury Verdict Form.

I find that Defendants' challenge to various parts of the jury verdict form is without merit and has been waived. The verdict form I ultimately adopted and submitted to the jury was, with minor exception, the form proposed by Defendants. The return of a general verdict for a total amount of damages on all causes of action means that each cause of action independently supports the entire award of actual damages. I find that Defendants waived any objection related to the verdict form and deny their motion on this ground. See *Johnson v Hoechst Celanese Corp*, 317 S C 415, 421, 453 S E 2d 908, 912 (Ct. App 1995)

### IV. Thirteenth Juror Doctrine.

Defendants also seek to have this Court grant a new trial as the thirteenth juror. I decline to interfere with the jury's verdict because I find that the record fully supports the verdict. I observed the jury to be very diligent, thoughtful and attentive in its work. After two weeks of receiving testimony and documentary evidence, listening attentively to arguments of counsel and jury charges, and deliberating for two days, the jury found Defendants' conduct was in violation of law, reprehensible, and otherwise deserving of punishment. Defendants' motion for a new trial on this ground is denied.<sup>10</sup>

### New Trial *Nisi Remittitur*

I deny Defendants' motion for a new trial *nisi remittitur* because I find there is no compelling reason to reduce the jury's verdict. Based on the evidence, applicable law, and the arguments of the parties, I find that the jury's verdict is fully supported by the evidence and is not excessive, arbitrary, or capricious. Having closely observed the evidence and the jury over the course of the two week trial, I find the verdict was based on neither emotion nor improper

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<sup>10</sup> Because I find no merit to Defendants' motion for new trial absolute, I deny relief on any and all grounds raised in that motion not specifically discussed in this Order.

sentiment and was supported by the evidence of record. I accept and concur with the jury's finding that Defendants' conduct was reprehensible, which justifies and supports the award of actual and punitive damages. I therefore deny the motion for new trial *nisi remittitur*.

### **Treble Damages under the Unfair Trade Practices Act**

Mr. Maybank moves to treble the jury's award of actual damages on the UTPA verdict because Defendants' conduct was willful or knowing. S.C. Code Ann. § 39-5-140(a). Conduct is willful if a reasonable person could have ascertained that their conduct violated the UTPA. *State ex rel. Medlock v. Nest Egg Soc. Today, Inc.*, 290 S.C. 124, 128, 348 S.E.2d 381, 384 (Ct. App. 1986). Relying on and incorporating here the evidence discussed above, which I find supports the jury's verdict under the UTPA, I further find that, having observed the testimony at trial and reviewed the evidence, Defendants' conduct in employing an unfair or deceptive method, act, or practice in commerce was both willful and knowing. I therefore treble the actual damages of \$3,100,000 to \$9,300,000.

### **Election of Remedies**

Defendants moved to require Mr. Maybank to elect between recovery of punitive damages awarded by the jury on the common law causes of action and treble damages under the UTPA. I find no election is required because, as stated, the evidence supported at least three theories for relief under the UTPA that were separate and distinct from the theories supporting the common law claims. 1) BB&T's presentation of a deceptive and misleading form contract that the Bank had no intention of fulfilling as written, 2) use of a form letter purporting to provide Mr. Maybank with personalized research and analysis of the investment strategy but that in fact was a generic, fill-in-the-blank form document in which Defendants pre-cleared the use of these risky investment strategies; and 3) Defendants' deceptive letter to at least 130 clients in

which it misrepresented that a fee refund was made to reflect BB&T's corporate values when in actuality it obscured its legal liability for having charged those fees at all. In contrast, the jury found for Mr. Maybank on the common law causes of action of breach of fiduciary duty, constructive fraud, and negligent misrepresentation and awarded \$5 million in punitive damages on those claims.<sup>11</sup> Each of these causes of action was based on a breach of the professional duties, trusted advisor status, and fiduciary duties undertaken by Defendants as Mr. Maybank's fiduciary and was fully supported by evidence admitted at trial. The jury found that Defendants' conduct was reprehensible and warranted punishment based on evidence that Defendants provided imprudent, unsuitable, uninformed, deceitful, and reckless advice and made misrepresentations to Mr. Maybank while acting as his fiduciary.

