

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-CP-40-3389
Appellate Case No. 2014-001652

Alan Wilson, Securities Commissioner
of South Carolina,

Respondent,

v.

Integrated Capital Strategies, LLC,

Appellant.

RECORD ON APPEAL

James M. Griffin
Margaret N. Fox
LEWIS, BABCOCK & GRIFFIN, L.L.P.
1513 Hampton Street
Columbia, South Carolina 29201

Attorney for Appellant

Alan Wilson, Securities Commissioner
Tracy Meyers, Deputy Securities Commissioner
Ian P. Weschler, Assistant Attorney General
SECURITIES DIVISION
1000 Assembly Street
Columbia, South Carolina 29201

Attorney for Respondent

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Table of Contents

ORDERS

Judgment on Rule to Show Cause, 6-9-14.	1
Order Requiring Compliance with a Subpoena, 7-1-14.....	4
Order Denying Motion for Reconsideration, 7-15-14 .. .	17

TRANSCRIPTS

Transcript of Rule to Show Cause Hearing, 6-10-14.....	19

MOTIONS AND MEMORANDA

Motion for Reconsideration, 7-10-14	40

NOTICES

Notice of Appeal, 7-30-14	45
Amended Notice of Appeal, 8-15-14.....	62

OTHER DOCUMENTS

Stock Purchase Agreement	83
Application for Order Requiring Compliance with a Subpoena, 5-23-14	277
Memorandum of Law in Support in Support of the Securities Commissioner's Application for an Order Requiring Complaint with a Subpoena, 5-23-14 .	281
Ex. A: Subpoena to ICS w/ affidavit of compliance for service, 4-9-14.. .	291
Ex. B: Letter from J. Griffin to I. Weschler, 5-6-14	300
Rule To Show Cause, 5-23-14	307
Response in Opposition to Application for Order Requiring Compliance with Subpoena, 6-3-14	309

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2014CP4003389**

Alan Wilson

Intergrated Capital Strategies LLC

Securities Commissioner of South Carolina
PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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. 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:

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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

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.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 9 June 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Ian Parks Weschler

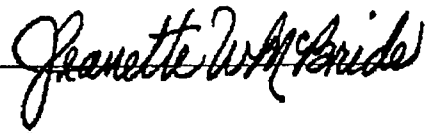
Margaret Nicole Fox

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

ALAN WILSON, SECURITIES
COMMISSIONER OF SOUTH
CAROLINA,

Applicant,

v.

INTEGRATED CAPITAL
STRATEGIES, LLC,

Respondent.

Case No. 2014-CP-

8389

RULE TO SHOW CAUSE

RICHLAND COUNTY
FILED
2014 MAY 23 PM 12:15
JEANETTE W. MCBRIDE
C.C.P. & G.S.

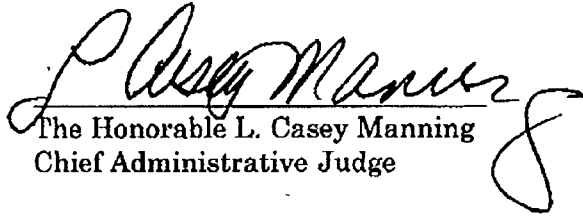
The Applicant, Alan Wilson, Securities Commissioner of South Carolina (the "Commissioner"), having filed an Application for an Order Requiring Compliance with a Subpoena accompanied by a Memorandum of Law, and the Court having considered the Application together with its supporting papers, and good cause having been shown, it is hereby,

ORDERED that Integrated Capital Strategies, LLC ("ICS") appear on June 10th, 2014, at 10:00 AM before the Richland County Court of Common Pleas, to show cause, if any there be, why it should not be ordered by this Court to produce documents pursuant to the subpoena served upon in in connection with the Commissioner's investigation, File No. 14023; and

IT IS FURTHER ORDERED that service of any notices or other documents required or permitted by this order may be accomplished by any means, including, but not limited to, telefax, email, overnight courier, personal delivery, or U.S. mail; and

IT IS FURTHER ORDERED that, no later than June 3, 2014, the Respondent shall deliver to the Commissioner and file with the Court any statement or memorandum of law in opposition to the Application and any papers in support thereof.

IT IS SO ORDERED.


The Honorable L. Casey Manning
Chief Administrative Judge

This 23 day of May, 2014.
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: **2014CP4003389**

Alan Wilson

Intergrated Capital Strategies LLC**Securities Commissioner of South Carolina**

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant**DISPOSITION TYPE (CHECK ONE)**

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☐ 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 _____
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Ian Parks Weschler

Margaret Nicole Fox

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

ALAN WILSON, SECURITIES
COMMISSIONER OF SOUTH
CAROLINA,

Applicant,

v.

INTEGRATED CAPITAL
STRATEGIES, LLC,

Respondent.

Case No. 2014-CP-400-3389

**ORDER REQUIRING
COMPLIANCE WITH A SUBPOENA**

Hearing Date: June 10, 2014
Presiding Judge: The Honorable G. Thomas Cooper, Jr.
On Behalf of the Respondent: James M. Griffin, Esq.
On Behalf of the Applicant: Ian P. Weschler, Esq.

This matter came before the Court as the result of an Application for an Order Requiring Compliance with a Subpoena filed by Alan Wilson, Securities Commissioner of South Carolina (the "Commissioner"). The Commissioner seeks enforcement of an administrative subpoena (the "Subpoena") issued by the Securities Division of the Office of the Attorney General of South Carolina (the "Securities Division") to Integrated Capital Strategies, LLC ("ICS") as part of an investigation under File No. 14023. For the reasons set forth below, the Court grants the Commissioner's Application and ICS is hereby ordered to comply with the Subpoena.

I. FACTUAL BACKGROUND

On April 9, 2014, the Securities Division issued the Subpoena to ICS. The Subpoena was addressed to ICS' address in Charlotte, North Carolina, as listed on



the website for the North Carolina Secretary of State. The Subpoena sought various documents related to an ongoing investigation being conducted into the offer and sale of securities by Certus Holdings, Inc. and CertusBank, N.A. (collectively, "Certus") in and from South Carolina. The documents sought pursuant to the Subpoena were required to be produced by Friday, April 25, 2014. To date, ICS has declined to produce the records to the Securities Division.

ICS' managers were the founders of and, until their termination in April of 2014, employees of Certus. ICS provided extensive services to Certus both at Certus' Greenville, South Carolina headquarters and elsewhere in and outside the state. Evincing the interrelated relationship between the two companies, not only were ICS' managers executives at Certus, but ICS' records custodian is or was, herself, an employee of Certus.

On April 23, 2014, ICS' attorney contacted the Securities Division and requested an extension of time in which to examine the Subpoena and prepare a response. On Friday, May 2, 2014, representatives of the Securities Division met with ICS' attorney and reiterated the request for documents. On Tuesday, May 6, 2014, ICS formally objected to the subpoena, alleging that the Securities Division lacked jurisdiction over it. On May 23, 2014, the Commissioner applied for and was granted a Rule to Show Cause directed at ICS, and ordering both parties to appear before the Court on June 10, 2014. At the June 10, 2014 hearing, the Court heard arguments from the Commissioner and ICS. This Order follows.



II. LAW AND ANALYSIS

A. The Court has Jurisdiction over this Action and over the Respondent.

The Court has jurisdiction over this action pursuant to Article 6 of the South Carolina Uniform Securities Act of 2005 (the "Securities Act"). As set forth the Securities Act, the mechanism for subpoena enforcement is for the Commissioner to "apply to the Richland County Court of Common Pleas...to enforce compliance." S.C. Code Ann. § 35-1-602(c) (Supp. 2013). Whereupon, the Court may, *inter alia*, "order the production of records." *Id.* Accordingly, the Court is the appropriate venue in which to seek the enforcement of the Subpoena. Moreover, the Uniform Securities Act has been interpreted, consistent with due process, to permit the enforcement of subpoenas issued to foreign actors who have transacted business within the state. *See, e.g., Silverman v. Berkson*, 661 A.2d 1266 (N.J. 1995).¹ Thus, ICS is subject to the power of the Court.

ICS alleges that the Commissioner lacks jurisdiction over it because the Subpoena was not served pursuant to South Carolina's long arm statute. However, as the Subpoena was validly served pursuant to the Securities Act, ICS' assertion is unavailing. Pursuant to S.C. Code Ann. § 35-1-611 (c), the Securities Act permits the service of subpoenas to in-state and out-of-state respondents, through the mailing, return receipt requested, of the document or documents in question to a respondents' address and the execution of an affidavit of compliance. Further, S.C.

¹ Additionally, as ICS has transacted significant business in this State, it should have reasonably anticipated the possibility of being haled into a South Carolina Court. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

617 #3

Code Ann. § 35-1-611(d) permits service pursuant to Section 611(c) in any proceeding to which the Commissioner is a party, as he is here. As is evidenced by the Subpoena and its accompanying Certificate of Service and Affidavit of Compliance, the Securities Division followed the requirements for proper service as set forth in the Securities Act when it served the Subpoena on ICS. Therefore, the Court finds that the subpoena was validly served upon ICS.

B. The Commissioner Has Met the Burden for Enforcement of the Subpoena.

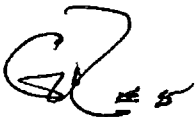
When a court's jurisdiction is invoked in a subpoena enforcement action "the scope of issues which may be litigated...must be narrow, because of the important governmental interest in the expeditious investigation of possible unlawful activity." *F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977); *see also United States v. Am. Target Adver., Inc.*, 257 F.3d 348, 351 (4th Cir. 2001) (citations and internal quotation marks omitted) ("[A] court's role in enforcing administrative subpoenas is sharply limited."); *RNR Enterprises, Inc. v. SEC*, 122 F.3d 93, 96 (2d Cir. 1997), *cert. denied sub nom, Wells v. S.E.C.*, 522 U.S. 958 (1997) (same); Louis Loss & Joel Seligman, *Fundamentals of Securities Regulation* 1490-1493 (4th Ed. 2004). To that end, the United States Supreme Court has set forth a multi-factor test for judicial enforcement of administrative subpoenas. Under this test, a court should enforce an administrative subpoena when "the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant." *United States v. Morton Salt*, 338 U.S. 632, 650

67 #4

(1950); *see also* *See v. City of Seattle*, 387 U.S. 541, 544 (1967) (*Morton Salt* analysis in the context of a state administrative subpoena); *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1023-24 (D.C. Cir. 1978); *United States v. Powell*, 379 U.S. 48, 57-58 (1964); *State ex rel. Miller v. Publishers Clearing House, Inc.*, 633 N.W.2d 732, 736 (Iowa 2001) (state court employing the same analysis in enforcing an administrative subpoena); S.C. Code Ann § 35-1-602, cmt. 2 (citing 10 Louis Loss & Joel Seligman, Securities Regulation 4917-4937 (3d ed. Rev. 1996) and explaining “[t]he standards for the issuance of subpoenas have been generally established in federal and state securities laws.”). The Court finds that the Subpoena meets each of these factors.

i. The Subpoena is within the Securities Division’s authority.

Pursuant to S.C. Code Ann. § 35-1-602, the Commissioner and his designee, the Securities Division, are vested with broad authority to conduct investigations into possible violations of the Securities Act and to require production of evidence relevant to such investigations. In furtherance of this investigative power, S.C. Code Ann. § 35-1-601(b) permits the Commissioner or his designees to “subpoena witnesses, seek the compulsion of evidence, take evidence, require the filing of statements, and *require the production of any records that the Securities Commissioner considers relevant or material to [an] investigation*” (emphasis added). As is the case with other administrative agencies, the Securities Division’s investigative power, as delegated to it by the Commissioner, is statutory and is analogous to that of a grand jury. *Morton Salt*, 338 U.S. at 642-43; *see also* *Small Bus. Admin. v. Barron*, 240 F. Supp. 434, 445 (W.D.S.C. 1965); *In re Subpoena*



Duces Tecum, 228 F.3d 341, 347 (4th Cir. 2000). Like a grand jury, an administrative agency "can investigate merely on suspicion that the law is being violated, or just because it wants assurance that it is not." *Morton Salt, supra*; *Myers v. Holshouser*, 214 S.E.2d 630, 637 (N.C.App. 1975) ("The purpose of an administrative investigation is to protect the public; therefore, the public's interest in applying more relaxed criteria for administrative investigations is greater than the regulated person's, firm's, or corporation's right to privacy."). Consistent with well-established administrative law precedents, the Securities Division is acting within the scope of its legislatively granted authority even where its investigation is based on nothing more than "official curiosity." See, e.g., *Arthur Young & Co.*, 584 F.2d at 1023-24 & n. 45. In the instant matter, the Securities Division is investigating allegations of securities fraud, and such an inquiry falls directly within its mandate as set forth in the Securities Act.

a. The Securities Division's inquiry is not preempted.

Respondents raise the claim, on behalf of Certus, which is not a party to this action, that the Securities Division's investigation is preempted by the National Bank Act of 1864, 12 U.S.C.A. § 484 (West 2013) (the "NBA"), and the regulations promulgated thereunder by the Office of the Comptroller of the Currency (the "OCC"). The Respondents cite *Cuomo v. Clearing House Ass'n, LLC*, 557 U.S. 519 (2009), for this presumption. In *Cuomo*, the Attorney General of New York sought, pursuant to the State of New York's inherent powers of visitation and without the

317 #6

use of a subpoena,² information related to *bank lending practices* from a number of nationally chartered banks. Following a suit by the OCC and others, the Supreme Court determined that New York's visitation powers over the bank were preempted by the NBA and the rules promulgated thereunder. Those facts are entirely inapplicable in this action. Further, it is important to note that Certus itself has not raised any objection to the Securities Division's exercise of investigatory jurisdiction, and that ICS, while closely related to Certus, cannot assert any claims on Certus' behalf. In this case, the Securities Division, pursuant to the investigative authority conferred by the General Assembly and granted to it by the Commissioner, is conducting a lawful investigation in order to determine whether or not the Securities Act has been violated. The Securities Division is not seeking to investigate a bank *qua* bank, and therefore is not attempting to exercise the sovereign power of visitation over Certus. It has long been recognized, and the Court agrees here, that such investigations are not preempted by the NBA. *Peoples Bank of Danville v. Williams*, 449 F.Supp. 254, 260 (4th Cir. 1978) (an "SEC inquiry is not a 'visitorial power' within the understanding" of the NBA); *see also Bank of America Nat. Trust & Savings Ass'n v. Douglas*, 70 App.D.C. 221, 227 (D.C. Cir.

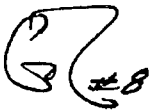
² At the time of the enactment of the National Bank Act in 1864, the term visitation "was accordingly understood as the act of examining into the affairs of a corporation by the government itself. Lower courts understood visitation to mean the act of a superior or superintending officer, who visits a corporation to examine into its manner of conducting business, and enforce an observance of its laws and regulations. A State was the visitor of all companies incorporated in the State, simply by virtue of the State's role as sovereign." *Cuomo*, at 526 (2009) (Scalia, J.) (citations and internal quotation marks omitted).

62
#7

1939) (SEC subpoena to a bank as part of a securities investigation was not an "exercise of visitorial powers"); *Cuomo*, at 528-29.

b. ICS is subject to the Securities Division's investigatory powers.

Additionally, ICS alleges that the Securities Division has no jurisdiction over it or Certus under the assumption that Certus did not offer or sell securities in South Carolina. However, it is well-settled that the issue of subject matter jurisdiction is "not to be decided in subpoena enforcement actions," as administrative agencies like the Securities Division, "must be free without undue interference or delay to conduct an investigation which will adequately develop a factual basis for a determination as to whether particular activities come within...[its]...regulatory authority." *SEC v. Brigadoon Scotch Distributing Co.*, 480 F.2d 1047, 1053-54 (2nd Cir. 1973); *see also Gardner v. Lefkowitz*, 412 N.Y.S.2d 740, 745 (N.Y.Sup.Ct. 1978) (holding that New York's securities act permits the Attorney General to investigate in order to determine whether or not "the subject being investigated comes within the scope of his authority"). Indeed, "it has long been established that the question of inclusion of a particular person or entity within the coverage of a regulatory statute is generally for initial determination by an agency, subject to review on direct appeal, rather than for a...court whose jurisdiction is invoked to enforce an administrative subpoena." *SEC v. Wall Street Transcript Corp.*, 422 F.2d 1371, 1375 (2nd Cir. 1970), *cert. denied*, 398 U.S. 958 (1970) (citing, *inter alia*, *Powell*, 379 U.S. at 57-58; *FTC v. Crafts*, 355 U.S. 9 (1957); *Endicott*



Johnson Corp. v. Perkins, 317 U.S. 501, 517 (1943) (not even a showing of probable coverage can be required in a subpoena enforcement action)); *see also F.T.C. v. Texaco*, 555 F.2d at 879 ("As a general rule, substantive issues which may be raised in defense against an administrative complaint are premature in an enforcement proceeding."); *SEC v. Vacuum Can Co.*, 157 F.2d 530, 532 (7th Cir. 1946) (citations omitted) ("The purpose of a subpoena is to gather evidence, not prove a pending charge."); 1 Davis, *Administrative Law*, § 4.1 (3rd ed. 1994). Furthermore, it would utterly frustrate the law enforcement purpose of administrative agency investigations to limit an administrative agency's subpoena power to entities within that agency's regulatory jurisdiction, and such a limitation has been universally rejected. *See* 27 A.L.R 1208 (1953); *Freeman v. Fidelity Trust Co.*, 248 F.Supp 487, 492 (E.D. Penn. 1965) ("It is by now abundantly clear that for an administrative agency to exercise subpoena power in aid of its investigatory power, it need not show that it has jurisdiction over the witness subpoenaed."); *United States v. Art Metal-U.S.A., Inc.*, 484 F. Supp. 884, 887 (D.N.J. 1980); *Sandsend Financial Consultants, Ltd. v. Federal Home Loan Bank Board*, 878 F.2d 875 (5th Cir. 1989); *McGarry v. SEC*, 147 F.2d (10th Cir. 1945); *State ex rel. R.R. & Warehouse Commission v. Mees*, 49 N.W.2d 386, 392 (Minn. 1951) (witness subpoenaed by administrative agency need not be under direct regulatory authority of the agency so long as "the information sought is relevant and material to the investigation"). Additionally, the Uniform Securities Act has been interpreted to confer investigative subpoena power over out-of-state entities, which do not come

under the Securities Commissioner's regulatory authority. *Raymond Lee Organization, Inc. v. Securities Commission*, 543 P.2d 75, (Colo.App. 1975), *rev'd on other grounds*, 556 P.2d 1209 (Colo. 1976) (stating that "[s]uch an investigative procedure is permitted by the holding in *Natural Gas Pipeline v. Slattery*, 302 U.S. 300 [(1937)]."). Accordingly, the Court finds that the Subpoena and the information sought by it are within the Securities Division's delegated authority under the Securities Act.

ii. The information sought is reasonably relevant.

Like the issue of coverage, the issue of relevance is a threshold matter to be determined by the Securities Division. *See, e.g., Arthur Young & Co.*, 584 F.2d at 1031 (the scope of the SEC's subpoena power is "co-extensive" with its investigative power, and that the SEC is given the sole discretion to determine what is relevant to an investigation.). In the context of an administrative subpoena, relevance must be construed broadly as "law enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest." *Morton Salt Co.*, 338 U.S. at 652. Indeed, courts "defer to the agency's appraisal of relevancy, which must be accepted so long as it is not obviously wrong." *RNR Enterprises*, 122 F.3d at 97 (citations and internal quotation marks omitted). To that end, information is relevant to an investigation when it is "not plainly incompetent or irrelevant to any legal purpose." *Endicott Johnson*, 317 U.S. at 509. In the present case, the Securities Division has determined that the information and documents sought from ICS are relevant to its investigation. For instance, the

GA 10

billing records, the contracts related to work to be performed on behalf of Certus, and a list of the employees of ICS are each relevant to determine ICS' relationship with Certus. The Securities Division believes these documents, collectively, to be important to the process of determining whether or not Certus or any of its employees committed violations of the Securities Act. When an inquiry such as this is legally authorized and the information sought is relevant to the inquiry, the burden of showing unreasonableness shifts to the Respondent, and such a burden "is not easily met." *Brigadoon Scotch*, 480 F.2d at 1056. ICS has failed to meet that burden as it has not shown the records sought by the Subpoena to be incompetent or irrelevant to any legal purpose. *Endicott Johnson, supra*.

iv. The Subpoena is not too indefinite.

In addition to the factors discussed above, in order for an administrative subpoena to be enforced, it is also necessary that the information sought by it must not be too indefinite. *Morton Salt*, 338 U.S. at 650. Here, the Court finds that the Attachment to the Subpoena clearly sets forth the nature of the documents sought and the timeframe for ICS to produce those documents, thus, Subpoena itself is not too indefinite.



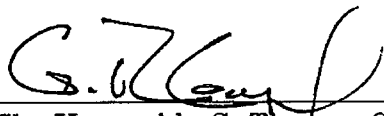
III. CONCLUSION

Having considered the arguments of both parties and reviewed the extensive case law on the subject of the enforcement of administrative subpoenas, the Court finds that the Subpoena, which was validly issued and served, meets the well-established requirements for judicial enforcement. Accordingly, it is hereby,

ORDERED that the Commissioner's Application for an Order Requiring Compliance with a Subpoena is **GRANTED** and Integrated Capital Strategies, LLC shall fully comply the Subpoena served upon it by the Securities Division by producing to the Securities Division any and all documents within its possession, custody, or control responsive to the Subpoena no later than ten days from the issuance of this Order; and

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes necessary and appropriate to insure compliance with this Order.

IT IS SO ORDERED.


The Honorable G. Thomas Cooper, Jr.
Circuit Court Judge

This 25 day of June, 2014.
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2014CP4003389**

Alan Wilson

Intergrated Capital Strategies LLC

Securities Commissioner of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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

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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
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.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 5 August 2014 to attorneys of record or to parties (when appearing pro se) as follows.

Ian Parks Weschler

Margaret Nicole Fox

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Alan Wilson, Securities Commissioner of)
South Carolina,)
)
Plaintiff,)
)
v.)
)
Integrated Capital Strategies, LLC,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2014-CP-40-3389

**ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION**

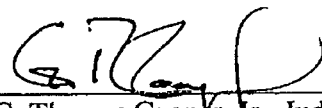
2014 AUG - 11 11:55 AM
CLERK OF COURT
FIFTH JUDICIAL CIRCUIT

This matter comes before the Court by way of Defendant Integrated Capital Strategies, LLC's Motion to Reconsider pursuant to Rule 59(e), SCRCF. Specifically, Defendant asks this Court to reconsider its Order Requiring Compliance with a Subpoena filed July 1, 2014.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Defendant's Motion under Rule 59(e), SCRCF to Reconsider this Court's Order filed July 1, 2014. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
July 31, 2014


G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

State of South Carolina

Court of Common Pleas

County of Richland

2014-CP-40-03389

Alan Wilson, Securities
Commissioner of S.C.

:
:
:
:
:
:

-VS-

TRANSCRIPT OF RECORD

Integrated Capital Strategies,
LLC

June 10, 2014
Columbia, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Jr., Judge.

A P P E A R A N C E S:

Ian P. Weschler, Esquire
Attorney for the Plaintiff

James M. Griffin, Esquire
Attorney for the Defendant

Daphne D. Helms
Circuit Court Reporter

1 **The Court:** Yes, sir.

2 **Mr. Griffin:** What this is is an issue between my client
3 who is a company called Integrated Capital Strategies, Inc.
4 The Attorney General's office securities commission served an
5 administrative subpoena on them. We objected and moved to
6 compel, if you will, and the hearing is on that matter. I've
7 got a copy of our response and their motion.

8 **The Court:** I have nothing.

9 **Mr. Weschler:** Yes, sir. I think what---

10 **Mr. Griffin:** If you want to take a break and read it,
11 we'll come back---

12 **The Court:** Yeah.

13 **Mr. Griffin:** ---next month. We'll be happy to...

14 **The Court:** No, no. Unlike another judge who professes
15 to be a speed reader, I'm at least a quick reader.

16 **Mr. Griffin:** I thought all the judges from Kershaw
17 County were speed readers.

18 **The Court:** Only one.

19 **Mr. Griffin:** I've heard of that. I've heard that.

20 (Pause in proceedings.)

21 **The Court:** We've got nothing until 11:00, so I'll take
22 a five-minute break and refill my coffee cup. Be with you in
23 a minute.

24 (Whereupon, a short break was taken.)

25 **The Court:** Thank you. Who will be arguing for the

1 Attorney General?

2 **Mr. Weschler:** That would be me, Your Honor. May it
3 please the Court? My name is Ian Weschler with the
4 securities division.

5 **The Court:** All right.

6 **Mr. Weschler:** And would you like me to begin?

7 **The Court:** Sure.

8 **Mr. Weschler:** All right. Judge, we think this is a
9 pretty easy case and it deals just with the enforcement of---

10 **The Court:** Why are we here if it's such an easy case?

11 **Mr. Weschler:** Well, I've got a little background for
12 you. We, the securities division, is investigating the
13 allegations of securities fraud related to securities issued
14 by CertusBank which is a bank headquartered in Greenville,
15 and as part of the investigation we validly issued a subpoena
16 to Mr. Griffin's client, Integrated Capital Strategies, which
17 is a Charlotte-based consultancy that performs some sort of
18 consulting services or extensive consulting services for
19 service. It was -- is, in fact, owned by former principals
20 of Certus and received a great deal of money from Certus, and
21 representations were made to investors related to what I.C.S.
22 -- whatever these services were that I.C.S. was performing
23 for Certus.

24 So, as part of our investigation, we issued a subpoena
25 to I.C.S. to which they objected and which is why we are here

1 today, Judge, to enforce that subpoena.

2 **The Court:** All right.

3 **Mr. Weschler:** All right. Having said that, Judge, the
4 standards for enforcing administrative subpoenas are very
5 clearly set forth throughout 65 years of case law at this
6 point, and I think they're succinctly summarized in a case
7 called United States versus Morton Salt. For me that's easy
8 to remember. I see Morton Salt on the table all the time.

9 But in that case there are three things that need to be
10 met, and once they are met, a court enforces an
11 administrative subpoena. First of all, the inquiry must be
12 within the grant of authority to the administrative agency.
13 Secondly, the request must be relevant to that inquiry and,
14 third, the request must not be too in-depth.

15 So beginning with the -- within the authority of the
16 agency, as the securities division we are empowered to
17 investigate allegations of securities fraud. We enforce the
18 South Carolina Uniform Securities Act. We try to detect,
19 prevent, and punish those who commit fraud.

20 In this case we are investigating fraud related --
21 allegations of fraud related to CertusBank, and as you'll
22 notice, Judge, CertusBank is not a party here. So any
23 objections to our jurisdiction to investigate CertusBank
24 would properly be made by CertusBank itself, but they're not
25 here and, in fact, they have been cooperating thus far with

1 our inquiry. In fact, I have a couple of communications from
2 them, if the Court would like to see them, that -- it, at
3 least, events (verbatim) I think their intent to thus far
4 cooperate with our investigation.

5 **The Court:** Have you shown those to Mr. Griffin?

6 (Mr. Weschler shows the documents to Mr. Griffin.)

7 **Mr. Weschler:** If I may approach, Your Honor? The bank
8 requested, -- well, Judge, the bank requested that we, if we
9 filed those, file them under seal as we obtained them during
10 our investigation. They're not public records. And so if
11 the Court would like me to file them, I would ask that I be
12 able to do so under seal.

13 **The Court:** Any objection?

14 **Mr. Griffin:** No, Your Honor.

15 **The Court:** All right. That's fine, Mr. Weschler.

16 **Mr. Weschler:** All right. And if I may, Judge, I'll
17 return to my three points about the enforcement of
18 administrative subpoena. As for the issue of jurisdiction
19 over an entity, that is a threshold matter determined by an
20 agency which is addressed on direct appeal rather than in a
21 subpoena enforcement action. I think there's any number of
22 Supreme Court cases that---

23 **The Court:** Say that again.

24 **Mr. Weschler:** Well, when an administrative agency
25 issues a subpoena for something determined by the agency to

1 be relevant, the issue of the jurisdiction of the agency to
2 seek those documents is determined not during the subpoena
3 enforcement action but on direct appeal after the agency
4 takes an action, should it choose to.

5 **The Court:** So you can subpoena records from a suspected
6 securities fraud in Montana.

7 **Mr. Weschler:** As long as they did business or there is
8 enough of a tangential relationship to South Carolina. Of
9 course, it would have to be that. I mean, if I wanted to
10 know what was going on in Alaska, Judge, I don't think I
11 would have jurisdiction to do that unless it dealt with South
12 Carolina.

13 **The Court:** That's correct.

14 **Mr. Weschler:** So -- and that, of course, is the
15 distinction between administrative subpoenas for the federal
16 government and for a state agency, while the federal case law
17 is very clear and it's used in the securities act and its
18 reporters' comments points out that the standards for
19 enforcing a subpoena are well established. Of course, we
20 don't think that we have some power to subpoena anything and
21 everything under the sun that never touched the State of
22 South Carolina, and I don't think that's the case here,
23 Judge.

24 **The Court:** Well, what is the nexus?

25 **Mr. Weschler:** The nexus. Well -- and that's actually

1 the -- the second point, Judge, is relevance and, again, it's
2 a threshold matter determined by the securities division. If
3 it's relevant to our investigation and unless it's plainly
4 irrelevant or incompetent, then the courts in the past and
5 particularly in Morton Salt and the other U.S. Supreme Court
6 cases interpreting the administrative subpoena law for
7 enforcement -- they all say that it is up to the agency to
8 determine what's relevant unless it's plainly incompetent.

9 And in this case representations were made to investors
10 about the nature of I.C.S. I.C.S. was controlled by the
11 principals of Certus who were terminated by Certus and---

12 **The Court:** These are your -- the source of your
13 information?

14 **Mr. Weschler:** The source of our information and
15 complaints by investors, Judge. There are media reports.
16 We've talked to the bank.

17 **The Court:** What bank?

18 **Mr. Weschler:** CertusBank.

19 **The Court:** Go ahead.

20 **Mr. Weschler:** And so I would -- I would submit, Judge,
21 that we have ample reason to begin an investigation.

22 **The Court:** Where are these investors?

23 **Mr. Weschler:** There are investors in South Carolina and
24 investors outside of South Carolina. There are -- of course,
25 because Certus is headquartered in Greenville as well, any

1 communications that it would be making with investors within
2 or without the state would come from Greenville which would
3 put them within the purview of our regulatory authority
4 because, of course, when the General Assembly passed the
5 securities act, they didn't pass it so that South Carolina
6 could be a haven for securities fraud.

7 **The Court:** Well, this -- the subpoena is not issued for
8 service.

9 **Mr. Weschler:** That's correct, Judge. It is issued to
10 I.C.S. to determine whether or not what Certus's owner or
11 principals who were the owners of I.C.S. told investors was,
12 in fact, accurate. Investors were told, for instance, that
13 I.C.S.---

14 **The Court:** Investors in what?

15 **Mr. Weschler:** Investors in CertusBank. I.C.S. itself
16 doesn't have South Carolina investors, is not an issuer of
17 securities, but is tied inextricably to representations that
18 were made to investors by Certus and, of course, it is or was
19 - I think it still is - controlled by at least three
20 principals of Cert -- former principals of Certus, the
21 founders of Certus who were fired by the Certus board in
22 April.

23 **The Court:** All right.

24 **Mr. Weschler:** All right. And, of course, the third
25 factor, Judge, is that the information sought be not too

1 indefinite, sought by the subpoena. In this case our
2 attachment to the subpoena sets forth clearly, we believe,
3 that -- well, what information we're seeking, of course.
4 Should I.C.S. require any sort of clarification, we would, of
5 course, be happy to provide it.

6 And in sum, Judge, this isn't a trial of the securities
7 commissioners' investigative jurisdiction. Rather -- and, of
8 course, it's not a trial of our investigative jurisdiction of
9 a party that is not here today, CertusBank. Rather, this is
10 an administrative subpoena enforcement action. It -- issues
11 relating to jurisdiction are best, of course -- and,
12 according to the case law as set forth in our brief, those
13 issues are dealt with should we decide to take action.

14 In other words, we are looking around in something
15 related to securities in order to determine whether or not
16 the law was broken which is within the purview of the power
17 the securities act grants us and, of course, that is remedial
18 legislation. The securities act's provisions need to be read
19 broadly to effectuate the intent of the legislature which was
20 to prevent securities fraud from being committed within this
21 state. And that's all I have, Your Honor.

22 **The Court:** Mr. Griffin?

23 **Mr. Griffin:** Yes, Your Honor. I think Your Honor hit
24 the nail on the head with regard to: It's a territorial
25 jurisdiction issue and what -- and it's also a subject matter

1 jurisdiction issue. And so that distinguishes the federal
2 S.E.C. regulatory cases that the State relies upon here.

3 And just a factual predicate, Your Honor -- I think
4 you've read the brief, but I.C.S. is a Charlotte member-
5 managed L.L.C. It was formed by former executives of Bank of
6 America, Wachovia, and other high-level officers in those
7 national banks to acquire troubled assets from failed banking
8 institutions around the country. During that process, they
9 went to Wall Street hedge funds to raise money and -- and it
10 became apparent that the opportunity for these African-
11 Americans was to get a shelf charter, a national bank with no
12 assets, which was very -- very rarely happens.. And it took a
13 lot of doing, but it happened in this case.

14 And then to hand in glove, they raised a commitment of
15 \$500 million from hedge funds from Wall Street all in New
16 York pursuant to a private placement memorandum including
17 from John Paulson's billion-dollar hedge fund and others that
18 -- and so the capital that was used to create CertusBank
19 holdings was raised through this private placement
20 memorandum. I have a copy of it here, Your Honor, if you'd
21 like to see it.

22 We filed it under seal, but that private placement
23 memorandum says that the State of New York, Southern District
24 of New York federal courts have exclusive jurisdiction over
25 any disputes under the agreement and that the -- and that the

1 parties agree that the law of the State of New York applies.
2 And all -- and this is before South Carolina is even a
3 thought.

4 So they have a national shelf charter bank. They raised
5 equity through a private placement memorandum. They formed
6 Certus Holdings which was originally Blue Ridge Holdings
7 Company in North Carolina. They relocated it to Atlanta,
8 Georgia. It's a Delaware corporation. And they started
9 buying up banks. One bank they bought up was in South
10 Carolina. They then in South Carolina moved their
11 headquarters here.

12 So they're -- the CertusBank was headquartered in
13 Greenville, South Carolina, but it is -- it's wholly owned by
14 CertusBank Holdings which is an Atlanta, Georgia,
15 headquartered company, incorporated in Delaware, who have
16 nine investors. And according to the federal banking
17 approval process from the office of -- from the comptroller
18 of currency and the treasurer, there were restrictions on
19 these investors to act in concert with each other because
20 there was concern about having a national bank owned by so
21 few people, and so they cannot act in concert with them.

22 But what -- and in sort of jumping ahead -- and what
23 they've done, instead of acting in concert with them, you
24 know, one or more acting in concert with the Attorney General
25 of South Carolina to do what they cannot do under their

1 agreements with the F.D.I.C. and O.C.C. -- and so that's sort
2 of the concern here and what we are pushing back about and
3 that there's no nexus to South Carolina securities in this
4 case, period.

5 The securities that they're talking about -- I don't
6 know who these 29 people are that they've listed. We have no
7 idea who they are, if they were former shareholders of some
8 acquired bank, if there were some employees who had options
9 that we had vested. We don't know who they are, but what we
10 do know is that the investors in Certus Holdings are all out
11 of state. They made their investments before there was any
12 South Carolina connection whatsoever, and they say, well,
13 there are some communications originating in South Carolina
14 because CertusBank is located now in Greenville, and so
15 they're communicating with shareholders.

16 But that doesn't give the -- that would give the
17 Attorney General's office jurisdiction over any Fortune 500
18 company that has an office in South Carolina to investigate
19 securities fraud. It's not that broad and it's territorial
20 and it's subject matter. And so it's jurisdiction to
21 investigate, you know, fraud or whatever in connection with
22 offer or sale of securities. There was no offer or sale of
23 securities in South Carolina by CertusBank Holdings,
24 CertusBank, and clearly not I.C.S.

25 Now, they say that CertusBank is cooperating. Well,

1 then get the information from CertusBank that---

2 **The Court:** Well...

3 **Mr. Griffin:** But I.C.S. does not -- is not subject to
4 any jurisdiction.

5 **The Court:** Did I.C.S. sell anything?

6 **Mr. Griffin:** I.C.S. is not selling -- they're a service
7 entity. They don't sell anything. They don't sell anything
8 in South Carolina. They've never sold any stock. They had
9 some investors early on who were paid out in 2007 and '8, and
10 I've given that information to the Attorney General's office.

11 And, Your Honor, I'd like to hand up -- and they've seen
12 this letter.

13 **Mr. Weschler:** The O.C.C. one?

14 **Mr. Griffin:** Yeah. And it's a letter from the O.C.C.
15 dated - that's the Office of Comptroller of Currency - dated
16 April 30th, 2014, to I.C.S. and they're saying: I.C.S., you
17 are an affiliate of CertusBank because you provide services
18 to them, just what they're asking about. You know, what
19 services are they providing?

20 And O.C.C. says: Freeze all documents. Don't destroy
21 anything. And we're going to come inspect what you've done,
22 just what the Attorney General wants to do, in concert with
23 the investors who are prohibited from acting in concert.

24 And, Your Honor, I'd like to hand this up to the Court.

25 **The Court:** All right.

1 **Mr. Griffin:** And so, Your Honor, it really is -- you
2 know, to the extent there are shares, we cite the exemption
3 under the South Carolina Securities Act that bank stock is
4 exempted under the act. It's got -- there's no basis to
5 investigate here and, again, as I mentioned, it is an end run
6 around the -- around their ability to sort of investigate the
7 bank, but if the bank wants to give them all the documents in
8 the world, have -- I mean, the bank knows what -- the bank's
9 got the information, but my client is an out-of-state company
10 and with no shareholders in South Carolina and has -- and is
11 not subject to the jurisdiction of the Attorney General
12 because there's no offer or sale of security.

13 The -- the -- and lastly, Your Honor, we did object on
14 the grounds of service of process. They didn't comply with
15 any of the -- well, they didn't comply with the South
16 Carolina Long-Arm Statute, and in their brief they say they
17 complied with -- they're relying upon 35-1-611 which provides
18 for service of process for companies who are -- who registers
19 to sell securities of South Carolina, that by doing that it's
20 sort of like an insurance commissioner, that they appoint the
21 securities commissioner as their agent for service of
22 process.

23 I.C.S. never registered to sell any securities in South
24 Carolina. So, therefore, they have not appointed the
25 securities commissioner to be its agent of service of

1 process.

2 Secondly, the statute also says if an entity, including
3 a nonresident of South Carolina, engages in an act or
4 practice or course of conduct prohibited by Title 35, then by
5 doing the act -- by doing the unlawful act that they have,
6 therefore, appointed the securities commission as their
7 agent.

8 In the cover letter for the subpoena which was sent -
9 just Federal Express, it wasn't certified or any other formal
10 service as the law requires - they say that, you know, we're
11 not accused of doing anything. We're not -- you shouldn't
12 take this as any accusation that you've done anything. We're
13 just sticking our head under the tent. I mean, that's
14 essentially what the cover letter says.

15 And so they've not -- they've not properly served
16 I.C.S., and I understand that's a technical defense. We
17 think substantive -- well, we think that they cannot meet
18 that hurdle. So by not complying with the subpoena -- I
19 mean, if we weren't required -- we did more than what we were
20 required to. We've given them the information to show that
21 I.C.S. had no investors in South Carolina and I.C.S. -- what
22 limited investors we had, we paid off.

23 And another thing Your Honor needs to know is the
24 principal -- the members of I.C.S., not all of them but a
25 number of them, were also officers of CertusBank, on the

1 board of CertusBank, still on the board of CertusBank, and
2 those are the folks who were fired without notice from
3 CertusBank.

4 The Attorney General has issued a subpoena to those
5 folks, those members of CertusBank who are also members of
6 I.C.S. who live in South Carolina, who work in South
7 Carolina. Those same folks objected to the subpoena as bank
8 officers. They're saying the bank's cooperating, but they
9 served those persons with the same subpoena. They filed the
10 same objection; they mirrored my letter.

11 They didn't move to compel the officers of the bank
12 because, you know, what they're doing is trying to make an
13 end run around what they know they can't come into court and
14 get an order from this Court compelling officers of a bank to
15 come give testimony about bank practices, and that's really
16 what you're talking about here is bank practices.

17 We cited the Cuomo (phonetic) case out of New York.
18 Well, it's a U.S. Supreme Court case that says under the
19 National Banking Act that's broad preemption of states
20 attempting to regulate bank practices, and that's exactly
21 what they're after here is what services were provided by
22 I.C.S. to CertusBank, and those are bank practices issues.

23 The O.C.C. is looking into that, and under the Cuomo
24 case, the U.S. Supreme Court case says the State's got no
25 business examining bank practices, and that's really what the

1 effort here by the Attorney General is to do. And so we
2 object and we don't think -- and we ask the Court not to
3 compel I.C.S. to respond to this subpoena.

4 **The Court:** Mr. Weschler?

5 **Mr. Weschler:** A couple of points if I may, Judge. Mr.
6 Griffin mentioned peeking our head in the tent. That is, in
7 fact, the nature of administrative law. The idea of
8 administrative agencies is that they are permitted to look
9 around to see whether or not the law is being violated.

10 Now, here we have numerous instances that the law may
11 have been violated. For instance, investors were told that
12 I.C.S. was not a profit-generating enterprise, yet we've also
13 seen suggestions that, in fact, I.C.S. did generate a profit.

14 Nine million dollars of Certus money went to I.C.S.
15 Nine million dollars of investor money went to I.C.S. because
16 all the bank's money was investor money to start with, and
17 we'd like to know whether or not I.C.S. did with that money
18 what it said it did and accordingly then what Certus's now
19 fired executives told the investors that the money was going
20 to do.

21 Secondly, as to the jurisdictional issue or the
22 subpoena, excuse me, the subpoena service issue: 35-1-611
23 does, as Mr. Griffin says, provide methods sort of like an
24 out-of-state insurance -- insurance statute that we can serve
25 the commissioner if someone violates the act. However, it

1 also provides that service pursuant to that subsection may be
2 made in any proceeding before the securities commissioner to
3 which he is a party.

4 And we would contend, Judge, that our investigation
5 satisfies that element of the service of process, and
6 accordingly we over-nighted the subpoena to I.C.S.'s
7 headquarters directed to its records custodian as we always
8 do when we subpoena records. It was signed for. Mr. Griffin
9 is here. They got the subpoena, and nonetheless while we're
10 happy -- I think that it complies with the requirements of
11 611, particularly 611(d) and (c). Nonetheless, the subpoena
12 would be a valid subpoena under Rule 4 of the Rules of Civil
13 Procedure and Rule 45, but those, of course, are for civil
14 actions, and this is an administrative action.

15 And again, Judge, I have to stress: We're not here to
16 try Certus. We're not here to try allegations about Certus.
17 It is sufficient for the case law for the enforcement of
18 administrative subpoena that we have an inquiry into Certus
19 which, as an issue of securities, falls within our
20 jurisdiction to look and to determine whether or not the law
21 was violated.

22 We've got lots of suggestions that it may well have been
23 violated by Certus, by people at Certus. We're not quite
24 there yet, Judge. That's what we have to do. We have to
25 investigate and find out and, of course, that's why the case

1 law over the years has allowed relatively broad investigative
2 jurisdiction for administrative agencies.

3 Of course, our jurisdiction to take action is far more
4 narrow than our jurisdiction to look. We can send a subpoena
5 to someone who is not an entity regulated by us. For
6 instance, we had a case where investor money was used to
7 purchase something from Tiffany's. We didn't know what it
8 was. We sent a subpoena to Tiffany's. They told us that it
9 was a diamond ring.

10 So that's because -- of course, Tiffany had no int --
11 or, I guess, objection to the subpoena because it was
12 relevant to our investigation. It wasn't, of course -- we
13 weren't investigating Tiffany's for securities fraud. We
14 were investigating to find out what investor money went to,
15 and that is precisely the case here, Judge, and that's why we
16 suggest and humbly submit that the three factors of the
17 Morton Salt test here are met.

18 The subpoena was within our grant of authority. The
19 information sought is relevant to our investigation, and it
20 was not too indefinite and, therefore, Judge, we respectfully
21 ask that the Court sign the order attached as Exhibit C.
22 enforcing compliance with our subpoena.

23 **The Court:** All right. Well, I need a little more
24 background than that. Let me ask you -- just each of you to
25 send me a proposed order within 10 days with your supporting

1 authorities. All right? Thank you very much.

2 **Mr. Griffin:** Thank you, Your Honor.

3 **Mr. Weschler:** Thank you, Judge.

4 (Whereupon, the proceedings were concluded. There were
5 no exhibits introduced.)
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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Daphne D. Helms, court reporter

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Alan Wilson, Securities Commissioner of
South Carolina

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40-3389

MOTION AND ORDER INFORMATION

Plaintiff,

vs.

Integrated Capital Strategies, LLC

Defendant.