Taken in the light most favorable to the non-moving party, the record supports a reasonable conclusion that Defendants' liability under the UTPA is separate from that for the common law causes of action. See *Taylor*, 324 S.C. at 218, 479 S.E.2d at 44-45 ("Election of remedies is not applicable where there are two separate causes of action, each based on different facts") (citing *Jones v. Winn-Dixie Greenville*, 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995) (holding that "the principle [of election of remedies] has no application where two separate causes of action, each based on different facts, exists")). Moreover, the UTPA by its clear and unambiguous language is "cumulative and supplementary to all powers and remedies otherwise provided by law." S.C. Code Ann. § 39-5-160. I find that the common law causes of action for which punitive damages were awarded were based on evidence demonstrating Defendants'

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<sup>11</sup> The verdict form differentiated the causes of action for which punitive damages could be awarded from those that could not, including the UTPA cause of action, providing in pertinent part as follows: "12. If you answer Yes to Questions 2 [Breach of Fiduciary Duty], 3, 6, 7, 8 [Constructive Fraud], or 9 [Negligent Misrepresentation], do you find by clear and convincing evidence that the acts of the defendant(s) warrant payment of punitive damages?" The jury also was instructed as to the standards for imposing punitive damages.

imprudent, unsuitable, and risky investment advice to Mr Maybank, representations to him that the recommended strategy would protect his assets and was well-researched and tailored to his specific investment needs. In contrast, Defendants' practice of presenting the false and deceptive contracts and letters to Mr Maybank, while deliberately hiding their falsity, is an independent, separate unfair and deceptive business practice. I therefore deny Defendants' motion to require election because, based on the facts and Defendants' actions in this case, there is no double recovery for a single wrong. *Taylor*, 324 S.C. at 218, 479 S.E.2d at 44-45 <sup>12</sup>

I deny Defendants' motion for election of remedies on all other grounds. Many of these grounds were not raised at trial. For instance, although pled in their Answer, Defendants waived their arguments on the economic loss rule by failing to raise it in any of their eight summary judgment motions, or during trial in their 31-page motion for directed verdict. *Patterson v Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995) (post-trial motion cannot be used to raise an issue that could have been raised at trial). Regardless, I reject their argument on the economic loss rule, which in South Carolina is primarily limited to the products liability arena. See *Kennedy v Columbia Lumber Mfg. Co.* 299 S.C. 335, 345-46, 384 S.E.2d 730 (1989). Moreover, even Defendants' cited authority expressly rejects the economic loss rule when Defendants owe an independent duty. *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 56, 463 S.E.2d 85, 89 (1995). Defendants acted to become Mr Maybank's fiduciary and well knew that he would suffer economic losses if they breached their duties to him.

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<sup>12</sup> See also, e.g., *Freeman v. A & M Mobile Home Sales, Inc.*, 293 S.C. 255, 359 S.E.2d 532, 536 (Ct. App. 1987) (upholding both punitive and treble damages).

I also reject Defendants' argument that the claims for constructive fraud and negligent misrepresentation are inconsistent. I expressly instructed the jury that Mr. Maybank was not entitled to multiple damages based on the number of causes of action.

The plaintiff has asserted multiple causes of action against the defendant. In other words, the plaintiff believes he is entitled to recover against the defendant under multiple, different legal theories. If you find that the plaintiff has met their burden of proof as to more than one cause of action and you consider awarding damages, you should not increase the amount of actual damages simply based on the number of different causes of action, if any, upon which you find the plaintiff has prevailed.

Following these instructions, the jury in this case returned a verdict against Defendants for \$3.1 million on all causes of action on a verdict form proposed by Defendants. I therefore deny Defendants' motion on this ground.<sup>13</sup> I also deny Defendant's motion to require Mr. Maybank to elect a single cause of action on which to proceed because I find that there is no possibility of double recovery of actual damages in this case. *See Taylor*, 324 S.C. at 203, 479 S.E.2d at 44-45 (election of remedies is the act of choosing between inconsistent remedies allowed by law on the same set of facts)<sup>14</sup>

#### **Motion for Attorneys' Fees and Costs under the Unfair Trade Practices Act**

Mr. Maybank has moved for an award of attorneys' fees of \$3,317,868.70 and costs of \$306,264.10. *See* S.C. Code Ann. § 39-5-140(a). In rendering my decision, I have relied upon my own knowledge and observations in the case as well as the affidavits submitted by Mr.

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<sup>13</sup> This conclusion is not changed by the fact that the jury returned a single award of \$3.1 million on five causes of action, including the UTPA violation. The jury's award of a single amount of actual damages is not indicative of a finding that no distinct damages flow from the jury's determination of a violation of the UTPA. To the contrary, a general verdict form is indicative of the fact that any or all of the causes of action returned by the jury sustain the full amount of the actual damages. The question is not whether there is a separate award of damages for that violation, but whether separate facts and actions of the Defendants support each of the treble and punitive damage awards.

<sup>14</sup> To the extent not expressly addressed in this Order, Defendants' arguments nevertheless are denied.

Maybank, including the affidavit of Professor John Freeman<sup>15</sup> Although Plaintiff's request for attorneys' fees and costs is reasonable, I nevertheless find it appropriate to reduce the total hours and costs by 20% in order to limit the fees to the UTPA claim. I therefore award as reasonable and appropriate attorneys' fees of \$2,654,295 and costs of \$245,011<sup>16</sup>

**I. Introduction and background:**

The specific award of attorneys' fees and costs is left to the discretion of this Court, and must be determined using a lodestar analysis *Layman v State*, 376 S.C. 434, 444, 457-58, 658 S.E.2d 320, 325, 332-33 (2008). This analysis requires determining a reasonable hourly rate and hours worked and then considering any exceptional circumstances justifying an enhancement of the lodestar figure *Id.* at 458-61, 658 S.E.2d at 33-35. This requires considering the following: (1) the nature, extent, and difficulty of the case, (2) the time necessarily devoted to the case, (3) the professional standing of counsel, (4) the contingency of compensation, (5) the beneficial results obtained, and (6) the customary legal fees for similar services *Id.* at 458, 658 S.E.2d at 333 (citing *Jackson*, 326 S.C. at 308; 486 S.E.2d at 760).

I start with my familiarity with this extremely complicated case and the fine, well-prepared, and knowledgeable counsel representing both sides. The parties appeared before me on four separate occasions to resolve pre-trial issues and dispositive motions, with most hearings lasting several hours. These motions involved substantial written submissions, which I observed

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<sup>15</sup> I find Professor Freeman's affidavit to be appropriate and consistent with the parameters of expert testimony established by the case law. See, e.g., *Vortex Sports & Entm't, Inc v Ware*, 378 S.C. 197, 208, 662 S.E.2d 444, 450 (Ct. App. 2008). Professor Freeman is qualified to render an opinion assisting the Court in exercising its discretion. See Rule 702, SCRE. I therefore deny the motion to strike Professor Freeman's affidavit.

<sup>16</sup> Defendants filed two additional post-trial motions beyond the deadline of July 10, 2014, seeking to compel the submission of additional documentation from Mr. Maybank in support of his request for attorneys' fees and costs under the UTPA, as well as to postpone consideration of the motion for attorneys' fees, costs, and treble damages. I have considered these motions, find them to be without merit, and therefore deny them.

to be of the highest quality. The trial itself lasted two weeks, during which time I closely observed Mr. Maybank's counsel first-hand. Finally, the parties appeared before me on August 19 to argue post-trial motions. I have reviewed the fee affidavit of Plaintiff's counsel detailing the hours worked by each attorney and submitting their current hourly market rates. I also have reviewed the cost affidavit detailing the costs and expenses paid and advanced in the litigation.

## II. Reasonableness factors.

### A. *The nature, extent, and difficulty of the case.*

I find that the nature, extent, and difficulty of this case weighs heavily in favor of awarding attorneys' fees. Although this case was extremely difficult to litigate, involving complex investment products and strategies, both sides were represented by excellent attorneys who were strong advocates for their clients. Plaintiffs in investment litigation, like here, are often single individuals bringing claims against well-financed, multi-billion dollar institutions with the very best defense lawyers available. The difficulty of an individual plaintiff litigating against a multi-billion dollar corporate entity is enormous. Moreover, as true here, the subject matter of investment cases is often quite complicated, providing counsel with the enormous challenge of explaining the issues and investment strategies and products in clear and understandable ways. Due to these factors, litigating this jury trial required substantial experience, knowledge, and expertise by Mr. Maybank's counsel, requiring them to know and understand the complicated legal and factual issues involved and to present those issues in a manner comprehensible to lay persons. Mr. Maybank's counsel were excellent in this regard.