FORM AND COVERSHEET

Plaintiff's Attorney: Ian P. Weschler, Bar No. _____ Address: 1000 Assembly Street Phone: 803-734-9916 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: James M. Griffin, Bar No. 9995 Address: 1513 Hampton Street Phone: 803-771-8000 Fax 803-733-3541 E-mail: jmg@lbglegal.com Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion for Reconsideration Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/ ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☒ Defendant _____ 7-10-2014 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT \$ _____ ☐ EXEMPT (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Alan Wilson, Securities Commissioner of
South Carolina,

Applicant,

vs.

Integrated Capital Strategies, LLC,

Respondent

Civil Action No.: 2014-CP-40-3389

MOTION FOR RECONSIDERATION

RICHLAND COUNTY
CLERK
2014 JUL 10 11:08:55
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Respondent, Integrated Capital Strategies, LLC (hereinafter "ICS") hereby moves for reconsideration of this Court's Order entered July 1, 2014. In support of this motion, ICS states as follows.

1) During the hearing held in this matter, Counsel for the Commissioner presented the Court with a list of alleged stockholders of CertusBank who were residents of the State of South Carolina. Counsel for the Commissioner had never disclosed this document to ICS and submitted this document to the Court for an in camera inspection and to be filed under seal. Following the hearing, Counsel for the Commissioner agreed to provide ICS a copy of this document so that it could verify whether the information contained therein was true and correct. However, following this conversation, Counsel for the Commissioner indicated that the Commissioner refused to produce this document and therefore ICS has not had an opportunity to examine the information relied upon in this Court's Order.

As a result, ICS requests the Court strike from its consideration any claim that there are residents from the State of South Carolina who are shareholders of CertusBank and therefore reconsider its Order.

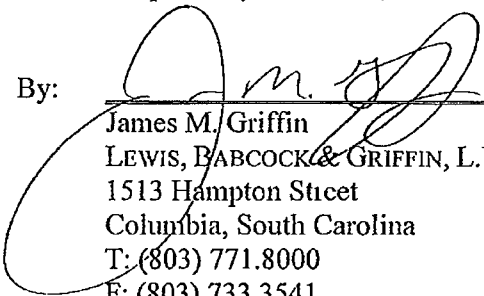
2) In addition, this Court's Order fails to address and/or overlooks the following facts and legal arguments presented by ICS:

- a) The Commissioner does not have the authority under South Carolina law to investigate banks or banking practices;
- b) The Commissioner's authority under the South Carolina Uniform Securities Act is limited to the sale of securities in this State, regulating broker dealers and investment advisers who transact business in this State and the anti-fraud provisions relating to the offer, sale, or purchase of a security within this State;
- c) Securities such as CertusBank's representing an interest in or obligation of a banking institution organized under the laws of the United States or, a member of bank of Federal Reserve system are exempted from the South Carolina Uniform Securities Act;
- d) Neither CertusBank, CertusBank Holdings or ICS has ever offered for sale or sold any securities in South Carolina

Based upon the foregoing, ICS requests that the Court reconsider its Order requiring compliance with a subpoena and vacate the Order in light of the facts and matters raised herein.

Respectfully submitted,

By:



James M. Griffin
LEWIS, BABCOCK & GRIFFIN, L.L.P.
1513 Hampton Street
Columbia, South Carolina
T: (803) 771.8000
F: (803) 733.3541
jmg@lbglegal.com

Attorneys for ICS

July ¹⁰~~9~~, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Alan Wilson, Securities Commissioner of
South Carolina,

Applicant,

vs.

Integrated Capital Strategies, LLC,

Respondent.

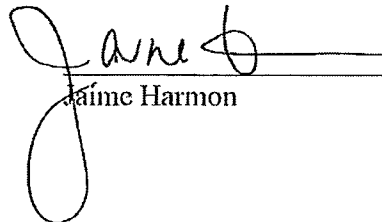
Civil Action No.: 2014-CP-40-33899

CERTIFICATE OF SERVICE

RICHLAND COUNTY
CLERK OF COURT
JANETTE W. CERRA
C.C.P. # 33899
2014 JUL 10 AM 8:55

I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin L.L.P, attorneys for the Respondent do hereby certify that I have served a copy of the foregoing **Motion for Reconsideration** in connection with the above-referenced case by hand delivering a copy of the same, to the following addresses:

Ian P. Weschler
Assistant Attorney General
Securities Division
1000 Assembly Street, Room 519
Columbia, SC 29201


Jaime Harmon

Columbia, South Carolina
July 10, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-CP-40-3389

Alan Wilson, Securities Commissioner
Of South Carolina.,

Respondent,

v.

Integrated Capital Strategies, LLC,

Appellant.

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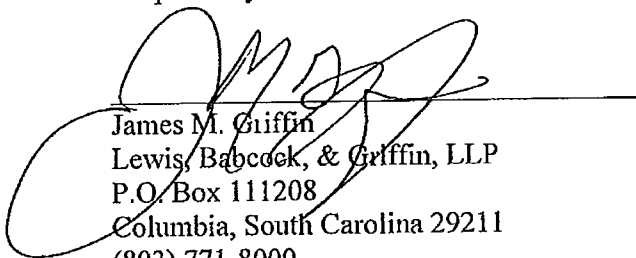
JUL 30 2014

SC Court of Appeals

NOTICE OF APPEAL

Integrated Capital Strategies, LLC appeals the Judgment entered July 1, 2014 upon the Order of the Honorable G. Thomas Cooper, Jr. dated Jun 25, 2014 granting the Respondents' Application for an Order Requiring Compliance with a Subpoena. A copy of the Order is attached.

Respectfully submitted,



James M. Griffin
Lewis, Babcock, & Griffin, LLP
P.O. Box 111208
Columbia, South Carolina 29211
(803) 771-8000
Attorney for the Appellants

Columbia, South Carolina
July 30, 2014

Other Counsel of Record:
Ian Parks Weschler, Assistant Attorney General Securities Division

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2014CP4003389

Alan Willson

Intergrated Capital Strategies LLC

Securities Commissioner of South Carolina
PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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. 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:

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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

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.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 1 July 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Ian Parks Weschler

Margaret Nicole Fox

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeannette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

ALAN WILSON, SECURITIES
COMMISSIONER OF SOUTH
CAROLINA,

Applicant,

v.

INTEGRATED CAPITAL
STRATEGIES, LLC,

Respondent.

Case No. 2014-CP-400-3389

RECEIVED

JUL 30 2014

SC Court of Appeals

ORDER REQUIRING
COMPLIANCE WITH A SUBPOENA

Hearing Date: June 10, 2014
Presiding Judge: The Honorable G. Thomas Cooper, Jr.
On Behalf of the Respondent: James M. Griffin, Esq.
On Behalf of the Applicant: Ian P. Weschler, Esq.

This matter came before the Court as the result of an Application for an Order Requiring Compliance with a Subpoena filed by Alan Wilson, Securities Commissioner of South Carolina (the "Commissioner"). The Commissioner seeks enforcement of an administrative subpoena (the "Subpoena") issued by the Securities Division of the Office of the Attorney General of South Carolina (the "Securities Division") to Integrated Capital Strategies, LLC ("ICS") as part of an investigation under File No. 14023. For the reasons set forth below, the Court grants the Commissioner's Application and ICS is hereby ordered to comply with the Subpoena.

I. FACTUAL BACKGROUND

On April 9, 2014, the Securities Division issued the Subpoena to ICS. The Subpoena was addressed to ICS' address in Charlotte, North Carolina, as listed on

67

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the website for the North Carolina Secretary of State. The Subpoena sought various documents related to an ongoing investigation being conducted into the offer and sale of securities by Certus Holdings, Inc. and CertusBank, N.A. (collectively, "Certus") in and from South Carolina. The documents sought pursuant to the Subpoena were required to be produced by Friday, April 25, 2014. To date, ICS has declined to produce the records to the Securities Division.

ICS' managers were the founders of and, until their termination in April of 2014, employees of Certus. ICS provided extensive services to Certus both at Certus' Greenville, South Carolina headquarters and elsewhere in and outside the state. Evincing the interrelated relationship between the two companies, not only were ICS' managers executives at Certus, but ICS' records custodian is or was, herself, an employee of Certus.

On April 23, 2014, ICS' attorney contacted the Securities Division and requested an extension of time in which to examine the Subpoena and prepare a response. On Friday, May 2, 2014, representatives of the Securities Division met with ICS' attorney and reiterated the request for documents. On Tuesday, May 6, 2014, ICS formally objected to the subpoena, alleging that the Securities Division lacked jurisdiction over it. On May 23, 2014, the Commissioner applied for and was granted a Rule to Show Cause directed at ICS, and ordering both parties to appear before the Court on June 10, 2014. At the June 10, 2014 hearing, the Court heard arguments from the Commissioner and ICS. This Order follows.

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II. LAW AND ANALYSIS

A. The Court has Jurisdiction over this Action and over the Respondent.

The Court has jurisdiction over this action pursuant to Article 6 of the South Carolina Uniform Securities Act of 2005 (the "Securities Act"). As set forth the Securities Act, the mechanism for subpoena enforcement is for the Commissioner to "apply to the Richland County Court of Common Pleas...to enforce compliance." S.C. Code Ann. § 35-1-602(c) (Supp. 2013). Whereupon, the Court may, *inter alia*, "order the production of records." *Id.* Accordingly, the Court is the appropriate venue in which to seek the enforcement of the Subpoena. Moreover, the Uniform Securities Act has been interpreted, consistent with due process, to permit the enforcement of subpoenas issued to foreign actors who have transacted business within the state. *See, e.g., Silverman v. Berkson*, 661 A.2d 1266 (N.J. 1995).¹ Thus, ICS is subject to the power of the Court.

ICS alleges that the Commissioner lacks jurisdiction over it because the Subpoena was not served pursuant to South Carolina's long arm statute. However, as the Subpoena was validly served pursuant to the Securities Act, ICS' assertion is unavailing. Pursuant to S.C. Code Ann. § 35-1-611 (c), the Securities Act permits the service of subpoenas to in-state and out-of-state respondents, through the mailing, return receipt requested, of the document or documents in question to a respondents' address and the execution of an affidavit of compliance. Further, S.C.

¹ Additionally, as ICS has transacted significant business in this State, it should have reasonably anticipated the possibility of being haled into a South Carolina Court. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

61 3

Code Ann. § 35-1-611(d) permits service pursuant to Section 611(c) in any proceeding to which the Commissioner is a party, as he is here. As is evidenced by the Subpoena and its accompanying Certificate of Service and Affidavit of Compliance, the Securities Division followed the requirements for proper service as set forth in the Securities Act when it served the Subpoena on ICS. Therefore, the Court finds that the subpoena was validly served upon ICS.

B. The Commissioner Has Met the Burden for Enforcement of the Subpoena.

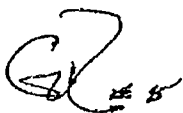
When a court's jurisdiction is invoked in a subpoena enforcement action "the scope of issues which may be litigated...must be narrow, because of the important governmental interest in the expeditious investigation of possible unlawful activity." *F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977); *see also United States v. Am. Target Adver., Inc.*, 257 F.3d 348, 351 (4th Cir. 2001) (citations and internal quotation marks omitted) ("[A] court's role in enforcing administrative subpoenas is sharply limited."); *RNR Enterprises, Inc. v. SEC*, 122 F.3d 93, 96 (2d Cir. 1997), *cert. denied sub nom, Wells v. S.E.C.*, 522 U.S. 958 (1997) (same); Louis Loss & Joel Seligman, *Fundamentals of Securities Regulation* 1490-1493 (4th Ed. 2004). To that end, the United States Supreme Court has set forth a multi-factor test for judicial enforcement of administrative subpoenas. Under this test, a court should enforce an administrative subpoena when "the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant." *United States v. Morton Salt*, 338 U.S. 632, 650

612 #4

(1950); *see also* *See v. City of Seattle*, 387 U.S. 541, 544 (1967) (*Morton Salt* analysis in the context of a state administrative subpoena); *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1023-24 (D.C. Cir. 1978); *United States v. Powell*, 379 U.S. 48, 57-58 (1964); *State ex rel. Miller v. Publishers Clearing House, Inc.*, 633 N.W.2d 732, 736 (Iowa 2001) (state court employing the same analysis in enforcing an administrative subpoena); S.C. Code Ann. § 35-1-602, cmt. 2 (citing 10 Louis Loss & Joel Seligman, *Securities Regulation* 4917-4937 (3d ed. Rev. 1996) and explaining "[t]he standards for the issuance of subpoenas have been generally established in federal and state securities laws."). The Court finds that the Subpoena meets each of these factors.

i. The Subpoena is within the Securities Division's authority.

Pursuant to S.C. Code Ann. § 35-1-602, the Commissioner and his designee, the Securities Division, are vested with broad authority to conduct investigations into possible violations of the Securities Act and to require production of evidence relevant to such investigations. In furtherance of this investigative power, S.C. Code Ann. § 35-1-601(b) permits the Commissioner or his designees to "subpoena witnesses, seek the compulsion of evidence, take evidence, require the filing of statements, and *require the production of any records that the Securities Commissioner considers relevant or material to [an] investigation*" (emphasis added). As is the case with other administrative agencies, the Securities Division's investigative power, as delegated to it by the Commissioner, is statutory and is analogous to that of a grand jury. *Morton Salt*, 338 U.S. at 642-43; *see also* *Small Bus. Admin. v. Barron*, 240 F. Supp. 434, 445 (W.D.S.C. 1965); *In re Subpoena*



Duces Tecum, 228 F.3d 341, 347 (4th Cir. 2000). Like a grand jury, an administrative agency "can investigate merely on suspicion that the law is being violated, or just because it wants assurance that it is not." *Morton Salt, supra*; *Myers v. Holshouser*, 214 S.E.2d 630, 637 (N.C.App. 1975) ("The purpose of an administrative investigation is to protect the public; therefore, the public's interest in applying more relaxed criteria for administrative investigations is greater than the regulated person's, firm's, or corporation's right to privacy."). Consistent with well-established administrative law precedents, the Securities Division is acting within the scope of its legislatively granted authority even where its investigation is based on nothing more than "official curiosity." See, e.g., *Arthur Young & Co.*, 584 F.2d at 1023-24 & n. 45. In the instant matter, the Securities Division is investigating allegations of securities fraud, and such an inquiry falls directly within its mandate as set forth in the Securities Act.

a. The Securities Division's inquiry is not preempted.

Respondents raise the claim, on behalf of Certus, which is not a party to this action, that the Securities Division's investigation is preempted by the National Bank Act of 1864, 12 U.S.C.A. § 484 (West 2013) (the "NBA"), and the regulations promulgated thereunder by the Office of the Comptroller of the Currency (the "OCC"). The Respondents cite *Cuomo v. Clearing House Ass'n, LLC*, 557 U.S. 519 (2009), for this presumption. In *Cuomo*, the Attorney General of New York sought, pursuant to the State of New York's inherent powers of visitation and without the

57 # 6

use of a subpoena,² information related to *bank lending practices* from a number of nationally chartered banks. Following a suit by the OCC and others, the Supreme Court determined that New York's visitation powers over the bank were preempted by the NBA and the rules promulgated thereunder. Those facts are entirely inapplicable in this action. Further, it is important to note that Certus itself has not raised any objection to the Securities Division's exercise of investigatory jurisdiction, and that ICS, while closely related to Certus, cannot assert any claims on Certus' behalf. In this case, the Securities Division, pursuant to the investigative authority conferred by the General Assembly and granted to it by the Commissioner, is conducting a lawful investigation in order to determine whether or not the Securities Act has been violated. The Securities Division is not seeking to investigate a bank *qua* bank, and therefore is not attempting to exercise the sovereign power of visitation over Certus. It has long been recognized, and the Court agrees here, that such investigations are not preempted by the NBA. *Peoples Bank of Danville v. Williams*, 449 F.Supp. 254, 260 (4th Cir. 1978) (an "SEC inquiry is not a 'visitorial power' within the understanding" of the NBA); *see also Bank of America Nat. Trust & Savings Ass'n v. Douglas*, 70 App.D.C. 221, 227 (D.C. Cir.

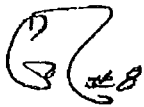
² At the time of the enactment of the National Bank Act in 1864, the term visitation "was accordingly understood as the act of examining into the affairs of a corporation by the government itself. Lower courts understood visitation to mean the act of a superior or superintending officer, who visits a corporation to examine into its manner of conducting business, and enforce an observance of its laws and regulations. A State was the visitor of all companies incorporated in the State, simply by virtue of the State's role as sovereign." *Cuomo*, at 526 (2009) (Scalia, J.) (citations and internal quotation marks omitted).

62
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1939) (SEC subpoena to a bank as part of a securities investigation was not an "exercise of visitatorial powers"); *Cuomo*, at 528-29.

b. ICS is subject to the Securities Division's investigatory powers.

Additionally, ICS alleges that the Securities Division has no jurisdiction over it or Certus under the assumption that Certus did not offer or sell securities in South Carolina. However, it is well-settled that the issue of subject matter jurisdiction is "not to be decided in subpoena enforcement actions," as administrative agencies like the Securities Division, "must be free without undue interference or delay to conduct an investigation which will adequately develop a factual basis for a determination as to whether particular activities come within...[its]...regulatory authority." *SEC v. Brigadoon Scotch Distributing Co.*, 480 F.2d 1047, 1053-54 (2nd Cir. 1973); see also *Gardner v. Lefkowitz*, 412 N.Y.S.2d 740, 745 (N.Y. Sup.Ct. 1978) (holding that New York's securities act permits the Attorney General to investigate in order to determine whether or not "the subject being investigated comes within the scope of his authority"). Indeed, "it has long been established that the question of inclusion of a particular person or entity within the coverage of a regulatory statute is generally for initial determination by an agency, subject to review on direct appeal, rather than for a...court whose jurisdiction is invoked to enforce an administrative subpoena." *SEC v. Wall Street Transcript Corp.*, 422 F.2d 1371, 1375 (2nd Cir. 1970), cert. denied, 398 U.S. 958 (1970) (citing, *inter alia*, *Powell*, 379 U.S. at 57-58; *FTC v. Crafts*, 355 U.S. 9 (1957); *Endicott*



Johnson Corp. v. Perkins, 317 U.S. 501, 517 (1943) (not even a showing of probable coverage can be required in a subpoena enforcement action)); *see also F.T.C. v. Texaco*, 555 F.2d at 879 ("As a general rule, substantive issues which may be raised in defense against an administrative complaint are premature in an enforcement proceeding."); *SEC v. Vacuum Can Co.*, 157 F.2d 530, 532 (7th Cir. 1946) (citations omitted) ("The purpose of a subpoena is to gather evidence, not prove a pending charge."); 1 Davis, *Administrative Law*, § 4.1 (3rd ed. 1994). Furthermore, it would utterly frustrate the law enforcement purpose of administrative agency investigations to limit an administrative agency's subpoena power to entities within that agency's regulatory jurisdiction, and such a limitation has been universally rejected. *See 27 A.L.R* 1208 (1953); *Freeman v. Fidelity Trust Co.*, 248 F.Supp 487, 492 (E.D. Penn. 1965) ("It is by now abundantly clear that for an administrative agency to exercise subpoena power in aid of its investigatory power, it need not show that it has jurisdiction over the witness subpoenaed."); *United States v. Art Metal-U.S.A., Inc.*, 484 F. Supp. 884, 887 (D.N.J. 1980); *Sandsend Financial Consultants, Ltd. v. Federal Home Loan Bank Board*, 878 F.2d 875 (5th Cir. 1989); *McGarry v. SEC*, 147 F.2d (10th Cir. 1945); *State ex rel. R.R. & Warehouse Commission v. Mees*, 49 N.W.2d 386, 392 (Minn. 1951) (witness subpoenaed by administrative agency need not be under direct regulatory authority of the agency so long as "the information sought is relevant and material to the investigation"). Additionally, the Uniform Securities Act has been interpreted to confer investigative subpoena power over out-of-state entities, which do not come

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under the Securities Commissioner's regulatory authority. *Raymond Lee Organization, Inc. v. Securities Commission*, 543 P.2d 75, (Colo.App. 1975), *rev'd on other grounds*, 556 P.2d 1209 (Colo. 1976) (stating that "[s]uch an investigative procedure is permitted by the holding in *Natural Gas Pipeline v. Slattery*, 302 U.S. 300 [(1937)]"). Accordingly, the Court finds that the Subpoena and the information sought by it are within the Securities Division's delegated authority under the Securities Act.

ii. The information sought is reasonably relevant.

Like the issue of coverage, the issue of relevance is a threshold matter to be determined by the Securities Division. *See, e.g., Arthur Young & Co.*, 584 F.2d at 1031 (the scope of the SEC's subpoena power is "co-extensive" with its investigative power, and that the SEC is given the sole discretion to determine what is relevant to an investigation.). In the context of an administrative subpoena, relevance must be construed broadly as "law enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest." *Morton Salt Co.*, 338 U.S. at 652. Indeed, courts "defer to the agency's appraisal of relevancy, which must be accepted so long as it is not obviously wrong." *RNR Enterprises*, 122 F.3d at 97 (citations and internal quotation marks omitted). To that end, information is relevant to an investigation when it is "not plainly incompetent or irrelevant to any legal purpose." *Endicott Johnson*, 317 U.S. at 509. In the present case, the Securities Division has determined that the information and documents sought from ICS are relevant to its investigation. For instance, the

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billing records, the contracts related to work to be performed on behalf of Certus, and a list of the employees of ICS are each relevant to determine ICS' relationship with Certus. The Securities Division believes these documents, collectively, to be important to the process of determining whether or not Certus or any of its employees committed violations of the Securities Act. When an inquiry such as this is legally authorized and the information sought is relevant to the inquiry, the burden of showing unreasonableness shifts to the Respondent, and such a burden "is not easily met." *Brigadoon Scotch*, 480 F.2d at 1056. ICS has failed to meet that burden as it has not shown the records sought by the Subpoena to be incompetent or irrelevant to any legal purpose. *Endicott Johnson, supra*.

iv. The Subpoena is not too indefinite.

In addition to the factors discussed above, in order for an administrative subpoena to be enforced, it is also necessary that the information sought by it must not be too indefinite. *Morton Salt*, 338 U.S. at 650. Here, the Court finds that the Attachment to the Subpoena clearly sets forth the nature of the documents sought and the timeframe for ICS to produce those documents, thus, Subpoena itself is not too indefinite.



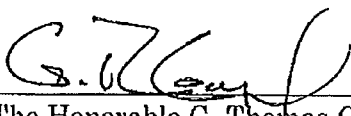
III. CONCLUSION

Having considered the arguments of both parties and reviewed the extensive case law on the subject of the enforcement of administrative subpoenas, the Court finds that the Subpoena, which was validly issued and served, meets the well-established requirements for judicial enforcement. Accordingly, it is hereby,

ORDERED that the Commissioner's Application for an Order Requiring Compliance with a Subpoena is **GRANTED** and Integrated Capital Strategies, LLC shall fully comply the Subpoena served upon it by the Securities Division by producing to the Securities Division any and all documents within its possession, custody, or control responsive to the Subpoena no later than ten days from the issuance of this Order; and

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes necessary and appropriate to insure compliance with this Order.

IT IS SO ORDERED.


The Honorable G. Thomas Cooper, Jr.
Circuit Court Judge

This 25 day of June, 2014.
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-CP-40-3389

Alan Wilson, Securities Commissioner
Of South Carolina.,

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v.

Integrated Capital Strategies, LLC,

Appellant.

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JUL 30 2014

SC Court of Appeals

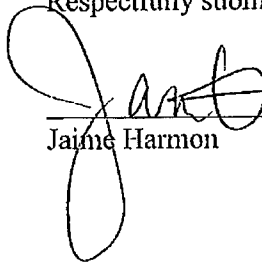
PROOF OF SERVICE

I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin L.L.P, attorney for Appellant Integrated Capital Strategies, LLC, do hereby certify that I have served a copy of the foregoing Notice of Appeal, in connection with the above-referenced case by hand delivering a copy of the same to the following address on July 30, 2014:

Ian P. Weschler
Assistant Attorney General
Securities Division
1000 Assembly Street, Room 519
Columbia, SC 29201

The Honorable Jeanette McBride
Clerk of Court, Richland County
1701 Main Street, Room 205
Columbia, SC 29201

Respectfully submitted,



Jaime Harmon

Columbia, South Carolina
July 30, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-CP-40-3389

Alan Wilson, Securities Commissioner
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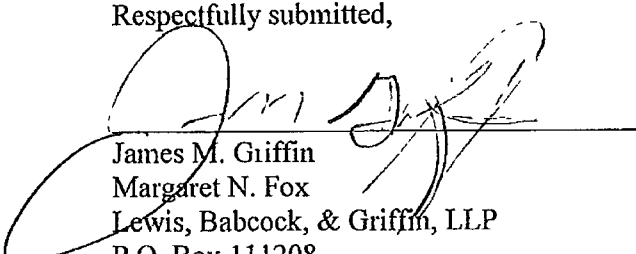
Appellant.

RECEIVED
AUG 15 2014
SC Court of Appeals

AMENDED NOTICE OF APPEAL

Integrated Capital Strategies, LLC ("ICS") appeals the Judgment entered July 1, 2014 upon the June 25, 2014 Order of the Honorable G. Thomas Cooper, Jr. granting the Respondents' Application for an Order Requiring Compliance with a Subpoena. ICS also appeals the July 31, 2014 Order denying its Motion for Reconsideration of the June 25, 2014 Order. A copy of the June 25, 2014 Order and the July 31, 2014 Order are attached hereto as Exhibits A and B, respectively.

Respectfully submitted,



James M. Griffin
Margaret N. Fox
Lewis, Babcock, & Griffin, LLP
P.O. Box 111208
Columbia, South Carolina 29211
(803) 771-8000
Attorney for the Appellants

Columbia, South Carolina
August 15, 2014

Other Counsel of Record:
Ian Parks Weschler, Assistant Attorney General Securities Division

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2014CP4003389

Alan Wilson

Intergrated Capital Strategies LLC

Securities Commissioner of South Carolina
PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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. 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:

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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
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.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 1 July 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Ian Parks Weschler

Margaret Nicole Fox

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

ALAN WILSON, SECURITIES
COMMISSIONER OF SOUTH
CAROLINA,

Applicant,

v.

INTEGRATED CAPITAL
STRATEGIES, LLC,

Respondent.

Case No. 2014-CP-400-3389

ORDER REQUIRING
COMPLIANCE WITH A SUBPOENA

RECEIVED
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Hearing Date: June 10, 2014
Presiding Judge: The Honorable G. Thomas Cooper, Jr.
On Behalf of the Respondent: James M. Griffin, Esq.
On Behalf of the Applicant: Ian P. Weschler, Esq.

This matter came before the Court as the result of an Application for an Order Requiring Compliance with a Subpoena filed by Alan Wilson, Securities Commissioner of South Carolina (the "Commissioner"). The Commissioner seeks enforcement of an administrative subpoena (the "Subpoena") issued by the Securities Division of the Office of the Attorney General of South Carolina (the "Securities Division") to Integrated Capital Strategies, LLC ("ICS") as part of an investigation under File No. 14023. For the reasons set forth below, the Court grants the Commissioner's Application and ICS is hereby ordered to comply with the Subpoena.

I. FACTUAL BACKGROUND

On April 9, 2014, the Securities Division issued the Subpoena to ICS. The Subpoena was addressed to ICS' address in Charlotte, North Carolina, as listed on

67

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the website for the North Carolina Secretary of State. The Subpoena sought various documents related to an ongoing investigation being conducted into the offer and sale of securities by Certus Holdings, Inc. and CertusBank, N.A. (collectively, "Certus") in and from South Carolina. The documents sought pursuant to the Subpoena were required to be produced by Friday, April 25, 2014. To date, ICS has declined to produce the records to the Securities Division.

ICS' managers were the founders of and, until their termination in April of 2014, employees of Certus. ICS provided extensive services to Certus both at Certus' Greenville, South Carolina headquarters and elsewhere in and outside the state. Evincing the interrelated relationship between the two companies, not only were ICS' managers executives at Certus, but ICS' records custodian is or was, herself, an employee of Certus.

On April 23, 2014, ICS' attorney contacted the Securities Division and requested an extension of time in which to examine the Subpoena and prepare a response. On Friday, May 2, 2014, representatives of the Securities Division met with ICS' attorney and reiterated the request for documents. On Tuesday, May 6, 2014, ICS formally objected to the subpoena, alleging that the Securities Division lacked jurisdiction over it. On May 23, 2014, the Commissioner applied for and was granted a Rule to Show Cause directed at ICS, and ordering both parties to appear before the Court on June 10, 2014. At the June 10, 2014 hearing, the Court heard arguments from the Commissioner and ICS. This Order follows.

 2

II. LAW AND ANALYSIS

A. The Court has Jurisdiction over this Action and over the Respondent.

The Court has jurisdiction over this action pursuant to Article 6 of the South Carolina Uniform Securities Act of 2005 (the "Securities Act"). As set forth the Securities Act, the mechanism for subpoena enforcement is for the Commissioner to "apply to the Richland County Court of Common Pleas...to enforce compliance." S.C. Code Ann. § 35-1-602(c) (Supp. 2013). Whereupon, the Court may, *inter alia*, "order the production of records." *Id.* Accordingly, the Court is the appropriate venue in which to seek the enforcement of the Subpoena. Moreover, the Uniform Securities Act has been interpreted, consistent with due process, to permit the enforcement of subpoenas issued to foreign actors who have transacted business within the state. *See, e.g., Silverman v. Berkson*, 661 A.2d 1266 (N.J. 1995).¹ Thus, ICS is subject to the power of the Court.

ICS alleges that the Commissioner lacks jurisdiction over it because the Subpoena was not served pursuant to South Carolina's long arm statute. However, as the Subpoena was validly served pursuant to the Securities Act, ICS' assertion is unavailing. Pursuant to S.C. Code Ann. § 35-1-611 (c), the Securities Act permits the service of subpoenas to in-state and out-of-state respondents, through the mailing, return receipt requested, of the document or documents in question to a respondents' address and the execution of an affidavit of compliance. Further, S.C.

¹ Additionally, as ICS has transacted significant business in this State, it should have reasonably anticipated the possibility of being haled into a South Carolina Court. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

61 3

Code Ann. § 35-1-611(d) permits service pursuant to Section 611(c) in any proceeding to which the Commissioner is a party, as he is here. As is evidenced by the Subpoena and its accompanying Certificate of Service and Affidavit of Compliance, the Securities Division followed the requirements for proper service as set forth in the Securities Act when it served the Subpoena on ICS. Therefore, the Court finds that the subpoena was validly served upon ICS.

B. The Commissioner Has Met the Burden for Enforcement of the Subpoena.

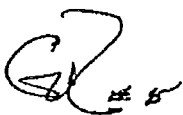
When a court's jurisdiction is invoked in a subpoena enforcement action "the scope of issues which may be litigated...must be narrow, because of the important governmental interest in the expeditious investigation of possible unlawful activity." *F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977); *see also United States v. Am. Target Adver., Inc.*, 257 F.3d 348, 351 (4th Cir. 2001) (citations and internal quotation marks omitted) ("[A] court's role in enforcing administrative subpoenas is sharply limited."); *RNR Enterprises, Inc. v. SEC*, 122 F.3d 93, 96 (2d Cir. 1997), *cert. denied sub nom, Wells v. S.E.C.*, 522 U.S. 958 (1997) (same); Louis Loss & Joel Seligman, *Fundamentals of Securities Regulation* 1490-1493 (4th Ed. 2004). To that end, the United States Supreme Court has set forth a multi-factor test for judicial enforcement of administrative subpoenas. Under this test, a court should enforce an administrative subpoena when "the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant." *United States v. Morton Salt*, 338 U.S. 632, 650

67-4

(1950); see also *See v. City of Seattle*, 387 U.S. 541, 544 (1967) (*Morton Salt* analysis in the context of a state administrative subpoena); *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1023-24 (D.C. Cir. 1978); *United States v. Powell*, 379 U.S. 48, 57-58 (1964); *State ex rel. Miller v. Publishers Clearing House, Inc.*, 633 N.W.2d 732, 736 (Iowa 2001) (state court employing the same analysis in enforcing an administrative subpoena); S.C. Code Ann. § 35-1-602, cmt. 2 (citing 10 Louis Loss & Joel Seligman, *Securities Regulation* 4917-4937 (3d ed. Rev. 1996) and explaining “[t]he standards for the issuance of subpoenas have been generally established in federal and state securities laws.”). The Court finds that the Subpoena meets each of these factors.

i. The Subpoena is within the Securities Division’s authority.

Pursuant to S.C. Code Ann. § 35-1-602, the Commissioner and his designee, the Securities Division, are vested with broad authority to conduct investigations into possible violations of the Securities Act and to require production of evidence relevant to such investigations. In furtherance of this investigative power, S.C. Code Ann. § 35-1-601(b) permits the Commissioner or his designees to “subpoena witnesses, seek the compulsion of evidence, take evidence, require the filing of statements, and *require the production of any records that the Securities Commissioner considers relevant or material to [an] investigation*” (emphasis added). As is the case with other administrative agencies, the Securities Division’s investigative power, as delegated to it by the Commissioner, is statutory and is analogous to that of a grand jury. *Morton Salt*, 338 U.S. at 642-43; see also *Small Bus. Admin. v. Barron*, 240 F. Supp. 434, 445 (W.D.S.C. 1965); *In re Subpoena*



Duces Tecum, 228 F.3d 341, 347 (4th Cir. 2000). Like a grand jury, an administrative agency "can investigate merely on suspicion that the law is being violated, or just because it wants assurance that it is not." *Morton Salt, supra*; *Myers v. Holshouser*, 214 S.E.2d 630, 637 (N.C.App. 1975) ("The purpose of an administrative investigation is to protect the public; therefore, the public's interest in applying more relaxed criteria for administrative investigations is greater than the regulated person's, firm's, or corporation's right to privacy."). Consistent with well-established administrative law precedents, the Securities Division is acting within the scope of its legislatively granted authority even where its investigation is based on nothing more than "official curiosity." See, e.g., *Arthur Young & Co.*, 584 F.2d at 1023-24 & n. 45. In the instant matter, the Securities Division is investigating allegations of securities fraud, and such an inquiry falls directly within its mandate as set forth in the Securities Act.

a. The Securities Division's inquiry is not preempted.

Respondents raise the claim, on behalf of Certus, which is not a party to this action, that the Securities Division's investigation is preempted by the National Bank Act of 1864, 12 U.S.C.A. § 484 (West 2013) (the "NBA"), and the regulations promulgated thereunder by the Office of the Comptroller of the Currency (the "OCC"). The Respondents cite *Cuomo v. Clearing House Ass'n, LLC*, 557 U.S. 519 (2009), for this presumption. In *Cuomo*, the Attorney General of New York sought, pursuant to the State of New York's inherent powers of visitation and without the

57 x 6

use of a subpoena,² information related to *bank lending practices* from a number of nationally chartered banks. Following a suit by the OCC and others, the Supreme Court determined that New York's visitation powers over the bank were preempted by the NBA and the rules promulgated thereunder. Those facts are entirely inapplicable in this action. Further, it is important to note that Certus itself has not raised any objection to the Securities Division's exercise of investigatory jurisdiction, and that ICS, while closely related to Certus, cannot assert any claims on Certus' behalf. In this case, the Securities Division, pursuant to the investigative authority conferred by the General Assembly and granted to it by the Commissioner, is conducting a lawful investigation in order to determine whether or not the Securities Act has been violated. The Securities Division is not seeking to investigate a bank *qua* bank, and therefore is not attempting to exercise the sovereign power of visitation over Certus. It has long been recognized, and the Court agrees here, that such investigations are not preempted by the NBA. *Peoples Bank of Danville v. Williams*, 449 F.Supp. 254, 260 (4th Cir. 1978) (an "SEC inquiry is not a 'visitorial power' within the understanding" of the NBA); *see also Bank of America Nat. Trust & Savings Ass'n v. Douglas*, 70 App.D.C. 221, 227 (D.C. Cir.

² At the time of the enactment of the National Bank Act in 1864, the term visitation "was accordingly understood as the act of examining into the affairs of a corporation by the government itself. Lower courts understood visitation to mean the act of a superior or superintending officer, who visits a corporation to examine into its manner of conducting business, and enforce an observance of its laws and regulations. A State was the visitor of all companies incorporated in the State, simply by virtue of the State's role as sovereign." *Cuomo*, at 526 (2009) (Scalia, J.) (citations and internal quotation marks omitted).

62
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1939) (SEC subpoena to a bank as part of a securities investigation was not an "exercise of visitatorial powers"); *Cuomo*, at 528-29.

b. ICS is subject to the Securities Division's investigatory powers.

Additionally, ICS alleges that the Securities Division has no jurisdiction over it or Certus under the assumption that Certus did not offer or sell securities in South Carolina. However, it is well-settled that the issue of subject matter jurisdiction is "not to be decided in subpoena enforcement actions," as administrative agencies like the Securities Division, "must be free without undue interference or delay to conduct an investigation which will adequately develop a factual basis for a determination as to whether particular activities come within...[its]...regulatory authority." *SEC v. Brigadoon Scotch Distributing Co.*, 480 F.2d 1047, 1053-54 (2nd Cir. 1973); *see also Gardner v. Lefkowitz*, 412 N.Y.S.2d 740, 745 (N.Y.Sup.Ct. 1978) (holding that New York's securities act permits the Attorney General to investigate in order to determine whether or not "the subject being investigated comes within the scope of his authority"). Indeed, "it has long been established that the question of inclusion of a particular person or entity within the coverage of a regulatory statute is generally for initial determination by an agency, subject to review on direct appeal, rather than for a...court whose jurisdiction is invoked to enforce an administrative subpoena." *SEC v. Wall Street Transcript Corp.*, 422 F.2d 1371, 1375 (2nd Cir. 1970), *cert. denied*, 398 U.S. 958 (1970) (citing, *inter alia*, *Powell*, 379 U.S. at 57-58; *FTC v. Crafts*, 355 U.S. 9 (1957); *Endicott*

62

Johnson Corp. v. Perkins, 317 U.S. 501, 517 (1943) (not even a showing of probable coverage can be required in a subpoena enforcement action)); *see also F.T.C. v. Texaco*, 555 F.2d at 879 ("As a general rule, substantive issues which may be raised in defense against an administrative complaint are premature in an enforcement proceeding."); *SEC v. Vacuum Can Co.*, 157 F.2d 530, 532 (7th Cir. 1946) (citations omitted) ("The purpose of a subpoena is to gather evidence, not prove a pending charge."); 1 Davis, *Administrative Law*, § 4.1 (3rd ed. 1994). Furthermore, it would utterly frustrate the law enforcement purpose of administrative agency investigations to limit an administrative agency's subpoena power to entities within that agency's regulatory jurisdiction, and such a limitation has been universally rejected. *See* 27 A.L.R. 1208 (1953); *Freeman v. Fidelity Trust Co.*, 248 F.Supp 487, 492 (E.D. Penn. 1965) ("It is by now abundantly clear that for an administrative agency to exercise subpoena power in aid of its investigatory power, it need not show that it has jurisdiction over the witness subpoenaed."); *United States v. Art Metal-U.S.A., Inc.*, 484 F. Supp. 884, 887 (D.N.J. 1980); *Sandsend Financial Consultants, Ltd. v. Federal Home Loan Bank Board*, 878 F.2d 875 (5th Cir. 1989); *McGarry v. SEC*, 147 F.2d (10th Cir. 1945); *State ex rel. R.R. & Warehouse Commission v. Mees*, 49 N.W.2d 386, 392 (Minn. 1951) (witness subpoenaed by administrative agency need not be under direct regulatory authority of the agency so long as "the information sought is relevant and material to the investigation"). Additionally, the Uniform Securities Act has been interpreted to confer investigative subpoena power over out-of-state entities, which do not come

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under the Securities Commissioner's regulatory authority. *Raymond Lee Organization, Inc. v. Securities Commission*, 543 P.2d 75, (Colo.App. 1975), *rev'd on other grounds*, 556 P.2d 1209 (Colo. 1976) (stating that "[s]uch an investigative procedure is permitted by the holding in *Natural Gas Pipeline v. Slattery*, 302 U.S. 300 [(1937)]"). Accordingly, the Court finds that the Subpoena and the information sought by it are within the Securities Division's delegated authority under the Securities Act.

ii. The information sought is reasonably relevant.

Like the issue of coverage, the issue of relevance is a threshold matter to be determined by the Securities Division. *See, e.g., Arthur Young & Co.*, 584 F.2d at 1031 (the scope of the SEC's subpoena power is "co-extensive" with its investigative power, and that the SEC is given the sole discretion to determine what is relevant to an investigation.). In the context of an administrative subpoena, relevance must be construed broadly as "law enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest." *Morton Salt Co.*, 338 U.S. at 652. Indeed, courts "defer to the agency's appraisal of relevancy, which must be accepted so long as it is not obviously wrong." *RNR Enterprises*, 122 F.3d at 97 (citations and internal quotation marks omitted). To that end, information is relevant to an investigation when it is "not plainly incompetent or irrelevant to any legal purpose." *Endicott Johnson*, 317 U.S. at 509. In the present case, the Securities Division has determined that the information and documents sought from ICS are relevant to its investigation. For instance, the

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billing records, the contracts related to work to be performed on behalf of Certus, and a list of the employees of ICS are each relevant to determine ICS' relationship with Certus. The Securities Division believes these documents, collectively, to be important to the process of determining whether or not Certus or any of its employees committed violations of the Securities Act. When an inquiry such as this is legally authorized and the information sought is relevant to the inquiry, the burden of showing unreasonableness shifts to the Respondent, and such a burden "is not easily met." *Brigadoon Scotch*, 480 F.2d at 1056. ICS has failed to meet that burden as it has not shown the records sought by the Subpoena to be incompetent or irrelevant to any legal purpose. *Endicott Johnson, supra*.

iv. The Subpoena is not too indefinite.

In addition to the factors discussed above, in order for an administrative subpoena to be enforced, it is also necessary that the information sought by it must not be too indefinite. *Morton Salt*, 338 U.S. at 650. Here, the Court finds that the Attachment to the Subpoena clearly sets forth the nature of the documents sought and the timeframe for ICS to produce those documents, thus, Subpoena itself is not too indefinite.



III. CONCLUSION

Having considered the arguments of both parties and reviewed the extensive case law on the subject of the enforcement of administrative subpoenas, the Court finds that the Subpoena, which was validly issued and served, meets the well-established requirements for judicial enforcement. Accordingly, it is hereby,

ORDERED that the Commissioner's Application for an Order Requiring Compliance with a Subpoena is **GRANTED** and Integrated Capital Strategies, LLC shall fully comply the Subpoena served upon it by the Securities Division by producing to the Securities Division any and all documents within its possession, custody, or control responsive to the Subpoena no later than ten days from the issuance of this Order; and

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes necessary and appropriate to insure compliance with this Order.

IT IS SO ORDERED.



The Honorable G. Thomas Cooper, Jr.
Circuit Court Judge

This 25 day of June, 2014.
Columbia, South Carolina

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4003389

Alan Wilson

Intergrated Capital Strategies LLC

Securities Commissioner of South Carolina
PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Liantant

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:

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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

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.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 5 August 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Ian Parks Weschler

Margaret Nicole Fox

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Alan Wilson, Securities Commissioner of
South Carolina,

Plaintiff,

v.

Integrated Capital Strategies, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2014-CP-40-3389

ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION

FILED
JUL 11 2014
AM 11:55
CLERK OF COURT
FIFTH JUDICIAL CIRCUIT
COLUMBIA, S.C.

This matter comes before the Court by way of Defendant Integrated Capital Strategies, LLC's Motion to Reconsider pursuant to Rule 59(e), SCRPC. Specifically, Defendant asks this Court to reconsider its Order Requiring Compliance with a Subpoena filed July 1, 2014.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or distearded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Defendant's Motion under Rule 59(e), SCRPC to Reconsider this Court's Order filed July 1, 2014. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
July 31, 2014


G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-CP-40-3389

Alan Wilson, Securities Commissioner
Of South Carolina.,

Respondent,

v.

Integrated Capital Strategies, LLC,

Appellant.