### B. *The time necessarily devoted to the case.*

Advancing this case to trial involved successfully gaining remand to this court following Defendants' removal to federal court, extensive discovery including 32 depositions, review of

60,000 pages of discovery, and responding to eight substantive motions for summary judgment. In light of this immense and time-intensive task, I find that the time identified by Plaintiff's counsel was fairly expended in the development of the core set of facts that supported all of the claims.<sup>17</sup> According to Mr. Willoughby's affidavit, almost 6,700 hours have been devoted to handling Mr. Maybank's case through June 30, 2014, excluding post-trial issues. As was their right, Defendants vigorously defended each point and issue in this case. In light of the comprehensive, "challenge every issue" defense employed by Defendants, which I observed firsthand, I find Mr. Maybank's counsel were required to invest time and resources in mounting an effective response. I therefore find the time devoted by Mr. Maybank's counsel in litigating this case was necessary, essential, and reasonable. The fact that Mr. Maybank's counsel produced a successful result weighs heavily in favor of the requested attorneys' fees.

However, the UTPA verdict is the only one for which attorneys' fees and costs are recoverable. Plaintiff's counsel asserts and Professor Freeman opined that the amount of fees allocable to this cause of action cannot be separately determined because all of the causes of action are based upon a core set of intertwined facts and no deduction to the fee request is warranted based on the amount of time expended by Mr. Maybank's counsel. See *Hensley v. Eckhart*, 461 U.S. 424, 435 (1983) (noting that, in litigation based on "a common core of facts," an attorney's time "will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis") and *Austin*, 387 S.C. at 57, 691 S.E.2d at 153 (declining to dissect a counsel's fee affidavit where violations under the statutory claim were

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<sup>17</sup> Defendants were Mr. Maybank's trusted fiduciary. As a consequence, all of their activities were inextricably intertwined. I find that it was necessary to conduct discovery and extensive pretrial work to understand all facets of the parties' lengthy and complex fiduciary relationship and delineate which acts and conduct of Defendants constituted violations of which causes of action.

based on the same body of evidence underlying the claims for fraud and constructive fraud). I find that the causes of action are based upon a core set of common and intertwined facts.<sup>18</sup> However, out of an abundance of caution, I find that a 20% reduction in the number of hours will fairly reflect the time expended by Plaintiffs' counsel in investigating, developing, advancing, and litigating the UTPA claim while at the same time protecting Defendants against being charged for work that did not serve to develop the UTPA claim. See *Layman*, 376 S.C. at 460, 658 S.E.2d at 333 (reducing total hours by percentage). The implementation of this reduction is set forth below

**C. Professional standing of counsel.**

Both Mr. Willoughby's firm and Mr. Bannister's firm have high standing and regard in the legal community and are respected members of the South Carolina Bar and the Richland and Greenville County Bars, respectively. I saw first-hand the high level of written and oral advocacy demonstrated by Mr. Maybank's counsel throughout this complex case. Litigating and trying this case involved the command of thousands of documents, numerous lay and expert witnesses, the experience and expertise of knowing the specialized area of investment strategies and products and the law-related thereto, and the ability to conduct effective legal combat with a team of highly skilled attorneys for the defense. Despite the complexities of this case, Plaintiff's counsel litigated it with an exceptionally high degree of competence and skill. I therefore find

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<sup>18</sup> As an example that the work on the UTPA claim continued throughout the pendency of this case from start to finish, a key document that formed one of the foundations of the UTPA claim as presented to the jury was not produced by Defendants until late on the Friday before the trial began on Monday, June 16, 2014. Ex 91

the professional standing of Mr Maybank's counsel militates heavily in favor of the award of attorneys' fees.<sup>19</sup>