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SC Court of Appeals

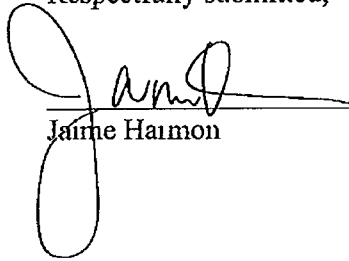
PROOF OF SERVICE

I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin L.L.P, attorney for Appellant Integrated Capital Strategies, LLC, do hereby certify that I have served a copy of the foregoing Amended Notice of Appeal, in connection with the above-referenced case by hand delivering a copy of the same to the following address on August 15, 2014:

Ian P. Weschler
Assistant Attorney General
Securities Division
1000 Assembly Street, Room 519
Columbia, SC 29201

The Honorable Jeanette McBride
Clerk of Court, Richland County
1701 Main Street, Room 205
Columbia, SC 29201

Respectfully submitted,



Jaime Haimon

Columbia, South Carolina
August 15, 2014

STOCK PURCHASE AGREEMENT
BY AND AMONG
BLUE RIDGE HOLDINGS, INC.
AND
THE PURCHASERS PARTY HERETO

Dated as of May 25, 2010

TABLE OF CONTENTS

ARTICLE I. Definitions.	2
Section 1.01 Defined Terms	2
Section 1.02 Other Definitions.	7
Section 1.03 Construction.....	10
ARTICLE II. Purchase and Sale.....	10
Section 2.01 Purchase and Sale of Securities.	10
Section 2.02 Capital Call for Second Closing.	13
Section 2.03 Termination of Unfunded Commitments.....	17
Section 2.04 Additional Commitments.....	17
ARTICLE III. Representations and Warranties of Purchasers.	18
Section 3.01 Organization; Authorization	18
Section 3.02 No Public Sale or Distribution.....	18
Section 3.03 Accredited Investor.....	19
Section 3.04 Foreign Investors	19
Section 3.05 ERISA	19
Section 3.06 No General Solicitation.....	20
Section 3.07 Reliance on Exemptions	20
Section 3.08 Review of Information and Consultation with Advisors	20
Section 3.09 No Reliance.....	21
Section 3.10 No Public Market; No Governmental Review; Securities Not Insured.....	21
Section 3.11 Brokers and Finders	22
Section 3.12 No Conflicts	22
Section 3.13 No Other Agreements with Company or Other Purchasers.....	22
Section 3.14 Investment Risk	23
Section 3.15 Residency.....	23
Section 3.16 Certain Regulatory Matters.....	23
Section 3.17 Ownership of Common Stock and Non-Exercise of Controlling Influence	24
Section 3.18 Placement Agent Fee.	25
Section 3.19 Acknowledgement of Investment Risk.....	26
ARTICLE IV. Representations and Warranties of the Company.....	26
Section 4.01 Organization, Good Standing, Corporate Power and Qualification	26
Section 4.02 Commitment Amount; Capitalization.....	26
Section 4.03 Subsidiaries	28
Section 4.04 Authorization	28
Section 4.05 Issuance of Securities.....	29
Section 4.06 Governmental Consents and Filings	29
Section 4.07 Compliance with Other Instruments	30
Section 4.08 Litigation.....	30
Section 4.09 No General Solicitation; Placement Agent's Fees.....	30

Section 4.10 Regulatory Enforcement Matters	31
Section 4.11 Tax Status.....	31
Section 4.12 Investment Company Status	31
Section 4.13 Activities of the Company Prior to Signing Date	31
Section 4.14 First Closing Pro Forma Balance Sheet; Material Contracts	31
Section 4.15 Certain Transactions	31
Section 4.16 Rights of Registration and Voting Rights.....	32
Section 4.17 No Other Agreements with Purchasers.....	32
Section 4.18 Broker's Fees	32
Section 4.19 Disclosure	32
ARTICLE V. Covenants.....	32
Section 5.01 Reasonable Best Efforts	32
Section 5.02 Voting/Ownership Limits; Automatic Conversion of Excess Stock.	33
Section 5.03 Board of Directors.....	37
Section 5.04 Notice Filings.....	37
Section 5.05 Information Provided to Governmental Authorities	37
Section 5.06 First Bank Acquisition	38
Section 5.07 Access to FDIC Information.....	38
Section 5.08 Use of Proceeds and Investment Account	38
Section 5.09 Activity Limitations of the Company	39
Section 5.10 FDIC Policy	39
Section 5.11 Avoidance of Control; Passivity Agreements.....	40
Section 5.12 Liquidation if No Bank Acquisition by Bank Acquisition Deadline	40
Section 5.13 Integrated Capital Strategies	41
Section 5.14 Equity Awards to Officers and Directors; Management Employment Agreements.....	41
Section 5.15 Benefit Plan Investor Redemption	43
Section 5.16 Regulatory Redemption	43
Section 5.17 Transfer Restrictions.	44
Section 5.18 Legends	46
Section 5.19 Reports by Company.....	51
Section 5.20 Right of First Offer.	51
Section 5.21 Approval of Certain Transaction	53
ARTICLE VI. Closing Conditions for First Closing.	53
Section 6.01 Conditions to the Company's Obligations at First Closing	53
Section 6.02 Conditions to Each Purchaser's Obligations at First Closing.....	55
ARTICLE VII. Closing Conditions for Second Closing.	57
Section 7.01 Conditions to the Company's Obligations at Second Closing.....	57
Section 7.02 Conditions to Each Funding Purchaser's Obligations at Second Closing	58
ARTICLE VIII. TERMINATION.	60

Section 8.01 Termination of Agreement.....	60
Section 8.02 Effect of Termination.....	60
ARTICLE IX. Miscellaneous.	61
Section 9.01 Further Assurances.....	61
Section 9.02 Survival	61
Section 9.03 Governing Law; Jurisdiction; Waiver of Jury Trial.....	61
Section 9.04 Counterparts.....	61
Section 9.05 Headings	62
Section 9.06 Brokers and Finders	62
Section 9.07 Expenses	62
Section 9.08 Severability	62
Section 9.09 Entire Agreement	62
Section 9.10 Amendments and Waivers	62
Section 9.11 Delays or Omissions	63
Section 9.12 Notices	63
Section 9.13 Successors and Assigns.....	64
Section 9.14 No Third Party Beneficiaries	64
Section 9.15 No Strict Construction	64
Section 9.16 Independent Nature of Purchasers' Obligations and Rights	64
Section 9.17 Acknowledgement Regarding Counsel.....	65
Section 9.18 Publicity	65

APPENDICES

Appendix I	Form of Ownership and Wire Information Questionnaire
Appendix II	Accredited Investor Questionnaire
Appendix III	Benefit Plan Questionnaire
Appendix IV	Certain Risk Factors
Appendix V	First Closing Pro Forma Balance Sheet of the Company

EXHIBITS

Exhibit A	Form of Amended and Restated Certificate of Incorporation
Exhibit B	Form of Amended and Restated Bylaws
Exhibit C	Form of Registration Rights Agreement
Exhibit D	Form of Warrant Agreement
Exhibit E	Form of FDIC Questionnaire
Exhibit F	Form of Anti-Association Commitments
Exhibit G	Form of Passivity Commitments
Exhibit H	Form of Opinion of Counsel for the Company
Exhibit I	Form of Secretary's Certificate
Exhibit J	Form of Officer's Certificate
Exhibit K	Form of First Closing Escrow Agreement
Exhibit L	Form of Second Closing Escrow Agreement
Exhibit M	Form of Lead Investor Agreement
Exhibit N	Form of Lock-Up Agreement
Exhibit O	Form of Investor Letter

STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (this "**Agreement**"), dated as of May 25, 2010 (the "**Signing Date**"), is by and among Blue Ridge Holdings, Inc., a corporation organized under the laws of the State of Delaware, (the "**Company**"), and each of the investors identified on the signature pages hereto (individually, a "**Purchaser**" and collectively, the "**Purchasers**" and together with the Company, the "**Parties**"; Purchaser shall include any permitted assignee of all or a portion of a Purchaser's rights and obligations hereunder).

RECITALS:

A. The Company and each Purchaser (severally and not jointly) are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(2) of the Securities Act of 1933, as amended (the "**Securities Act**"), and Rule 506 of Regulation D as promulgated by the United States Securities and Exchange Commission (the "**Commission**") under the Securities Act ("**Regulation D**").

B. The Company is a recently formed Delaware corporation with the goal of creating a leading community bank holding company. The Company will seek to acquire banking institutions within the United States by effecting a purchase of assets and assumption of liabilities from the FDIC, as receiver for one or more failed depository institutions ("**Failed Banks**"). The Company may also seek to acquire other banking institutions, including the operations of distressed and undercapitalized banks, ("**Non-Failed Banks**," and together with Failed Banks, "**Banks**"). The acquisition of a Failed Bank, or group of Failed Banks packaged together, is referred to as a "**Failed Bank Acquisition**" and the acquisition of a Non-Failed Bank is referred to as a "**Non-Failed Bank Acquisition**," and collectively Failed Bank Acquisitions and Non-Failed Bank Acquisitions are referred to together as "**Bank Acquisitions**" and each as a "**Bank Acquisition**."

C. Each Purchaser, severally and not jointly, wishes to commit to purchase and the Company wishes to sell, upon the terms and conditions stated in this Agreement, shares of Class A voting common stock, par value \$0.001 per share, of the Company (the "**Class A Voting Common Stock**"), and to the extent such Purchaser would hold shares of Class A Voting Common Stock in excess of an applicable Voting Limit (defined below), shares of Class B non-voting common stock, par value \$0.001 per share, of the Company (the "**Class B Non-Voting Common Stock**" and together with the Class A Voting Common Stock, the "**Common Stock**"), at \$20.00 per share of Common Stock (the "**Issue Price**") in the aggregate U.S. dollar amount indicated below such Purchaser's name on the signature page of this Agreement (which aggregate amount for all Purchasers together shall be \$501,000,000 or 25,050,000 shares of Common Stock). Upon the terms and conditions stated in this Agreement, each Purchaser, severally and not jointly, shall purchase ten percent (10%) of the total shares of Common Stock it has committed to purchase at the First Closing (as defined below), which is scheduled to occur shortly after the Signing Date, and, subject to the Company identifying a target Bank and making the requisite capital call, shall purchase at the Second Closing (as defined herein) ninety percent (90%) of the total shares of Common Stock it has committed to purchase, or such lesser amount requested by the Company, subject to the right of such Purchaser to terminate such ninety percent (90%) of its commitment as provided herein.

D. In addition, the Company wishes to issue and sell to each Lead Investor (as defined below) in addition to the shares of Common Stock such Lead Investor purchases hereunder, in exchange for such Lead Investor agreeing to be subject to the FDIC Policy (as defined below), a number of warrants to purchase shares of Class B Non-Voting Common Stock, at an exercise price equal to the Issue Price, equal to 5% of the number of shares of Common Stock such Lead Investor purchases at each of the First Closing and the Second Closing.

E. If the Company has not completed a Bank Acquisition by the Bank Acquisition Deadline (defined below), the Company will dissolve as promptly as practicable and liquidate and distribute *pro rata* to the holders of Common Stock the Company's net assets all as provided herein and in the Company's Amended and Restated Certificate of Incorporation.

F. The Company has engaged FBR Capital Markets & Co. as its sole placement agent (the "**Placement Agent**") for the offering of the shares of Common Stock and Lead Investor Warrants on a "best efforts" basis.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser, severally and not jointly, hereby agree as follows:

ARTICLE I. DEFINITIONS.

Section 1.01 Defined Terms. When used in this Agreement, each of the following terms shall have the following meaning unless the context otherwise requires:

(a) "**4.9% Voting Limit**" shall mean the maximum percentage, which percentage shall be 4.9%, of outstanding shares of Class A Voting Common Stock that any Person (other than a Lead Investor, Member of Management or Investment Company that elects (in the case of a Lead Investor, in its Lead Investor Agreement) to be subject to the 9.9% Voting Limit or the 24.9% Voting Limit) may own, Control or have the power to vote (alone or with a group of Affiliates or Persons acting in concert, including, but not limited to, a Purchaser and its Identified Persons), which percentage shall be calculated based on the number of shares such Person currently owns and shares that such Person has a right to purchase (treating stock options as outstanding to the extent provided in Section 5.02(d) hereof).

(b) "**9.9% Voting Limit**" shall mean the maximum percentage, which percentage shall be 9.9%, of outstanding shares of Class A Voting Common Stock that a Lead Investor, Member of Management or Investment Company that elects (in the case of a Lead Investor, in its Lead Investor Agreement) to be subject to this Voting Limit may own, Control or have the power to vote (alone or with a group of Affiliates or Persons acting in concert, including, but not limited to, a Purchaser and its Identified Persons), which percentage shall be calculated based on the number of shares such Person currently owns and shares that such Person has a right to purchase (treating stock options as outstanding to the extent provided in Section 5.02(d) hereof).

(c) **"24.9% Voting Limit"** shall mean the maximum percentage, which percentage shall be 24.9%, of outstanding shares of Class A Voting Common Stock that a Lead Investor that elects in its Lead Investor Agreement to be subject to this Voting Limit may own, Control or have the power to vote (alone or with a group of Affiliates or Persons acting in concert, including, but not limited to, a Purchaser and its Identified Persons), which percentage shall be calculated based on the number of shares such Person currently owns and shares that such Person has a right to purchase (treating stock options and warrants as outstanding to the extent provided in Section 5.02(d)).

(d) **"Accredited Investor"** shall have the meaning ascribed to such term in Rule 501 promulgated under the Securities Act.

(e) **"Affiliate"** or **"Affiliated"** shall mean, with respect to any Person, any individual, corporation, partnership or other entity that directly, or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person.

(f) **"Amended and Restated Bylaws"** shall mean the Company's Amended and Restated Bylaws in the form attached hereto as Exhibit B, as may be amended in accordance with the terms thereof and applicable law.

(g) **"Amended and Restated Certificate of Incorporation"** shall mean the Company's Amended and Restated Certificate of Incorporation in the form attached hereto as Exhibit A, as may be amended in accordance with the terms thereof and applicable law.

(h) **"Anti-Association Commitments"** shall mean the anti-association commitments as requested by the applicable regulators, which may include those in Exhibit F attached hereto.

(i) **"Bank Acquisition Deadline"** shall mean the date that is 12 months after the First Closing Date; *provided*, that if on the date the Bank Acquisition Deadline would otherwise occur, a portion of the Unfunded Commitment Amount has been called by the Company and is in escrow in respect of a specific Bank Acquisition, then the Bank Acquisition Deadline shall be extended to the related Funding Release Date.

(j) **"Benefit Plan Investor"** shall have the meaning ascribed to such term in Section 3(42) of ERISA.

(k) **"Board of Directors"** shall mean the Board of Directors of the Company, the composition of which as of the Second Closing Date shall be as specified in Section 5.03 of this Agreement.

(l) **"Business Day"** shall mean a day, other than Saturday, Sunday or any other day on which commercial banks in New York, New York are authorized or required by law to close.

(m) **"Closings"** shall mean the First Closing and the Second Closing.

(n) **"Code"** shall mean the Internal Revenue Code of 1986, as amended.

(o) ***“Equity Equivalents”*** shall mean all stock options, stock appreciation rights, stock units or similar “phantom” option plans, warrants exercisable into capital stock, restricted stock still subject to forfeiture and other securities exercisable or convertible into capital stock of the Company or any obligation to issue any of the foregoing or any equity securities.

(p) ***“ERISA”*** shall mean the Employee Retirement Income Security Act of 1974, as amended.

(q) ***“Exchange Act”*** shall mean the Securities Exchange Act of 1934, as amended.

(r) ***“FDIC”*** shall mean Federal Deposit Insurance Corporation.

(s) ***“FDIC Policy”*** shall mean the FDIC Statement of Policy on Qualifications for Failed Bank Acquisitions issued by the FDIC on August 26, 2009, as it may be amended, supplemented or clarified from time to time.

(t) ***“FDIC Questionnaire”*** shall mean the FDIC questionnaire provided by the FDIC, which may include those questions in Exhibit E attached hereto.

(u) ***“Federal Reserve”*** shall mean the Board of Governors of the Federal Reserve System of the United States.

(v) ***“Funding Release Date”*** shall mean (i) in the case of a funding for a Failed Bank Acquisition, 30 days after the Funding Date Deadline and (ii) in the case of a Non-Failed Bank Acquisition (a) 30 days after the Funding Date Deadline if the Company has not entered into a definitive agreement for such transaction within such 30-day period or (b) if the Company has entered into a definitive agreement for such acquisition within such 30-day period then the earlier of (x) the date, if any, on which such definitive agreement is thereafter terminated without the closing thereunder occurring or (y) the end of such period of time (but not more than 120 days) after the date the definitive agreement is signed as is set forth in the Capital Call Notice for such transaction (such period of time set forth in the Capital Call Notice, the ***“Non-Failed Bank Outside Date”***).

(w) ***“Governmental Authority”*** shall mean any legislature, agency, bureau, branch, department, division, commission, court, tribunal or other similar recognized organization or body of any federal, state, county, municipal, local or foreign government or other similar recognized organization or body exercising similar powers or authority.

(x) ***“ICS”*** shall mean Integrated Capital Strategies Holding, LLC or any successor thereto.

(y) ***“ICS Reimbursement Agreement”*** shall mean the Reimbursement Agreement dated May 2010 between the Company and ICS.

(z) ***“ICS Transaction”*** shall mean consummation of a transaction in which the Company acquires 100% of the outstanding membership interests of ICS.

(aa) ***“Independent Director”*** shall mean a member of the Board of Directors of the Company who has been determined by such Board of Directors to be independent under the standard of a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended, and shall not include any Member of Management.

(bb) ***“Investment Company”*** shall mean an open-ended investment company registered under the Investment Company Act of 1940, as amended, that has issued redeemable securities that allow investors to redeem such securities on demand.

(cc) ***“Investor Letter”*** shall mean the Investor Letter in the form of Exhibit O attached hereto.

(dd) ***“Knowledge,”*** including the phrase ***“to the Company’s knowledge”*** and similar phrases, shall mean the actual knowledge of any of the following officers of the Company: Milton M. Jones, Jr., Walter L. Davis and Charles M. Williams, Jr.

(ee) ***“Lead Investor”*** shall mean a Purchaser (alone or with a group of Affiliates or Persons acting in concert, including, but not limited to, a Purchaser and its Identified Persons) who owns over 4.9% of the outstanding shares of Class A Voting Common Stock, is subject to the FDIC Policy, and has signed a letter agreement with the Company designating such Purchaser as a Lead Investor (each a ***“Lead Investor Agreement”***) in the form attached hereto as Exhibit M.

(ff) ***“Management Employment Agreement”*** means each of the employment agreements between the Company and certain Members of Management in the forms made available to Purchasers by the Company prior to the Signing Date.

(gg) ***“Material Adverse Effect”*** means a material adverse effect on (i) the business, assets (including intangible assets), liabilities, financial condition, property or results of operations of the Company or (ii) the ability of the Company to consummate the transactions contemplated by this Agreement (including a Bank Acquisition prior to the Bank Acquisition Deadline).

(hh) ***“Members of Management”*** shall mean each of the Company’s Chief Executive Officer, Chief Credit Officer, Chief Operating Officer and Chief Financial Officer and any other officers of the Company so designated by the Board of Directors of the Company by specific reference to this defined term, and shall include, without limitation, each of Milton H. Jones, Jr., Walter L. Davis and Charles M. Williams, Jr. for so long as each Person is employed by the Company or any Subsidiary of the Company.

(ii) ***“Nondisclosure Agreements”*** means each of the Nondisclosure Agreements made by the Purchasers with or for the benefit of the Company.

(jj) ***“Ownership Limit”*** shall mean, as applicable, the 9.9% Ownership Limit and the 24.9% Ownership Limit.

(kk) ***“Passivity Commitments”*** shall mean the passivity commitments as requested by the applicable regulators, which may include those in Exhibit G attached hereto.

(ll) **“Person”** shall mean an individual, partnership, corporation, limited liability company, trust, unincorporated organization, Governmental Authority, or any other legal entity.

(mm) **“Placement Agency Agreement”** shall mean the Amended and Restated Engagement Letter, dated as of May 25, 2010, among the Company, ICS and the Placement Agent.

(nn) **“Plan Asset Regulation”** shall mean the regulations promulgated by the U.S. Department of Labor set forth in 29 C.F.R. § 2510.3-101, as amended.

(oo) **“Platform Bank Transaction”** shall mean an acquisition by the Company by way of merger, stock purchase, asset acquisition or otherwise, of SCCB Financial Corporation, the parent company of a South Carolina state-chartered banking institution (collectively, the **“Platform Bank”**), for a cash purchase price of approximately \$5.8 million.

(pp) **“Redemption Price”** shall mean an amount equal to (i) an amount equal to (A) the total assets of the Company valued at fair market value (determined in good faith by a majority of the Board of Directors of the Company and a majority of the Independent Directors), less (B) all accrued and unpaid liabilities of the Company plus any reserves deemed necessary and appropriate by a majority of the Board of Directors of the Company and a majority of the Independent Directors for contingent liabilities, divided by (ii) the total number of shares of outstanding Common Stock, treated as a single class, excluding any Equity Equivalents.

(qq) **“Registrable Shares”** shall have the meaning ascribed to such term in the Registration Rights Agreement.

(rr) **“Registration Rights Agreement”** shall mean the Registration Rights Agreement among the Company and each Purchaser in the form attached hereto as Exhibit C.

(ss) **“Shelf Registration Statement”** shall have the meaning ascribed to such term in the Registration Rights Agreement.

(tt) **“Subsidiary,”** when used with reference to a specified Person, means any corporation, partnership, trust or other entity of which the majority of outstanding voting securities are owned by such Person.

(uu) **“Transaction Documents”** shall mean this Agreement, the Registration Rights Agreement, the Placement Agency Agreement, the Warrant Agreement, the ICS Reimbursement Agreement, the Lead Investor Agreements, the First Closing Escrow Agreement, the Second Closing Escrow Agreement, the Management Employment Agreements, and the Nondisclosure Agreements.

(vv) **“Unrelated Director”** shall mean an individual who satisfies all of the following tests: (i) is an Independent Director; (ii) has not been nominated by any Purchaser pursuant to any right granted to such Purchaser in any Transaction Document (other than the right granted to all stockholders to nominate candidates for the board of directors of the Company as provided by Delaware law and in the Amended and Restated Certificate of Incorporation and the

Amended and Restated Bylaws of the Company); and (iii) is not (1) a partner, director or employee of, or consultant to, or the owner of 2% or more of the equity interests of, or a person that has a profit participation interest in, or a person that is receiving or is entitled to receive deferred compensation in any form from, any Purchaser, or (2) individually a Purchaser, that, in the case of (1) or (2), either (A) is subject to the FDIC Policy in connection with its investment in the Company, (B) has entered into passivity or anti-association commitments with the Federal Reserve in connection with its investment in the Company or has been requested by the Federal Reserve to do so, or (C) owns, controls or holds with the power to vote 5% or more of the equity of the Company, regardless of how such equity is denominated.

(ww) “**Voting Limit**” shall mean, as applicable, each of the 4.9% Voting Limit, the 9.9% Voting Limit and the 24.9% Voting Limit.

(xx) “**Warrant Agreement**” shall mean the Warrant Agreement, dated as of May 27, 2010, between the Company and American Stock Transfer & Trust Company, LLC as the Warrant Agent.

Section 1.02 Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
9.9% Ownership Limit.....	Section 5.02(c)
24.9% Ownership Limit.....	Section 5.02(c)
Additional Commitment Amount	Section 2.04
Additional Commitments.....	Section 2.04
Additional Fee.....	Section 3.18
Additional Shares.....	Section 2.02(d)(i)
Agreement.....	Preamble
Available Grant Amount.....	Section 5.14(a)
Bank Acquisition.....	Recitals
Bank Acquisition Shares.....	Section 2.01(c)(i)
Bank Holding Company.....	Section 5.01
Bank Holding Company Act.....	Section 5.01
Bank Secrecy Act.....	Section 3.16(a)
Benefit Plan Investor.....	Section 5.17(e)
Benefit Plan Investor Excess Stock.....	Section 5.15
Benefit Plan Investor Redemption	Section 5.15
Benefit Plan Investor Redemption Effective Date	Section 5.15
Business Plan	Section 4.18
Capital Call	Section 2.02(a)
Capital Call Amount	Section 2.02(a)
Capital Call Notice.....	Section 2.02(b)(i)
Capital Call Notice Deadline	Section 2.02(b)(ii)
Capital Call Termination Notice	Section 2.02(c)
Class A Voting Common Stock	Recitals
Class B Non-Voting Common Stock	Recitals
Commission	Recitals

<u>Term</u>	<u>Defined in Section</u>
Commitment.....	Section 2.01(a)(i)
Commitment Amount	Section 2.01(a)(i)
Commitment Shares	Section 2.01(a)(i)
Common Stock.....	Recitals
Company	Preamble
Control	Section 3.17
Controlling Person	Section 5.17(e)
Equity Incentive Plan	Section 4.02
Excess Funding Amount	Section 2.02(c)
Exempt Securities.....	Section 5.20(e)
Expense Cap.....	Section 5.08
Expiration Date	Section 8.01
Failed Bank	Recitals
Failed Bank Acquisition.....	Recitals
FDIC Target Bank Information.....	Section 5.07
First Closing	Section 2.01(b)(i)
First Closing Date	Section 2.01(b)(iii)
First Closing Escrow Agent	Section 2.01(b)(iv)
First Closing Escrow Agreement	Section 2.01(b)(iv)
First Closing Lead Investor Warrants	Section 2.01(b)(ii)
Funding Amount	Section 2.02(c)
Funding Date Deadline	Section 2.02(c)
Funding Notice.....	Section 2.02(c)
Funding Purchaser.....	Section 2.02(c)
ICS Services Fees and Expenses.....	Section 5.13
Identified Person	Section 3.13
Initial Fee	Section 3.18
Initial Funded Commitment	Section 2.01(b)(i)
Initial Funded Commitment Amount.....	Section 2.01(b)(i)
Initial Funded Shares.....	Section 2.01(b)(i)
Investment Account	Section 5.08
Issue Price	Recitals
Its Bank Acquisition Shares	Section 2.01(c)(i)
Its Commitment.....	Section 2.01(a)(i)
Its Commitment Amount	Section 2.01(a)(i)
Its Commitment Shares	Section 2.01(a)(i)
Its Initial Funded Commitment	Section 2.01(b)(i)
Its Initial Funded Commitment Amount	Section 2.01(b)(i)
Its Initial Funded Shares.....	Section 2.01(b)(i)
Its Unfunded Commitment.....	Section 2.01(c)(i)
Its Unfunded Commitment Amount	Section 2.01(c)(i)
Its Warrant Shares	Section 3.02
Lead Investor Agreement.....	Section 1.01(aa)
Lead Investor Warrants	Section 2.01(a)(ii)

<u>Term</u>	<u>Defined in Section</u>
Listing Date	Section 5.02(a)
Non-Failed Bank	Recitals
Non-Failed Bank Acquisition	Recitals
Non-Failed Bank Outside Date	Section 1.01(v)
Notice of Acceptance	Section 5.20(c)
NYSE	Section 5.14(a)
OCC	Section 3.16(b)
OFAC	Section 3.16(a)
Offer Notice	Section 5.20(b)
Offered Common Stock	Section 5.20(a)
Offered Securities.....	Section 3.02
Offering Summary	Section 3.08(c)
Ownership Threshold Redemption	Section 5.02(c)(iii)
Ownership Threshold Redemption Effective Date ...	Section 5.02(c)(iii)
Parties	Preamble
Placement Agent	Recitals
Plan Asset Regulation	Section 5.15
Platform Bank	Section 1.01(oo)
Preferred Stock.....	Section 4.02
Pro Rata Share.....	Section 5.20(a)
Prohibited Investor	Section 3.16(a)
Purchaser and Purchasers	Preamble
Purchaser Termination Right	Section 2.02(b)(ii)
Redemption Price	Section 5.15
Regulation D	Recitals
Regulatory Action	Section 4.12
Regulatory Default	Section 5.02(f)
Regulatory Redemption	Section 5.16
Regulatory Redemption Effective Date	Section 5.16
Resale Restriction Termination Date	Section 5.17(c)
Rescission Notice	Section 2.02(d)(ii)
ROFO Period.....	Section 5.20(a)
Second Closing	Section 2.01(c)(i)
Second Closing Date	Section 2.01(c)(iii)
Second Closing Escrow Agent.....	Section 2.01(c)(iv)
Second Closing Escrow Agreement.....	Section 2.01(c)(iv)
Second Closing Lead Investor Warrants.....	Section 2.01(c)(ii)
Securities Act	Recitals
Shelf Charter	Section 5.08
Signing Date.....	Preamble
Subscription Offer	Section 5.20(b)
Such Lead Investor's Warrant Shares	Section 3.02
Such Purchaser's Bank Acquisition Shares	Section 2.01(c)(i)
Such Purchaser's Commitment.....	Section 2.01(a)(i)

<u>Term</u>	<u>Defined in Section</u>
Such Purchaser's Commitment Amount.....	Section 2.01(a)(i)
Such Purchaser's Commitment Shares	Section 2.01(a)(i)
Such Purchaser's Initial Funded Commitment	Section 2.01(b)(i)
Such Purchaser's Initial Funded Commitment Amount.....	Section 2.01(b)(i)
Such Purchaser's Initial Funded Shares.....	Section 2.01(b)(i)
Such Purchaser's Offered Securities.....	Section 3.02
Such Purchaser's Unfunded Commitment	Section 2.01(c)(i)
Such Purchaser's Unfunded Commitment Amount..	Section 2.01(c)(i)
Transfer Agent	Section 2.01(b)(iv)
Transferee Letter	Section 5.17(c)
Unfunded Commitment.....	Section 2.01(c)(i)
Unfunded Commitment Amount	Section 2.01(c)(i)
Warrant Shares	Section 3.02

Section 1.03 Construction. Any reference to any law will be deemed also to refer to such law as amended and all rules and regulations promulgated thereunder, unless the context requires otherwise. The words "include," "includes," and "including" will be deemed to be followed by "without limitation." The words "this Agreement," "herein," "hereof," "hereby," "hereunder," and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

ARTICLE II. PURCHASE AND SALE

Section 2.01 Purchase and Sale of Securities.

(a) Purchase and Sale.

(i) On the terms and conditions set forth in this Agreement, the Company commits to issue and sell to each Purchaser, and each Purchaser severally, but not jointly, commits to purchase (such commitment for all Purchasers, the "**Commitment**" and for a particular Purchaser, "**Its Commitment**," "**Such Purchaser's Commitment**" or similar phrase indicating the commitment by such Purchaser) from the Company at the Issue Price at the Closings pursuant to Section 2.01(b) and (c), the number of shares of Common Stock (the total such shares for all Purchasers, the "**Commitment Shares**" and the shares for a particular Purchaser, "**Its Commitment Shares**," "**Such Purchaser's Commitment Shares**" or similar phrase indicating the portion of Commitment Shares attributable to that Purchaser) equal to (i) the aggregate U.S. dollar commitment indicated below such Purchaser's name on the signature page of this Agreement (such U.S. dollar commitment for all Purchasers, the "**Commitment Amount**" and the U.S. dollar commitment for a particular Purchaser, "**Its Commitment Amount**," "**Such Purchaser's Commitment Amount**" or similar phrase indicating the portion of the Commitment Amount attributable to that Purchaser), subject to termination of a Purchaser's Unfunded Commitment pursuant to Sections 2.02 and 2.03, divided by (ii) the Issue Price. A Purchaser's Commitment Shares shall consist of shares of Class A

Voting Common Stock up to the applicable Voting Limit for such Purchaser indicated below such Purchaser's name on the signature page of this Agreement, with such Purchaser's remaining Commitment Shares consisting of shares of Class B Non-Voting Common Stock.

(ii) In addition, the Company shall issue and sell to each Lead Investor in addition to the shares of Common Stock such Lead Investor agrees to purchase hereunder at each of the Closings, in exchange for such Lead Investor agreeing to be subject to the FDIC Policy, a number of warrants to purchase shares of Class B Non-Voting Common Stock, at an exercise price equal to the Issue Price, equal to 5% of the number of shares of Common Stock such Lead Investor purchases at such Closing, in substantially the form of warrant certificate attached to the form of Warrant Agreement attached hereto as Exhibit D, which warrants shall expire on the 10th anniversary of the First Closing Date (the "**Lead Investor Warrants**"); *provided, however*, if a Lead Investor elects to exercise its Purchaser Termination Right to terminate Its Unfunded Commitment, it will forfeit all of its Lead Investor Warrants.

(iii) No Purchaser will be permitted or required to purchase shares of Common Stock in excess of the applicable Ownership Limit indicated below such Purchaser's name on the signature page of this Agreement.

(b) First Closing: 10% of Commitment Amount.

(i) Subject to the satisfaction (or waiver) of the conditions set forth in Article VI below, the Company shall issue and sell to each Purchaser, and each Purchaser severally, but not jointly, shall purchase (such obligation for all Purchasers, the "**Initial Funded Commitment**" and for a particular Purchaser, "**Its Initial Funded Commitment**," "**Such Purchaser's Initial Funded Commitment**" or similar phrase indicating the obligation by such Purchaser) from the Company at the Issue Price at the first closing (the "**First Closing**") such number of Commitment Shares (the total such shares for all Purchasers, the "**Initial Funded Shares**" and such shares for a particular Purchaser, "**Its Initial Funded Shares**," "**Such Purchaser's Initial Funded Shares**" or similar phrase indicating the portion of Initial Funded Shares attributable to that Purchaser) equal to (i) ten percent (10%) of such Purchaser's Commitment Amount (such U.S. dollar commitment for all Purchasers, the "**Initial Funded Commitment Amount**" and such U.S. dollar commitment for a particular Purchaser, "**Its Initial Funded Commitment Amount**," "**Such Purchaser's Initial Funded Commitment Amount**" or similar phrase indicating the portion of the Initial Funded Commitment Amount attributable to that Purchaser), divided by (ii) the Issue Price.

(ii) In addition, the Company shall issue and sell at the First Closing to each Lead Investor in addition to such Lead Investor's Initial Funded Shares, in exchange for such Lead Investor agreeing to be subject to the FDIC Policy, a number of Lead Investor Warrants equal to 5% of such Lead Investor's Initial Funded Shares (the "**First Closing Lead Investor Warrants**").

(iii) The date of the First Closing (the "**First Closing Date**") shall be the second Business Day after all the conditions in Article VI have been satisfied or waived in accordance with the terms and conditions of this Agreement at the offices of Hunton & Williams LLP, 1900 K Street, N.W. Washington, D.C. 20006-1109, or at such other place, time, and date as the Company and the Purchasers may agree.

(iv) Prior to the First Closing Date, (A) each Purchaser shall have delivered Its Initial Funded Commitment Amount to the First Closing Escrow Agent to hold in escrow by wire transfer to the following account at Bank of New York Mellon (the "**First Closing Escrow Agent**"): Bank of New York Mellon, ABA No. 021-000-018, Credit: Blue Ridge Holdings, Inc., Account No. GLA # 111-565; and (B) the Company shall have issued written instructions to American Stock Transfer & Trust Company, the Company's transfer agent (the "**Transfer Agent**") authorizing, upon notice from the First Closing Escrow Agent, the issuance of (i) the Initial Funded Shares to the Purchasers; and (ii) the First Closing Lead Investor Warrants to the Lead Investors. On the First Closing Date: (x) the First Closing Escrow Agent shall wire to the Company the Initial Funded Commitment Amount for each Purchaser in accordance with the terms of the Escrow Agreement, dated May 25, 2010, among the First Closing Escrow Agent, the Placement Agent, the Purchasers and the Company in the form attached hereto as Exhibit K (the "**First Closing Escrow Agreement**"); and (y) the First Closing Escrow Agent shall notify the Transfer Agent to deliver to (1) each Purchaser the number of Initial Funded Shares that such Purchaser is purchasing hereunder, registered in the name of such Purchaser and (2) each Lead Investor the number of First Closing Lead Investor Warrants that such Lead Investor is acquiring hereunder, registered in the name of such Lead Investor.

(c) Second Closing: Up to 90% of Commitment Amount.

(i) Subject to the satisfaction (or waiver) of the conditions set forth in Article VII below, the Company shall issue and sell to each Funding Purchaser (defined below), and each Funding Purchaser severally, but not jointly, shall purchase (such obligation for all Purchasers, the "**Unfunded Commitment**" and for a particular Purchaser, "**Its Unfunded Commitment**," "**Such Purchaser's Unfunded Commitment**" or similar phrase indicating the obligation of such Purchaser) from the Company at the Issue Price at the second closing (the "**Second Closing**") such number of Commitment Shares (the total such shares for all Purchasers, "**Bank Acquisition Shares**" and such shares for a particular Purchaser, "**Its Bank Acquisition Shares**," "**Such Purchaser's Bank Acquisition Shares**" or similar phrase indicating the portion of Bank Acquisition Shares attributable to that Purchaser) equal to (i) ninety percent (90%) of such Purchaser's Commitment Amount (such U.S. dollar commitment for all Purchasers, the "**Unfunded Commitment Amount**" and such U.S. dollar commitment for a particular Purchaser, "**Its Unfunded Commitment Amount**," "**Such Purchaser's Unfunded Commitment Amount**" or similar phrase indicating the portion of the Unfunded Commitment Amount attributable to that Purchaser), or such smaller portion of such Purchaser's Unfunded Commitment Amount as the Company may determine pursuant to Section 2.02, in connection with a proposed Bank Acquisition, subject to termination of a

Purchaser's Unfunded Commitment Amount pursuant to Sections 2.02 and 2.03, divided by (ii) the Issue Price.

(ii) In addition, the Company shall issue and sell at the Second Closing to each Lead Investor in addition to such Lead Investor's Bank Acquisition Shares, in exchange for such Lead Investor agreeing to be subject to the FDIC Policy, a number of Lead Investor Warrants equal to 5% of such Lead Investor's Bank Acquisition Shares (the "**Second Closing Lead Investor Warrants**").

(iii) The date of the second Closing (the "**Second Closing Date**") shall be the second Business Day after all the conditions in Article VII have been satisfied or waived in accordance with the terms and conditions of this Agreement at the offices of Hunton & Williams LLP, 1900 K Street, N.W. Washington, D.C. 20006-1109, or at such other place, time, and date as the Company and the Purchasers may agree.

(iv) Prior to the Second Closing Date, (A) each Funding Purchaser shall have delivered Its Funding Amount to the Second Closing Escrow Agent to hold in escrow by wire transfer to the following account at Bank of New York Mellon (the "**Second Closing Escrow Agent**"): Bank of New York Mellon, ABA No. 021-000-018, Credit: Blue Ridge Holdings, Inc., Account No. GLA # 111-565; and (B) the Company shall issue written instructions to the Transfer Agent authorizing, upon notice from the Second Closing Escrow Agent, the issuance of (i) the Bank Acquisition Shares to the Funding Purchasers; and (ii) the Second Closing Lead Investor Warrants to the Lead Investors who are Funding Purchasers. On the Second Closing Date: (x) the Second Closing Escrow Agent shall wire the Funding Amount for each Funding Purchaser to the Company (or all or a portion thereof to such other Person as may be designated by the Company at the direction of the FDIC in the case of a Failed Bank Acquisition) in accordance with the terms of the Escrow Agreement to be entered into among the Second Closing Escrow Agent, the Placement Agent (if it elects to be a party), the Purchasers and the Company in substantially the form attached hereto as Exhibit L (the "**Second Closing Escrow Agreement**"); and (y) the Placement Agent (or the Company, if the Placement Agent is not a party to the Second Closing Escrow Agreement) will provide written instructions to the Second Closing Escrow Agent, on behalf of the Company, if applicable, to notify the Transfer Agent to deliver to (1) each Funding Purchaser the number of Bank Acquisition Shares that such Funding Purchaser is purchasing hereunder, registered in the name of such Funding Purchaser and (2) each Lead Investor who is a Funding Purchaser the number of Second Closing Lead Investor Warrants that such Lead Investor is acquiring hereunder, registered in the name of such Lead Investor.

Section 2.02 Capital Call for Second Closing.

(a) Capital Call. Prior to the time the Unfunded Commitments terminate as set forth in Section 2.03, the Company may make, upon approval of both a majority of the Board of Directors and a majority of the Independent Directors, a capital call for all or a portion of the Unfunded Commitment Amount (the "**Capital Call Amount**") for the purpose of funding a proposed Bank Acquisition (a "**Capital Call**"). The amount of the Capital Call Amount will be the amount that the Board of Directors determines would be appropriate with respect to the

proposed Bank Acquisition; *provided*, that in no event will such amount be less than the amount needed to achieve a Tier 1 common equity to total assets ratio of ten percent (10%) as of the closing of the Bank Acquisition. After the Company sends a Capital Call Notice, the Company may not send another Capital Call Notice unless and until the Company either sends (i) a Capital Call Termination Notice or (ii) a Rescission Notice.

(b) Capital Call Notice.

(i) Following approval of a Capital Call pursuant to Section 2.02(a), the Company will send a notice (a "***Capital Call Notice***") to each Purchaser stating (1) the aggregate Capital Call Amount, (2) such Purchaser's portion thereof assuming no other Purchaser opts to terminate its obligations with respect to Its Unfunded Commitment, (3) the intended purpose of the Capital Call, (4) a proposed business plan, (5) the Capital Call Notice Deadline (as defined below), (6) instructions on how to terminate all of a Purchaser's Unfunded Commitment, and (7) the following information regarding the proposed Bank Acquisition:

(A) if the Company proposes to bid in a given Failed Bank sale by the FDIC, then to the extent such information is available and the Company is able to disclose such information in compliance with applicable regulatory requirements, the Capital Call Notice will include (i) the name of the target Failed Bank, (ii) the material terms of the bid, (iii) the most recently available balance sheet for the Failed Bank, (iv) a pro forma summary balance sheet for the Company giving effect to the Bank Acquisition and (v) the anticipated bid date; or

(B) if the Company proposes to enter into an agreement for a Bank Acquisition for a Non-Failed Bank, the Capital Call Notice will include (i) the name of the target Non-Failed Bank, (ii) the material terms of the proposed agreement, (iii) a recent balance sheet for the Non-Failed Bank, (iv) a pro forma summary balance sheet for the Company giving effect to the Bank Acquisition, (v) the anticipated agreement date and closing date and (vi) the Non-Failed Bank Outside Date. In addition, to the extent practicable and subject to applicable regulatory and contractual limitations, the Company shall provide any additional information a Purchaser may reasonably request with respect to such Non-Failed Bank, as promptly as possible upon such request.

(ii) At any time on or prior to the deadline set forth in such Capital Call Notice, which in no event will be less than 48 hours from the time the Company issues the Capital Call Notice, (the "***Capital Call Notice Deadline***") each Purchaser will have the right in its sole discretion to terminate Its Unfunded Commitment (such termination right, the "***Purchaser Termination Right***") by delivering a written termination notice to the Company stating that it has elected to terminate Its Unfunded Commitment, subject to reinstatement of such obligations as set forth in Sections 2.02(c) and 2.02(d)(ii) of this Agreement.

(c) Funding Notice.

(i) Promptly following a Capital Call Notice Deadline, the Company will send a notice (a "**Funding Notice**") to each Purchaser who has not terminated Its Unfunded Commitment (a "**Funding Purchaser**"), stating (x) the amount of such Purchaser's *pro rata* portion of the aggregate Capital Call Amount (such Funding Purchaser's "**Funding Amount**") and (y) the date (the "**Funding Date Deadline**") by which such Funding Purchaser must transfer its Funding Amount to the Second Closing Escrow Agent to hold in escrow pursuant to the Second Closing Escrow Agreement, which date shall be no less than two Business Days after the date of the Funding Notice. The Funding Amount for a Funding Purchaser shall equal the product of the Capital Call Amount and a fraction, the numerator of which is such Funding Purchaser's Unfunded Commitment Amount and the denominator of which is the aggregate value of Unfunded Commitment Amounts of all Funding Purchasers, provided that if the Funding Amount would cause any Purchaser to exceed its applicable Ownership Limit (such excess amount, the "**Excess Funding Amount**") then the Funding Amount for any such Purchaser shall be capped at an amount that results in such Purchaser owning shares of Common Stock equal to its Ownership Limit and any such Excess Funding Amounts shall be allocated to the remaining Funding Purchasers *pro rata* based on their respective Unfunded Commitment Amounts, provided such allocation shall not cause any such Purchasers to exceed its Ownership Limits in which event the process described in this sentence shall be repeated until all Excess Funding Amounts have been allocated to Funding Purchasers and no Purchaser exceeds its Ownership Limit.

(ii) Notwithstanding the foregoing, a Capital Call shall be terminated by notice provided by the Company to each Purchaser (a "**Capital Call Termination Notice**"), if any of the following conditions occur:

(A) the Unfunded Commitment Amounts are not sufficient to fund the entire Capital Call Amount;

(B) any Funding Purchaser would increase its ownership of Common Stock in connection with such Funding Notice to such a degree that it would (1) in the case of a Funding Purchaser subject to the 4.9% Voting Limit, exceed the 4.9% Voting Limit, unless such Funding Purchaser has already agreed to Passivity and Anti-Association Commitments and to the FDIC Policy; (2) in the case of a Funding Purchaser subject to the 9.9% Voting Limit, exceed the 9.9% Voting Limit, unless such Funding Purchaser has complied with the Federal Reserve's Change in Bank Control Act processes; (3) in the case of a Funding Purchaser subject to the 24.9% Voting Limit, exceed the 24.9% Voting Limit; (4) in the case of a Funding Purchaser subject to the 24.9% Ownership Limit, exceed the 24.9% Ownership Limit or (5) in the case of a Funding Purchaser subject to the 9.9% Ownership Limit, exceed the 9.9% Ownership Limit;

(C) less than one-third of the Class A Voting Common Stock will be held by Persons subject to the FDIC Policy;

(D) a majority of the Board of Directors determines to terminate the Capital Call; or

(E) if (1) the Company changes the terms of a Bank Acquisition from the terms that have been disclosed to the Purchasers in the Capital Call Notice, unless a majority of the Independent Directors has determined in good faith that the proposed change is not material; or (2) the Company obtains information about the proposed Bank Acquisition that is different from the information in the Capital Call Notice, unless a majority of the Independent Directors has determined in good faith that the new information is not material; *provided*, that for purposes of this Section 2.02(c)(ii)(E) “material” shall mean a substantial likelihood that a reasonable Purchaser would consider the change in terms or additional information important in making its decision of whether or not to terminate its Unfunded Commitment; *provided*, that, without limitation, any such change in terms or additional information that results in a 10% or greater change in the Company’s valuation of a Bank Acquisition shall be deemed material.

(iii) If a Capital Call Termination Notice has been issued by the Company prior to the 12-month anniversary of the First Closing Date, the Unfunded Commitment of all Purchasers (including any Unfunded Commitments that one or more Purchasers have elected to terminate) shall be automatically restored.