**D. Contingency of compensation.**

The fee arrangement in this case was blended, with a reduced hourly fee coupled with a contingency if beneficial results were obtained. This blended fee recognizes the significant risk and difficulty of litigating such a complex case. Although this arrangement required Mr Maybank to bear a significant portion of ongoing litigation expenses, the law firms shared a substantial portion of the entire burden. The "contingency of compensation" factor is *not* a check to see whether a contingency contract exists, but rather to consider whether the plaintiff can pay the fees if a beneficial result is not obtained. See *Glasscock v Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991) ("In making this determination, the abilities of the parties to pay, their respective financial conditions, and the effect of the attorney's fees on each party's standard of living are also to be considered.") Because this case involved substantial financial losses by Mr Maybank, there was a substantial risk that he would be unable to pay even the reduced rate as the case progressed through protracted litigation.<sup>20</sup> Consequently, Plaintiff's counsel bore a significant risk in light of the complexity of the issues and the uncertainty of success. Plaintiff's counsel also incurred a significant opportunity risk because they devoted substantial time and effort to this case at reduced rates versus those that could be obtained on

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<sup>19</sup> As with most issues in this case, Defendants did not concede the professional standing of Mr Maybank's counsel.

<sup>20</sup> Mr Maybank testified that Mr David Fisher, a senior executive with Defendants, ridiculed and attempted to intimidate him for even contemplating making a claim, saying words to the effect of "You are an embarrassment to yourself, it will be expensive, and it will end badly." From the time devoted to this case as reflected in Mr Willoughby's affidavit, BB&T indeed made sure it was most expensive to litigate this case.

other work. I find that the risk to Plaintiffs' counsel of not being fully and fairly compensated was substantial and that this factor weighs in favor of awarding attorneys' fees.

**E. *Beneficial results obtained.***

Plaintiff's counsel obtained beneficial results for Mr. Maybank, which is "the most critical factor in determining the reasonableness of a fee award is the degree of success obtained." *Farnar v. Hobby*, 506 U.S. 103, 114 (1992). The success achieved was a direct result of the facts developed and the legal theories advanced by seasoned and experienced counsel with expertise in investment strategies and products. Counsel's trial advocacy with the jury was exceptional and their professionalism toward this Court and their respect for the judicial process noteworthy. The effective presentation by Mr. Maybank's counsel coupled with well-developed evidence of deception and unfair business practices resulted in one of the largest jury verdicts in Greenville County to date. I find that the fifth factor heavily militates in favor of the reasonable attorneys' fee awarded herein.

**F. *Customary legal fees for similar services.***

I find that the legal fees requested in this case are in line with the legal fees customarily charged for similar services in this type of litigation in Greenville and this State. Moreover, for the reasons detailed below, I find this case exhibits the type of exceptional circumstances warranting the application of a multiplier to the fee request.

**III. *Hours worked, billing rates, and propriety of a multiplier.***

The amount of time devoted to this case by Mr. Maybank's counsel is entirely reasonable given the complexity and difficulty of the issues involved in this case and the comprehensive defense. I find that the rates submitted by Mr. Willoughby and his team are reasonable, customary, and appropriate in Greenville and in this State given the complexity of this case and

investment-related cases in general, as well as the professional standing of Mr. Maybank's counsel. The reasonableness of the rates is supported by the expert testimony of Professor Freeman, who opined that the current hourly rates charged by Mr. Maybank's counsel are actually *below* fair market levels for the specialized type of legal work involved in this case. I find that this evidence militates in favor of the use of a multiplier, as discussed below.

#### IV. Calculation of fee award.

With these findings in mind, I calculate the lodestar fee<sup>21</sup> in this case as follows:

|                                            | Hourly<br>Rate | Hours<br>Expended | 20%<br>Reduction | Adjusted<br>Hours | Totals         |
|--------------------------------------------|----------------|-------------------|------------------|-------------------|----------------|
| <u>Willoughby &amp; Hoefer, P.A.</u>       |                |                   |                  |                   |                |
| Mitchell Willoughby                        | \$500.00       | 1,792.10          | (358.42)         | 1,433.68          | \$716,840.00   |
| Elizabeth Zeck                             | \$400.00       | 691.80            | (138.36)         | 553.44            | \$221,376.00   |
| Elizabeth Ann Loadholt Carroll             | \$400.00       | 514.10            | (102.82)         | 411.28            | \$164,512.00   |
| Tracey C. Green                            | \$400.00       | 76.80             | (15.36)          | 61.44             | \$24,576.00    |
| Chad N. Johnston                           | \$300.00       | 2,361.90          | (472.38)         | 1,889.52          | \$566,856.00   |
| John W. Roberts                            | \$300.00       | 103.30            | (20.66)          | 82.64             | \$24,792.00    |
| Andrew MacLeod                             | \$300.00       | 25.70             | (5.14)           | 20.56             | \$6,168.00     |
| <u>Bannister, Wyatt &amp; Stalvey, LLC</u> |                |                   |                  |                   |                |
| Bruce Bannister                            | \$325.00       | 90.00             | (18.00)          | 72.00             | \$23,400.00    |
| Jim Bannister                              | \$450.00       | 20.75             | (4.15)           | 16.60             | \$7,470.00     |
| Alex Stalvey                               | \$300.00       | 46.00             | (9.20)           | 36.80             | \$11,040.00    |
| Luke Burke                                 | \$250.00       | 12.50             | (2.50)           | 10.00             | \$2,500.00     |
| Total Fee Award for Attorneys              |                |                   |                  |                   | \$1,769,530.00 |