(d) Funding or Rescission of Capital Call.

(i) Funding. Following the Capital Call Notice Deadline, on or before the Funding Date Deadline, each Funding Purchaser agrees to deposit into the escrow account specified by the Company with the Second Closing Escrow Agent to hold in escrow such Funding Purchaser’s Funding Amount. The number of shares of Common Stock equal to (i) the aggregate Funding Amount of all Funding Purchasers, divided by (ii) the Issue Price is referred to as the “**Additional Shares**.” Following deposit of the Funding Amount in such escrow account, if the Company consummates the relevant Bank Acquisition, the Second Closing Escrow Agent will transfer the Funding Amount in escrow to (or at the direction of) the Company, the Additional Shares will be delivered to the Funding Purchasers and any remaining portion of the Unfunded Commitments that was not subject to the Capital Call for such Bank Acquisition will terminate. The Company, each Funding Purchaser and the Second Closing Escrow Agent will execute the Second Closing Escrow Agreement within one Business Day of the day of the Funding Notice.

(ii) Rescission. Following deposit of the Funding Amount in the escrow account specified by the Company with the Second Closing Escrow Agent to hold in escrow, if the definitive agreement for the relevant Bank Acquisition terminates, the Company issues a Capital Call Termination Notice with respect to the Capital Call relating to such Funding Amount or the Company has not closed the relevant Bank Acquisition by the Funding Release Date, then the Company will send a notice (a “**Rescission Notice**”) to each Purchaser stating that: (A) the Capital Call for such Bank

Acquisition shall be rescinded (and treated as if it had not been made) and the Funding Amount will be returned within one Business Day by the Second Closing Escrow Agent to the respective Funding Purchasers; and (B) in the event that the 12-month anniversary of the First Closing Date has not yet occurred, the Unfunded Commitment of all Purchasers (including any Unfunded Commitments that one or more Purchasers may have elected to terminate) shall be automatically restored. In addition to the Rescission Notice, the Company shall provide a similar notice to the Second Closing Escrow Agent under the Second Closing Escrow Agreement instructing the Second Closing Escrow Agent to return the Funding Amount to the respective Funding Purchasers within one Business Day of the Recission Notice.

Section 2.03 Termination of Unfunded Commitments. The Unfunded Commitment will terminate as follows: (i) if a Bank Acquisition occurs, any portion of the Unfunded Commitment for which an Unfunded Commitment Amount has not been called by the Company in connection with that Bank Acquisition will immediately terminate, (ii) if no portion of the Unfunded Commitment Amount has been called and is in escrow with the Second Closing Escrow Agent under the Second Closing Escrow Agreement on the 12-month anniversary of the First Closing Date, the Unfunded Commitment will terminate on the date of such 12-month anniversary of the First Closing Date, (iii) if a portion of the Unfunded Commitment Amount has been called and is in escrow with the Second Closing Escrow Agent under the Second Closing Escrow Agreement on the 12-month anniversary of the First Closing Date, the remaining portion of the Unfunded Commitment for which an Unfunded Commitment Amount is not in escrow with the Second Closing Escrow Agent under the Second Closing Escrow Agreement will terminate on the date of such 12-month anniversary of the First Closing Date and (iv) if a portion of the Unfunded Commitment Amount has been called and is in escrow with the Second Closing Escrow Agent under the Second Closing Escrow Agreement on the 12-month anniversary of the First Closing Date but the Bank Acquisition in respect of which such amounts were held in escrow has not occurred by the Bank Acquisition Deadline, such Unfunded Commitment for which an Unfunded Commitment Amount is held in escrow will terminate on the Bank Acquisition Deadline.

Section 2.04 Additional Commitments. Prior to the closing of the first Bank Acquisition, the Company may obtain additional written agreements ("**Additional Commitments**") to purchase shares of Common Stock at the Issue Price (the aggregate U.S. dollar amount of such Additional Commitments, the "**Additional Commitment Amount**") from Persons in substantially the same form as, and in accordance with, the terms and conditions set forth in this Agreement (except that, if the Company elects, such Additional Commitments for any such Person may be in the form of Unfunded Commitments only); *provided*, that without the approval of the Federal Reserve and the FDIC no such Additional Commitments may (i) be made by a Person that is not prior to making an Additional Commitment, a Purchaser under this Agreement or (ii) result in a Purchaser crossing the Voting Limit or Ownership Limit applicable to such Purchaser; *provided, further*, that the terms Commitment, Commitment Amount, Initial Funded Commitment (to the extent a portion of an Additional Commitment is invested in the Company in advance of the first Bank Acquisition), Initial Funded Commitment Amount (to the extent a portion of the Additional Commitment is invested in the Company in advance of the first Bank Acquisition), Unfunded Commitment and Unfunded Commitment Amount herein shall include any such Additional Commitments and, in the case of amounts, any such Additional

Commitment Amount (or applicable portion thereof) and any other related terms will be construed accordingly, in each case as the context requires; *provided, further*, that each Purchaser shall have the right to make Additional Commitments to maintain such Purchaser's *pro rata* portion of the total Commitment Amount after giving effect to the increase in the Commitment Amount due to any other Person's Additional Commitment. If the Company obtains Additional Commitments from any Person, the Company shall promptly (and, in any event, prior to closing its first Bank Acquisition) provide notice to each Purchaser.

ARTICLE III. REPRESENTATIONS AND WARRANTIES OF PURCHASERS.

Each Purchaser represents and warrants as of the Signing Date, as of the First Closing Date and, except a Purchaser that exercises its Purchaser Termination Right, as of the Second Closing Date (except, in each case, for the representations and warranties that are as of a specific date, which shall be made as of such date) to the Company that:

Section 3.01 Organization; Authorization. Such Purchaser is an entity duly organized, validly existing and in good standing (to the extent such concept is applicable) under the laws of the jurisdiction in which it is organized and has the requisite organizational power and authority to carry on its business as now being conducted. Such Purchaser has the requisite organizational power and authority to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated by the Transaction Documents to which it is a party. The execution and delivery of the Transaction Documents to which it is a party by such Purchaser and performance by such Purchaser of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate or, if such Purchaser is not a corporation, such partnership, limited liability company or other applicable like action, on the part of such Purchaser and no further consent or authorization in connection therewith is required by such Purchaser, its Board of Directors or its shareholders, or if such Purchaser is not a corporation, such partnership, limited liability company or other applicable like action, on the part of such Purchaser. This Agreement and the other Transaction Documents to which the Purchaser is a party have been (or upon delivery will have been) duly executed by such Purchaser, and when delivered by such Purchaser in accordance with terms hereof and thereof, will constitute the legal, valid and binding obligations of such Purchaser, enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance or transfer, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and to general principles of equity, including principles of materiality, commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution thereunder may be limited by federal or state securities laws or public policy relating thereto.

Section 3.02 No Public Sale or Distribution. Such Purchaser understands that Its Commitment Shares and, as applicable, its Lead Investor Warrants and the shares of Class B Non-Voting Common Stock to be issued upon exercise of its Lead Investor Warrants (the total such shares for all Lead Investors, the "**Warrant Shares**" and the shares for a particular Lead Investor, "**Its Warrant Shares**," "**Such Lead Investor's Warrant Shares**" or similar phrase indicating the portion of Warrant Shares attributable to that Lead Investor) (the total Commitment Shares and, as applicable, Lead Investor Warrants and the Warrant Shares for all

Purchasers, the “*Offered Securities*,” and as to any Purchaser, “*Its Offered Securities*,” “*Such Purchaser’s Offered Securities*” or any similar phrase indicating the portion of the Offered Securities attributable to that Purchaser) are being offered in a transaction not involving a public offering and have not been registered under the Securities Act or any applicable state securities law. Such Purchaser is acquiring Its Offered Securities as principal for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the Securities Act. Such Purchaser is acquiring Its Offered Securities hereunder in the ordinary course of its business. Such Purchaser does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of Its Offered Securities. Such Purchaser will notify any transferee of the foregoing resale restrictions and will provide the Company and the transfer agent such information as they may reasonably require to confirm that the transfer by it complies with the foregoing restrictions, the transfer restrictions set forth herein and the other restrictions set forth in the Certificate of Incorporation.

Section 3.03 Accredited Investor. Such Purchaser is an Accredited Investor and is aware that the offer and sale by the Company of Its Offered Securities to it are being made in reliance on an exemption from the registration requirements under the Securities Act and has provided the information in the Accredited Investor Questionnaire attached hereto as Appendix II. Such Purchaser is not a registered broker-dealer under Section 15 of the Exchange Act or an unregistered broker-dealer engaged in the business of being a broker-dealer. Unless disclosed in writing to the Company prior to the date of this Agreement, such Purchaser further represents and warrants that it is not an entity formed for the specific purpose of acquiring Its Offered Securities.

Section 3.04 Foreign Investors. Such Purchaser acknowledges that no action has been taken or will be taken in any jurisdiction outside of the United States by the Company or the Placement Agent that would permit an offering of Its Offered Securities (including any filing of a registration statement) in any jurisdiction outside the United States where action for that purpose is required. If a Purchaser is not a United States person (as defined by Section 7701(a)(30) of the Code), such Purchaser hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for Its Offered Securities or any use of this Agreement, including (i) the legal requirements within its jurisdiction for the purchase of Its Offered Securities, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained, and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale, or transfer of Its Offered Securities. Such Purchaser’s subscription and payment for and continued beneficial ownership of Its Offered Securities will not violate any applicable securities or other laws of any foreign jurisdiction.

Section 3.05 ERISA. Such Purchaser: (a) represents and warrants that either it is not purchasing or holding Its Offered Securities with the assets of any Benefit Plan Investor or the purchase and holding of Its Offered Securities by such Purchaser does not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code, (b) represents and warrants that the purchase and holding of Its Offered Securities by such Purchaser satisfies the applicable provisions of ERISA, (c) agrees to provide to the Company, promptly upon request, all additional information that the Company determines to be reasonably necessary

to determine the applicability of, or assure compliance with, an exception under the Plan Asset Regulation, and (d) represents and warrants that the information provided in the Benefit Plan Questionnaire is true, accurate and complete.

Section 3.06 No General Solicitation. The offering of the Offered Securities was directly communicated to such Purchaser. Such Purchaser is not purchasing Its Offered Securities as a result of any advertisement, article, notice or other communication regarding the Offered Securities, published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general advertisement or solicitation.

Section 3.07 Reliance on Exemptions. Such Purchaser understands that Its Offered Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Purchaser's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of such Purchaser to acquire Its Offered Securities and agrees that if any of the representations, warranties and acknowledgments deemed to have been made by such Purchaser hereunder are no longer accurate, such Purchaser will promptly notify the Company.

Section 3.08 Review of Information and Consultation with Advisors. Such Purchaser has, either alone or through its representatives:

(a) consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisers in connection herewith to the extent it has deemed necessary;

(b) had a reasonable opportunity to ask such questions as it has deemed necessary of, and to receive answers from, officers and representatives of the Company concerning the Company and its financial condition and results of operations, the terms and conditions of the offering of the Offered Securities and any additional relevant information that the Company possesses, and any such questions have been answered to its satisfaction;

(c) had the opportunity to review and evaluate the following in connection with its investment decision in Its Offered Securities: (i) all publicly available records and filings concerning the Company, as well as all other documents, records, filings, reports, agreements and other materials provided by the Company regarding its business, operations and financial condition, as well as that of ICS and the Platform Bank, sufficient to enable it to evaluate its investment, which for the avoidance of doubt shall include all information contained in the electronic data room established by the Company in connection with the offering contemplated hereby; (ii) the offering summary and investor presentations (as supplemented), that summarize this offering; and (iii) such other information it deems necessary in connection with its decision to purchase the Offered Securities;

(d) in connection with a proposed Bank Acquisition: (i) to the extent that the Purchaser has been granted access thereto by the FDIC it has reviewed and evaluated all documents, records, filings, reports, agreements and other materials regarding the Failed Bank's business, operations and financial condition, including the assets and liabilities, that are made

available in an electronic data room maintained by the FDIC for the Failed Bank; (ii) it has reviewed and evaluated all information contained in the Capital Call Notice; and (iii) it has reviewed and evaluated such other information it deems necessary, in each case in connection with its decision whether to terminate Its Unfunded Commitment; and

(e) made its own investment decisions based upon its own judgment, due diligence and advice from such advisers as it has deemed necessary and not upon any view expressed by any Person. Neither such inquiries nor any other due diligence investigations conducted by such Purchaser or its advisors, if any, or its representatives shall modify, amend or affect such Purchaser's right to rely on the Company's representations and warranties contained herein. Such Purchaser understands that its investment in Its Offered Securities involves a high degree of risk and is able to afford a complete loss of such investment. Such Purchaser is able to fend for itself.

Section 3.09 No Reliance. Purchaser acknowledges that the information in the offering summary and investor presentations (as supplemented) may not contain all of the terms and conditions of the offering and that certain terms of the offering may have changed from those set forth therein, and understands and acknowledges that it is Purchaser's responsibility to: (a) conduct its own independent investigation and evaluation of the offering, including, without limitation, the information specified in Section 3.08 hereof; and (b) review and evaluate the management team proposed to operate and manage the Company. Such Purchaser is not relying upon, and has not relied upon, any advice, statement, representation or warranty made by any Person, including, without limitation, the Placement Agent, or the Company's directors, officers, employees, affiliates (as defined below), shareholders, agents, representatives or advisors (including, without limitation, attorneys, accountants, consultants, financing sources and financial advisors), except for the Company's statements, representations and warranties of the Company made or contained in this Agreement. The Purchaser acknowledges and understands that the Placement Agent is not acting as underwriter or in any other capacity and is not and shall not be construed as a fiduciary for the Purchaser, the Company, or any other Person in connection with the offering, and that the Placement Agent is not responsible for any representation, warranty or agreement of the Company or any other Person in connection with the offering. Furthermore, such Purchaser acknowledges that: (i) the Placement Agent has not performed any due diligence review on behalf of the Purchaser; (ii) the Purchaser has made and relied upon its own independent examination in purchasing Its Offered Securities and carefully reviewed the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws as well as the Transaction Documents for the definitive terms of the offering as set forth above; (iii) nothing in this Agreement or any other materials presented by or on behalf of the Company to the Purchaser in connection with the purchase of the Offered Securities constitutes legal, tax or investment advice and such Purchaser has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of Its Offered Securities; and (iv) the Purchaser received or had access to all of the information the Purchaser deemed necessary in order to make its investment decision in Its Offered Securities. The Placement Agent is a third-party beneficiary to this Section 3.09.

Section 3.10 No Public Market; No Governmental Review; Securities Not Insured. Such Purchaser understands that there is no established market for the Offered Securities, and that no public market for the Offered Securities may develop. Such Purchaser understands that

no Governmental Authority has passed on or made any recommendation or endorsement of the Offered Securities or the fairness or suitability of an investment in the Offered Securities nor have such authorities passed upon or endorsed the merits of the offering of the Offered Securities. Such Purchaser understands that the Offered Securities are not deposits or other obligations of a depository institution and are not insured by the FDIC, including the FDIC's Deposit Insurance Fund, or any other Governmental Authority.

Section 3.11 Brokers and Finders. No Person will have, as a result of the transactions contemplated by this Agreement, any valid right, interest or claim against or upon the Company, or any Purchaser, for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of such Purchaser, other than as set forth in Section 3.18 hereof.

Section 3.12 No Conflicts. The execution, delivery and performance by such Purchaser of this Agreement and the consummation by such Purchaser of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of such Purchaser, or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Purchaser is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations, assuming the correctness of the representations and warranties made by the Company herein) applicable to such Purchaser, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Purchaser to perform its obligations hereunder.

Section 3.13 No Other Agreements with Company or Other Purchasers. Other than this Agreement and each of the other Transaction Documents to which a Purchaser is a party, such Purchaser is not a party to any agreement with the Company or any of its Affiliates or, to the extent relating to this Agreement or the transactions contemplated hereby, with any other Purchaser or any of its Affiliates, except for agreements with Affiliates or Identified Persons that have been disclosed (and copies of which have been delivered) to the Company prior to the date of this Agreement; *provided, however*, that Purchasers and their Affiliates may enter into Lead Investor Agreements with the Company and Additional Commitments with the Company pursuant to Section 2.04. Except any Person (an "*Identified Person*") disclosed on such Purchaser's signature page to this Agreement, which may include, without limitation, any Affiliates of such Purchaser or any other Identified Person, such Purchaser is neither part of a group nor acting in concert with any other Purchaser. For the avoidance of doubt, for purposes of any applicable Voting Limit or Ownership Limit a Purchaser's share ownership, Control or voting power shall include the shares owned, Controlled or voting power of such Purchaser's Identified Persons. Notwithstanding the foregoing, nothing in this Section 3.13 shall impede a Purchaser's ability to enter into or amend agreements with any Affiliate or any Identified Person; *provided*, that the terms of such agreements are not inconsistent with the terms of this Agreement and do not impede or delay the ability of the Company to consummate a Bank Acquisition or otherwise conduct its business or affairs.

Section 3.14 Investment Risk. Such Purchaser understands that its investment in Its Offered Securities involves a high degree of risk and that no representation is being made as to the business or prospects of the Company after completion of a Bank Acquisition or the future value of the Offered Securities. Such Purchaser, either alone or together with its representatives, has the knowledge, sophistication and experience in financial and business matters as to fully understand and be capable of evaluating the merits and risks of an investment in the Offered Securities and has the ability to bear the economic risks of an investment in the Offered Securities and, at the present time, is able to afford a complete loss of such investment.

Section 3.15 Residency. Such Purchaser has, if an entity, its principal place of business or, if an individual, its primary residence in the jurisdiction indicated below such Purchaser's name on the signature pages hereto, unless, with regard to the Second Closing, such Purchaser otherwise notifies the Company in writing at least ten Business Days prior to such closing.

Section 3.16 Certain Regulatory Matters.

(a) Such Purchaser represents and warrants that neither such Purchaser nor any Person controlling, controlled by or under common control with such Purchaser, nor, to such Purchaser's knowledge, any Person having a beneficial interest in such Purchaser, nor any other Person on whose behalf such Purchaser is acting: (i) is a Person listed in the annex to Executive Order No. 13224 (2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism); (ii) is named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Office of Foreign Assets Control ("*OFAC*"); (iii) is a Designated National as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515; (iv) is a non-U.S. shell bank or is providing banking services indirectly to a non-U.S. shell bank; (v) is a senior non-U.S. political figure or an immediate family member or close associate of such figure or an entity owned or controlled by such figure, unless additional due diligence has been conducted with respect to such Person's investment and it has been determined that such Person's investment is not derived from activities that may contravene any applicable anti-money laundering laws and regulations; (vi) is otherwise prohibited from investing in the Company pursuant to applicable U.S. anti-money laundering, antiterrorist, financial institution, economic sanctions and asset control laws, regulations, rules or orders; or (vii) to the knowledge of such Purchaser, will cause or result in, by reason of such Person's participation in the offering or ownership of Offered Securities, the violation of any law, regulation or governmental order (including bank or other financial institution regulatory laws, regulations or orders) to which the Company is subject (each of (i) through (vii) individually, a "*Prohibited Investor*"). Such Purchaser agrees to provide the Company, promptly upon request, all information that the Company reasonably deems necessary or appropriate to comply with applicable U.S. anti-money laundering, antiterrorist, financial institution, economic sanctions and asset control laws, regulations, rules and orders; *provided, however*, that each Purchaser shall have the option to provide such information directly to applicable Governmental Authorities; *provided*, that such Purchaser keeps the Company generally informed about all communications between the Purchaser and any applicable Governmental Authority. Such Purchaser consents to the disclosure to U.S. regulators and law enforcement authorities by the Company and its Affiliates and agents of such information about such Purchaser as the Company possesses and reasonably deems necessary or appropriate to comply with applicable U.S. anti-money laundering,

antiterrorist, financial institution, economic sanctions and asset control laws, regulations, rules and orders. If such Purchaser is a financial institution that is subject to the Bank Secrecy Act, as amended (31 U.S.C. Section 5311 et seq.) and its implementing regulations (collectively, the "**Bank Secrecy Act**"), such Purchaser represents that such Purchaser has met and will continue to meet all of its respective obligations under the Bank Secrecy Act. Such Purchaser further represents and warrants that the funds used to purchase Its Commitment Shares were legally derived.

(b) Such Purchaser acknowledges that if, following the investment in the Offered Securities by such Purchaser, the Company reasonably believes that such Purchaser is (x) a Prohibited Investor, (y) a Person whose identity or structure is determined by the Office of the Comptroller of the Currency (the "**OCC**"), the Federal Reserve, the FDIC or other financial regulatory authority to preclude such regulatory authority from allowing the Company to participate in any auction for or otherwise preclude the Company from participating in any acquisition of a financial institution or otherwise precludes the granting of any approval, consent or similar action or (z) is otherwise engaged in illegal or suspicious activity or refuses to provide promptly information that the Company reasonably requests relating to the matters described in this Section 3.16(b), the Company has the right or may be obligated to prohibit additional investments, segregate the assets constituting, and/or withhold or suspend distributions to such Purchaser in respect of, the investment in accordance with applicable regulations or immediately require such Purchaser to transfer Its Offered Securities. Such Purchaser further acknowledges that such Purchaser will not have any claim against the Company or any of its affiliates or agents or the Placement Agent for any form of damages as a result of any of the foregoing actions.