I find that enhancing the lodestar calculation of \$1,769,530 in attorneys' fees with a multiplier is necessary in order to reflect the exceptional circumstances in recovering damages under the UTPA in this case. See *Layman*, 658 S.E.2d at 334 (citing *Blum v. Stenson*, 465 U.S.

<sup>21</sup> Mr. Willoughby's fee affidavit lists Attorney Luke Burke's hourly rate as \$400.00, however, based on the attachment B to the fee affidavit, the Court finds that the listed rate was a scrivener's error and the rate should be \$250.00, which is reflected in the lodestar calculation.

886, 897 (1984) (recognizing that an enhanced lodestar award may be justified "in some cases of exceptional success")

Based on my familiarity with the nature, extent, and difficulty of this complex case, I find the quality of service rendered by Mr Maybank's counsel was superb and that the success achieved was "exceptional." In undertaking this difficult case in the face of a substantial risk of receiving compensation, Mr Maybank's counsel exposed unfair and deceptive business practices by Defendants against clients whom they served as trusted fiduciary as well as their misrepresentations to conceal those acts. I find all of these factors constitute significant and exceptional circumstances that warrant applying a multiplier of 1.5 to the current hourly rates to reflect the difficulty and exceptional circumstances of this case.

|                        |                |
|------------------------|----------------|
| Base Attorneys' Fees.  | \$1,769,530.00 |
| Multiplier:            | x 1.5          |
| <hr/>                  |                |
| Total Attorneys' Fees: | \$2,654,295.00 |

I therefore find that, based on the exercise of my informed discretion, Plaintiff is entitled to attorneys' fees of \$2,654,295 as a reasonable and a fair reflection of the exceptional circumstances involved in recovering damages under the UTPA.

**V. Award of costs.**

Mr. Maybank also is entitled to costs reasonably incurred in litigating and trying the UTPA claim. See S.C. Code Ann. § 39-5-140(a). Mr. Maybank's counsel submitted a cost affidavit detailing the costs and expenses actually paid and advanced in pursuit of the litigation, requesting costs of \$306,264.10. This Court has broad discretion to award costs to the prevailing party. *Peterson v. Nat'l R.R. Passenger Corp.*, 365 S.C. 391, 402, 618 S.E.2d 903, 908 (2005). Extending beyond the recovery of costs allowed as a matter of course to a prevailing party, fee-

shifting statutes like the UTPA contemplate reimbursement of all reasonable expenses incurred. See *Layman*, 376 S.C. at 461, 658 S.E.2d at 334.

After reviewing the affidavit and costs claimed by Mr. Maybank, I find the costs and expenses incurred, while significant, were reasonable in the context of this case. As Professor Freeman testified, expenses such as expert witness fees, online research, electronic document hosting fees, and trial preparation expenses are common, if not required, in cases of this size and complexity. The copying charges, while substantial, also are reasonable given that this case involved more than 60,000 pages of documents. Because the facts supporting the substantive claims were largely intertwined and developed throughout the lengthy discovery process, I find that no reduction of the costs and expenses is required due to Mr. Maybank's failure to win on every claim advanced. I also note that the costs of the expert witness of the Family Insurance Trust have already been excluded due to the lack of success in recovering damages for the trust. However, I find that the total amount should be further reduced by 20% to limit costs to the UTPA claim alone. I therefore award \$245,011 ( $\$306,264 \times (1 - .20)$ ) in costs and expenses as reasonable and appropriate.

### **Prejudgment Interest**

Mr. Maybank also has moved for an award of prejudgment interest based on the jury's award of actual damages under S.C. Code Ann. § 34-31-20(A). I find that Mr. Maybank's damages were not a sum certain as required by S.C. Code Ann. § 34-31-20(A) and I therefore deny Mr. Maybank's motion for prejudgment interest on that ground.

**NOW, THEREFORE**, based upon the foregoing findings and conclusions, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that.

1 Defendants' motions for Judgment Notwithstanding the Verdict, New Trial Absolute, New Trial *Nisi Remittitur*, and Election of Remedies are **DENIED**;

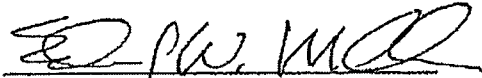
2. All other motions advanced by Defendants are also **DENIED**.

3. Plaintiff's motions for Treble Damages and for Attorneys' Fees and Costs are **GRANTED**

4. Plaintiff's motion for prejudgment interest is **DENIED**.

5. Judgment in favor of Plaintiff Francis P. Maybank is hereby **ENTERED** against all Defendants in the amount of **Seventeen Million, One Hundred Ninety Nine Thousand, Three Hundred Six Dollars (\$17,199,306)**.

**AND IT IS SO ORDERED**

  
The Honorable Edward W. Miller  
Business Court Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina  
This 10 day of October, 2014

*NOVEMBER*

A Certified Copy  
Paul B. Winkelman  
Clerk of Court C.P. & G.S.  
Greenville County, SC  
Printed 11/10/14

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
In the Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Case No 2011-CP-23-8578

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Francis P Maybank, . . . . . Respondent-Appellant,

v

BB&T Corporation, Branch Banking and Trust Company,  
*Successor in merger to Branch Banking and Trust Company of SC,*  
and Sterling Capital Management, LLC, *Successor in merger to*  
BB&T Asset Management, LLC, . . . . . Appellants-Respondents

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**PROOF OF SERVICE**

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This is to certify that I, a paralegal with the law firm Willoughby & Hoefler, P A , have caused to be served this day one (1) copy of the **Respondent-Appellant Francis P. Maybank's Notice of Cross-Appeal** via hand-delivery and by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows

D Larry Kristnik, Esquire  
C Mitchell Brown, Esquire  
Michael J Anzelmo, Esquire  
Kristen E Horne, Esquire  
**Nelson Mullins Riley & Scarborough LLP**  
1320 Main Street, 17<sup>th</sup> Floor  
Columbia, SC 29201  
(Via hand-delivery)

William S Brown, Esquire  
**Nelson Mullins Riley & Scarborough LLP**  
P O Box 10084  
Greenville, SC 29603-0084  
(Via US Mail)

  
Breanna M Karns

Columbia, South Carolina  
This 16<sup>th</sup> day of December, 2014

rec'd 3/6/2015  
04490/01520

# The Supreme Court of South Carolina

Francis P. Maybank and Jane H.P. Maybank, as Trustee  
for the Francis P. Maybank Family Insurance Trust,  
Plaintiffs,

Of whom Francis P. Maybank is the  
Respondent/Appellant,

v.

BB&T Corporation, Branch Banking and Trust  
Company, Successor in merger to Branch Banking and  
Trust Company of SC, and Sterling Capital Management,  
LLC, Successor in merger to BB&T Asset Management,  
LLC, Appellants/Respondents

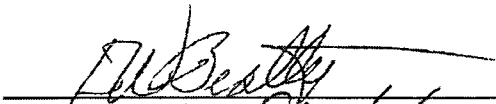
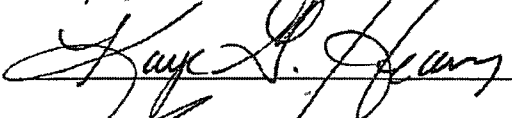
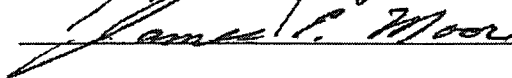
Appellate Case No 2015-000112

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## ORDER

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The Motion for Certification in the above matter is granted

 A.C.J.  
 J  
 A.J.

Chief Justice Jean H Toal, Justice Costa M  
Pleicones and Justice John W Kittredge, not  
participating

Columbia, South Carolina

March 5, 2015

cc

C. Mitchell Brown, Esquire

D Lawrence Kristinik, III, Esquire

Michael J Anzelmo, Esquire

Kristen E Horne, Esquire

William Stevens Brown, V, Esquire

Mitchell Willoughby, Esquire

Elizabeth Ann Zeck, Esquire

Chad Nicholas Johnston, Esquire

Bruce Wyche Bannister, Esquire

John Marion S Hoefer, Esquire

Tracey Colton Green, Esquire

The Honorable Jenny Abbott Kitchings

Electronic Media Containing  
Video Depositions  
as Presented to the Jury at Trial

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
Edward W. Miller, Circuit Court Judge

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Case No. 2011-CP-23-8578  
Appellate Case No. 2014-002638

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Francis P. Maybank and Jane H.P. Maybank, as trustee for  
the Francis P. Maybank Family Insurance Trust,

Plaintiffs

Of whom Francis P. Maybank is

Respondent/Appellant,

v

BB&T Corporation, Branch Banking & Trust Company,  
successor in merger to Branch Banking & Trust Company of  
SC, and Sterling Capital Management, LLC, successor in  
merger to BB&T Asset Management, LLC

Appellants/Respondents

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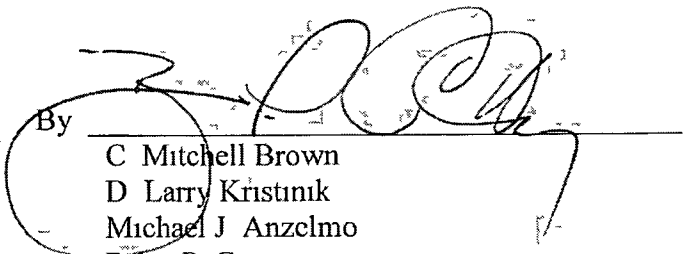
CERTIFICATE OF COUNSEL

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The undersigned hereby certifies that the Record on Appeal contains all material  
proposed to be included by any of the parties and not any other material

*Signature Page Attached*

NELSON MULLINS RILEY & SCARBOROUGH LLP

By 

C Mitchell Brown  
D Larry Kristink  
Michael J Anzelmo  
Brian P Crotty  
1320 Main Street  
Post Office Box 11070  
Columbia, SC 29211  
(803) 799-2000

William S Brown  
104 S Main Street, 9th Floor  
Post Office Box 10084 (29603-0084)  
Greenville, SC 29601  
(864) 250-2300

Attorneys for Appellants/Respondents BB&T Corp  
Branch Banking & Trust Co , and Sterling Capital  
Management, LLC

September 16, 2015

**RECEIVED**

SEP 16 2015

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY **S.C. Supreme Court**  
Court of Common Pleas

Edward W Miller, Circuit Court Judge

Case No 2011-CP-23-8578  
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Francis P Maybank and Jane H P  
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Maybank Family Insurance Trust,

Plaintiffs,

Of whom Francis P Maybank is the,

Respondent/Appellant,

v

BB&T Corporation, Branch Banking and  
Trust Company, Successor in merger to  
Branch Banking and Trust Company of SC,  
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Successor in merger to BB&T Asset  
Management, LLC,

Appellants/Respondents

PROOF OF SERVICE

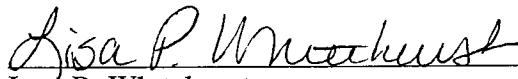
I, the undersigned Administrative Assistant of the law offices of Nelson  
Mullins Riley & Scarborough LLP, attorneys for Appellants/Respondents, do hereby  
certify that I have served all counsel in this action with a copy of the pleading(s)  
hereinbelow specified by mailing a copy to the following address(es)

Pleadings

Record on Appeal

Counsel Served

Mitchell M Willoughby, Esquire  
Elizabeth Zeck, Esquire  
Chad Johnston, Esquire  
John M S Hoefer, Esquire  
Tracey Colton Green, Esquire  
Willoughby & Hoefer, P A  
Post Office Box 8416  
Columbia, SC 29202



Lisa P Whitehurst  
Administrative Assistant

September 16, 2015