Section 3.17 Ownership of Common Stock and Non-Exercise of Controlling Influence. After giving effect to the purchase of Its Offered Securities hereunder, such Purchaser, either acting alone or together with any other Person that may be affiliated with such Purchaser, or that may be deemed to be acting in concert with such Purchaser, including, but not limited to, an Identified Person, pursuant to 12 C.F.R. Part 225, Subpart E, will not beneficially own in excess of: (a) if such Purchaser is not a Lead Investor, either 9.9% of the shares of Common Stock or 4.9% of the shares of Class A Voting Common Stock outstanding immediately after giving effect to the issuance of the Offered Securities to all of the Purchasers hereunder; (b) if such Purchaser is a Lead Investor who has elected to be subject to the 9.9% Voting Limit, 9.9% of the shares of Class A Voting Common Stock outstanding immediately after giving effect to the issuance of the Offered Securities to all of the Purchasers hereunder; (c) if such Purchaser is a Lead Investor who has elected to be subject to the 9.9% Ownership Limit, 9.9% of the shares of Common Stock outstanding immediately after giving effect to the issuance of the Offered Securities to all of the Purchasers hereunder (without counting as outstanding the shares of Class B Non-Voting Common Stock for which any Lead Investor Warrants are exercisable); (d) if such Purchaser is a Lead Investor who has elected to be subject to the 24.9% Voting Limit, 24.9% of the shares of Class A Voting Common Stock outstanding immediately after giving effect to the issuance of the Offered Securities to all of the Purchasers hereunder; or (e) if such Purchaser is a Lead Investor who has elected to be subject to the 24.9% Ownership Limit, 24.9% of the shares of Common Stock outstanding immediately after giving effect to the issuance of the Offered Securities to all of the Purchasers hereunder (counting as outstanding the shares of Class B Non-Voting Common Stock for which Lead Investor Warrants held by such Lead Investor (and only those held by such Lead Investor) are exercisable). Without limiting the foregoing, such Purchaser represents and

warrants that: (i) such Purchaser has no present intention of acquiring control of the Company, as “control” is defined in 12 C.F.R. Part 225, Subpart A (“**Control**”); (ii) such Purchaser will not acquire Control in the future without the prior approval of the applicable Governmental Authorities; (iii) such Purchaser is not participating and has not participated with any other Purchaser in any joint activity or parallel action towards a common goal between or among such Purchasers of acquiring Control of the Company; (iv) no other Person holding shares of Common Stock of the Company or that presently proposes to acquire shares of Common Stock of the Company is (a) a member of Purchaser’s immediate family (if Purchaser is an individual), (b) under common Control with Purchaser, or (c) a controlling shareholder, partner, trustee, officer, or director of Purchaser or has policy-making functions with respect to Purchaser, unless, with regard to this clause (iv) of Section 3.17, all such Persons specified in clauses (a), (b) or (c) holding shares of Common Stock of the Company or that presently propose to acquire shares of Common Stock of the Company, together with such Purchaser, would beneficially own (1) if such Purchaser is not a Lead Investor, no more than 9.9% of the shares of Common Stock and no more than 4.9% of the shares of Class A Voting Common Stock outstanding immediately after giving effect to the issuance of the Offered Securities to all of the Purchasers hereunder; (2) if such Purchaser is a Lead Investor who has elected to be subject to the 9.9% Voting Limit, no more than 9.9% of the shares of Class A Voting Common Stock outstanding immediately after giving effect to the issuance of the Offered Securities to all of the Purchasers hereunder; (3) if such Purchaser is a Lead Investor who has elected to be subject to the 9.9% Ownership Limit, no more than 9.9% of the shares of Common Stock outstanding immediately after giving effect to the issuance of the Offered Securities to all of the Purchasers hereunder (without counting as outstanding the shares of Class B Non-Voting Common Stock for which any Lead Investor Warrants are exercisable); (4) if such Purchaser is a Lead Investor who has elected to be subject to the 24.9% Voting Limit, no more than 24.9% of the shares of Class A Voting Common Stock outstanding immediately after giving effect to the issuance of the Offered Securities to all of the Purchasers hereunder; or (5) if such Purchaser is a Lead Investor who has elected to be subject to the 24.9% Ownership Limit, no more than 24.9% of the shares of Common Stock outstanding immediately after giving effect to the issuance of the Offered Securities to all of the Purchasers hereunder (counting as outstanding the shares of Class B Non-Voting Common Stock for which Lead Investor Warrants held by such Lead Investor (and only those held by such Lead Investor) are exercisable); and (v) will not, without first determining whether the prior approval of the applicable Governmental Authorities is required and, if such approval is required, obtaining such approval, directly or indirectly seek to appoint any director or executive officer to the Company or otherwise attempt to direct the management or policies of the Company.

Section 3.18 Placement Agent Fee.

(a) Such Purchaser acknowledges that it is aware that the Placement Agent under the Placement Agency Agreement (i) will receive a fee equal to 1% of the aggregate amount of the Initial Funded Commitment Amount (“**Initial Fee**”) payable by the Company to the Placement Agent at the First Closing; and (ii) will also receive a fee from the Company upon completion of the first Bank Acquisition that occurs on or prior to the Bank Acquisition Deadline (the “**Additional Fee**”), such that the aggregate amount of the Initial Fee and the Additional Fee equals (A) 7% of the aggregate Commitment Amount that has been funded on or before the date of such Bank Acquisition up to an aggregate funded amount of \$500 million and (B) a private placement fee at a market rate (as mutually agreed by the Company and the Placement Agent

negotiating in good faith; *provided*, that a market rate greater than 5% is subject to approval by a majority of the Independent Directors acting in good faith) for the aggregate Commitment Amount that has been funded on or before the date of such Bank Acquisition that exceeds an aggregate funded amount of \$500 million.

(b) Such Purchaser acknowledges that it is aware that the Placement Agent will also be entitled to a fee equal to (i) 7% of any amount funded to the Company or any of its Subsidiaries by any party that is a Purchaser under this Agreement up to a total aggregate funded amount (including the aggregate Commitment Amount funded on or before the date of the first Bank Acquisition) of \$500 million and (ii) a private placement fee at a market rate (as mutually agreed by the Company and the Placement Agent negotiating in good faith; *provided*, that a market rate greater than 5% is subject to approval by a majority of the Independent Directors acting in good faith) for any amount funded to the Company or any of its Subsidiaries by any party that is a Purchaser under this Agreement in excess of \$500 million in total aggregate funded amount (including the aggregate Commitment Amount funded on or before the date of the first Bank Acquisition); *provided*, that fees pursuant to this Section 3.18(b) shall be payable only if the relevant amount is funded (or an agreement to provide such funding is entered into) prior to the 12-month anniversary of the first Bank Acquisition and shall not be payable on amounts in respect of which a fee is paid under Section 3.18(a) above. For the avoidance of doubt, as used in this Section 3.18, Commitment Amount shall include any Additional Commitment Amounts, as provided in this Agreement. Such Purchaser further acknowledges that the Company has agreed to reimburse the Placement Agent for reasonable and actual expenses incurred in connection with this offering if and when a Bank Acquisition is completed.

Section 3.19 Acknowledgement of Investment Risk. Such Purchaser recognizes that the Company is a recently organized institution and has limited financial or operating history, and that an investment in the Offered Securities involves certain risks. Such Purchaser has read and understands the Company's "Risk Factors" outlining certain, but not all, risks related to the Company and an investment in the Company, a copy of which is attached hereto as Appendix IV.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company hereby represents and warrants as of the Signing Date and as of the First Closing Date to each of the Purchasers and as of the Second Closing Date to each of the Funding Purchasers (except for the representations and warranties that are as of a specific date which shall be made as of that date) that:

Section 4.01 Organization, Good Standing, Corporate Power and Qualification. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware, with the requisite corporate power and authority to carry on its business as now being conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify or be in good standing would, singularly or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 4.02 Commitment Amount; Capitalization.

(a) The Commitment Amount as of the Signing Date is \$501,000,000.

(b) The authorized capital of the Company consists, immediately prior to the First Closing, of:

(i) 200,000,000 shares of Class A Voting Common Stock, 150 shares of which are issued and outstanding immediately prior to the First Closing (and shall be repurchased by the Company immediately after the First Closing at the original purchase price for such shares). All of the outstanding shares of Common Stock have been duly authorized, are fully paid and nonassessable and were issued in compliance with all applicable federal and state securities laws.

(ii) 200,000,000 shares of Class B Non-Voting Common Stock, none of which are issued and outstanding immediately prior to the First Closing.

(iii) 50,000,000 shares of Preferred Stock, \$0.001 par value (the "**Preferred Stock**"), none of which are issued and outstanding immediately prior to the First Closing.

(iv) The Company has reserved 495,000 shares of Class B Non-Voting Common Stock for issuance upon exercise of Lead Investors Warrants.

(v) The Company has reserved 2,505,000 shares of Class A Voting Common Stock for issuance to officers, directors, employees and consultants of the Company pursuant to its Blue Ridge Holdings, Inc. 2010 Equity Incentive Plan duly adopted by the Board of Directors and approved by the Company stockholders (the "**Equity Incentive Plan**"). Of such reserved shares of Class A Voting Common Stock on the First Closing Date 401,255 shares will have been issued pursuant to restricted stock purchase agreements, options to purchase 925,600 shares will have been granted and will be outstanding, and 1,178,145 shares of Class A Voting Common Stock will remain available for issuance to officers, directors, employees and consultants pursuant to the Equity Incentive Plan. The Company has made available to the Purchasers complete and accurate copies of the Equity Incentive Plan and forms of agreements used thereunder.

(c) Immediately following the First Closing, assuming each of the Purchasers purchases Its Initial Funded Shares (based on the number of shares of Common Stock reflected on each Purchaser's signature page), the Company shall have issued and outstanding 1,768,868 shares of Class A Voting Common Stock, 736,132 shares of Class B Non-Voting Common Stock, 0 shares of Preferred Stock, Lead Investor Warrants exercisable into 49,500 shares of Class B Non-Voting Common Stock and the capital stock and Equity Equivalents described in paragraph 4.02(b)(v) above. Except as set forth in the prior sentence, no other capital stock or Equity Equivalents shall be outstanding immediately following the First Closing.

(d) Immediately following the Second Closing, assuming (i) the entire Unfunded Commitment Amount is called by the Company, (ii) no Purchaser exercises a

Purchaser Termination Right, (iii) 47% of the Available Grant Amount has been awarded under the Equity Incentive Plan to Members of Management and 2% of the Available Grant Amount has been awarded to non-employee members of the Board of Directors, (iv) the ICS Transaction has occurred and the maximum payment has been made, (v) the Amended and Restated Certificate of Incorporation has not been amended, (vi) no Lead Investor Warrants have been exercised, (vii) no shares of Common Stock have been redeemed, (viii) no shares of Class A Voting Common Stock have been converted into shares of Class B Non-Voting Common Stock, (ix) no shares of Class B Non-Voting Common Stock have been converted into shares of Class A Voting Common Stock, (x) no shares of Common Stock or Lead Investor Warrants have otherwise been repurchased by the Company, (xi) no shares of capital stock or Equity Equivalents have been issued by the Company in its first Bank Acquisition, and (xii) the Company has not obtained Additional Commitments from any Person, then the Company shall have issued and outstanding 18,038,679 shares of Class A Voting Common Stock, 7,361,321 shares of Class B Non-Voting Common Stock, 0 shares of Preferred Stock, Lead Investor Warrants exercisable into 495,000 shares of Class B Non-Voting Common Stock and the capital stock and Equity Equivalents permitted to be issued under the Equity Incentive Plan, and except as set forth in this sentence, no other capital stock or Equity Equivalents shall be outstanding immediately following the Second Closing.

Section 4.03 Subsidiaries. The Company does not currently own or control, directly or indirectly, any interest in any Person. The Company is not a participant in any joint venture, partnership or similar arrangement.

Section 4.04 Authorization. The Company has the requisite corporate power and authority to enter into and perform its obligations under the Transaction Documents to which it is a party and to issue the Offered Securities in accordance with the terms hereof and thereof. The execution and delivery by the Company of the Transaction Documents to which it is a party and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Offered Securities, have been duly authorized by the Company's Board of Directors and require no other action by the Board of Directors or the shareholders of the Company, except that (i) the Company's ability to send a Capital Call Notice shall require approval of both a majority of the Board of Directors and a majority of the Independent Directors, in accordance with Section 2.02(a); (ii) the ability of the Company to consummate a Bank Acquisition and issue the Additional Shares is subject to a sufficient number of Purchasers not exercising the Purchaser Termination Right, in accordance with Section 2.02(b)(ii); (iii) if the Company changes the terms of a Bank Acquisition from the terms that have been disclosed to the Purchasers in the Capital Call Notice, the Company will proceed with such proposed Bank Acquisition only if a majority of the Independent Directors determines in good faith that the proposed change is not material (as material is defined in Section 2.02(c)(ii)(E)); (iv) if the Company obtains information about the proposed Bank Acquisition that is different from the information that was provided or made available to the Purchasers in connection with the Capital Call Notice, the Company will proceed with such proposed Bank Acquisition only if a majority of the Independent Directors determines in good faith that the new information obtained is not material (as material is defined in Section 2.02(c)(ii)(E)); (v) the entry into a definitive agreement with respect to the first Bank Acquisition will require the approval of both a majority of the Board of Directors of the Company and a majority of the

Independent Directors, in accordance with Section 5.06; and (vi) following the first Bank Acquisition, the Company's filing of a Registration Statement shall require approval of the Company's Board of Directors. If the Second Closing occurs, the Company shall have obtained all authorizations of its Board of Directors and, as applicable, stockholders that, as of the Second Closing Date, are required to have been obtained on or prior to the Second Closing Date. This Agreement and the other Transaction Documents to which the Company is a party have been duly executed and delivered by the Company, and constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance or transfer, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and to general principles of equity, including principles of materiality, commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution thereunder may be limited by federal or state securities laws or public policy relating thereto.

Section 4.05 Issuance of Securities. The Offered Securities are duly authorized and, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement, will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under the Company's Amended and Restated Certificate of Incorporation, applicable state and federal securities laws and liens or encumbrances created by or imposed by a Purchaser and, with respect to any Purchaser, any Transaction Document to which such Purchaser is a party. Assuming the accuracy of the representations and warranties made by the Purchasers herein and subject to the filings described in Section 4.06 below, the offer and issuance by the Company of the Offered Securities is exempt from registration under the Securities Act.

Section 4.06 Governmental Consents and Filings. The Company has caused to be filed an Interagency Charter and Federal Deposit Insurance Application for Blue Ridge Bank, N.A. Assuming the accuracy of the representations made by the Purchasers herein, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local Governmental Authority is required on the part of the Company in connection with the consummation of the transactions contemplated by this Agreement, except for the following consent, approvals and filings, which in the case of those approvals described in clauses (c) - (g) below may or may not be required depending on the nature and structure of the first Bank Acquisition and the transactions contemplated by this Agreement: (a) the filing of the Amended and Restated Certificate of Incorporation, which will have been filed by the First Closing; (b) filings pursuant to Regulation D of the Securities Act, and applicable state securities laws; (c) approval of Interagency Charter and Federal Deposit Insurance Application for Blue Ridge Bank, N.A. and any related filing required by a state Governmental Authority, which, if required, shall be obtained on or before the Second Closing Date; (d) approval of Section 3 Application to the Board of Governors of the Federal Reserve System for prior approval to acquire 100% of the issued and outstanding shares of common stock of Blue Ridge Bank, N.A. and any related filing required by a state Governmental Authority, which, if required, shall be obtained on or before the Second Closing Date; (e) approval of Section 3 Application to the Board of Governors of the Federal Reserve System for prior approval to acquire 100% of the issued and outstanding shares of common stock of South Carolina Community Bank and any related filing required by a state Governmental Authority,

which, if required, shall be obtained on or before the closing of the Company's acquisition of South Carolina Community Bank; (f) any clearances or other approvals required by a Governmental Authority to bid upon and consummate a Failed Bank Acquisition, which shall, if required, occur or be obtained on or before the Company bidding upon and consummating, respectively, a Failed Bank Acquisition; and (g) approval of Section 3 Application to the Board of Governors of the Federal Reserve System for prior approval to acquire a Non-Failed Bank and any related filing required by a state Governmental Authority, which, in connection with such a Non-Failed Bank Acquisition, shall be obtained on or before the Second Closing Date.

Section 4.07 Compliance with Other Instruments. The Company is not in violation or default (i) of any provisions of its Amended and Restated Certificate of Incorporation or Amended and Restated Bylaws, (ii) of any instrument, judgment, order, writ or decree, or (iii) under any contract, agreement, note, indenture or mortgage to which it is a party or by which it is bound, or, to its knowledge, of any provision of federal or state statute, rule or regulation applicable to the Company, in the case of this clause (iii), the violation of which would, singularly or in the aggregate, reasonably be expected to have a Material Adverse Effect. The execution, delivery and performance of the Transaction Documents and the consummation of the transactions contemplated by the Transaction Documents will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either (i) a default under any such provision, instrument, judgment, order, writ, decree, contract, agreement, note, indenture or mortgage or (ii) an event which results in the creation of any lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, forfeiture, or nonrenewal of any material permit or license applicable to the Company. The Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws will be in effect immediately prior to the First Closing.

Section 4.08 Litigation. There is no claim, action, suit, proceeding, arbitration, complaint, charge or investigation pending or to the Company's knowledge, currently threatened in writing (i) against the Company or any officer or director of the Company arising out of their employment or board relationship with the Company; or (ii) that questions the validity of the Transaction Documents or the right of the Company to enter into them, or to consummate the transactions contemplated by the Transaction Documents; or (iii) to the Company's knowledge, that would, singularly or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor, to the Company's knowledge, any of its officers or directors is a party or is named as subject to the provisions of any order, writ, injunction, judgment or decree of any court or Governmental Authority or instrumentality (in the case of officers or directors, such as would affect the Company). There is no action, suit, proceeding or investigation by the Company pending or which the Company intends to initiate.

Section 4.09 No General Solicitation; Placement Agent's Fees. Neither the Company nor any of its affiliates, nor, to the Company's knowledge, any Person acting on its or their behalf, has engaged in any form of "general solicitation" or "general advertising" (within the meaning of Regulation D) in connection with the offer or sale of the Offered Securities. The Company shall be responsible for the payment of the Placement Agent's fees relating to or arising out of the transactions contemplated hereby in accordance with the terms of the Placement Agency Agreement. Other than the Placement Agent, the Company has not engaged any placement agent or other agent in connection with the sale of the Offered Securities.

Section 4.10 Regulatory Enforcement Matters. Neither the Company nor any of its respective officers, directors, employees or representatives, is subject or party to, or has received any notice from any Governmental Authority that any of them shall become subject or party to any investigation with respect to any cease-and-desist order, agreement, civil monetary penalty, consent agreement, memorandum of understanding or other regulatory enforcement action, proceeding or order with or by, or is a party to any commitment letter or similar undertaking to, or is subject to any directive by, or has been a recipient of any supervisory letter from, or has adopted any board resolutions at the request or suggestion of, any Governmental Authority that, in any such case, currently restricts in any material respect the conduct of their business (each, a “**Regulatory Action**”), nor has the Company been advised by any Governmental Authority that it is considering issuing or requesting any such Regulatory Action.

Section 4.11 Tax Status. The Company (i) has prepared and filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject and required to be filed through the Signing Date, subject to permitted extensions, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith, (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply, except in the case of clauses (i) and (ii) above, where the failure to so pay or file any such tax, assessment, charge or return would not, singularly or in the aggregate, reasonably be expected to result in a Material Adverse Effect and (iv) is not, and has not been, a real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction.

Section 4.12 Investment Company Status. The Company is not, and upon consummation of the sale of the Offered Securities will not be, an “investment company,” a company controlled by an “investment company” or an “affiliated person” of, or “promoter” or “principal underwriter” of, an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended.

Section 4.13 Activities of the Company Prior to Signing Date. Prior to the Signing Date, the Company’s activities have been limited in all material respects to organizational activities, diligence and negotiations related to pursuing the acquisition of the Platform Bank, limited diligence on potential target Banks, assessment of the market for potential Bank Acquisitions and activities related to raising capital and obtaining approvals of Governmental Authorities.

Section 4.14 First Closing Pro Forma Balance Sheet; Material Contracts. A pro forma unaudited balance sheet of the Company giving effect to the First Closing is attached hereto as Appendix V. Such pro forma balance sheet is true and accurate. Other than the Transaction Documents, the Company is not party to any material contract.

Section 4.15 Certain Transactions. Other than (a) the Management Employment Agreements, (b) agreements with regard to ICS Services Fees and Expenses, (c) customary director and officer indemnification agreements, (d) the potential ICS Transaction, and (e) the

grant of shares of the Company's capital stock and the issuance of options to purchase shares of the Company's Common Stock under the Equity Incentive Plan after the First Closing, as described in Section 5.14, in each instance, approved or to be approved in the written minutes or written consents of the Board of Directors, there are no, and have been no, agreements, payments, understandings, transactions or proposed transactions between the Company and any of its officers, family members of officers, directors, consultants or any Affiliate thereof.

Section 4.16 Rights of Registration and Voting Rights. Except as provided in the Registration Rights Agreement, the Company is not under any obligation to register under the Securities Act any of its currently outstanding securities or any securities issuable upon exercise or conversion of its currently outstanding securities. To the Company's knowledge, except as contemplated in the Transaction Documents or as described in Section 3.13 hereof, no stockholder of the Company has entered into any agreements with respect to the voting or disposition of capital shares of the Company.

Section 4.17 No Other Agreements with Purchasers. Other than this Agreement and each of the other Transaction Documents, the Company is not a party to any agreement with a Purchaser or any of its Affiliates that relates to this Agreement or the transactions contemplated hereby; *provided, however*, that the Company may enter into Lead Investor Agreements and Additional Commitments with Purchasers and their Affiliates pursuant to Section 2.04.

Section 4.18 Broker's Fees. The Company has no liability to pay any compensation to any broker, finder, or agent with respect to the offering of the shares of Common Stock and Lead Investor Warrants under this Agreement, other than the fees payable to the Placement Agent under the Placement Agency Agreement.

Section 4.19 Disclosure. The Company has made available to the Purchasers all the information reasonably available to the Company that the Purchasers have requested for deciding whether to acquire the Offered Securities. No representation or warranty of the Company contained in this Agreement, and no certificate made available or to be made available to Purchasers at the First or Second Closing contains any untrue statement of a material fact or, to the Company's knowledge, omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made; *provided, however*, that this representation does not limit any other representation or warranty made hereunder. In the case of the Second Closing, the business plan included in the Capital Call Notice will have been prepared in good faith, however, the Company does not warrant that it will achieve any results projected in such business plan. It is understood that this representation is qualified by the fact that the Company has not delivered to the Purchasers, and has not been requested to deliver, a private placement memorandum or similar memorandum or any written disclosure of the types of information customarily furnished to purchasers of securities in private placement transactions.

ARTICLE V. COVENANTS.

Section 5.01 Reasonable Best Efforts. Subject to the terms and conditions of this Agreement, including Section 5.05 with regard to information provided to Governmental Authorities, each of the Parties shall use its reasonable best efforts to take, or cause to be taken,

all actions, and to do, or cause to be done, all things necessary, proper or desirable, or advisable under applicable laws, so as to permit consummation of the issuance of the Offered Securities, as promptly as practicable and otherwise to enable consummation of the transactions contemplated hereby and shall use its reasonable best efforts to cooperate with each other Party to that end; *provided*, that, subject to the accuracy of the representations and warranties of a Purchaser, such Purchaser shall not be (i) required by this Agreement to become a bank holding company (a “**Bank Holding Company**”) within the meaning of The Bank Holding Company Act of 1956, as amended (the “**Bank Holding Company Act**”) or (ii) except for any Lead Investor that elects in its Lead Investor Agreement to be subject to the 24.9% Voting Limit, required by this Agreement to provide prior notice to the Federal Reserve under the Change in Bank Control Act of 1978, as amended, before acquiring shares of Common Stock or Lead Investor Warrants, as applicable, under this Agreement.

Section 5.02 Voting/Ownership Limits; Automatic Conversion of Excess Stock.

(a) Voting Limit. Each Purchaser party hereto has specified on its signature page hereto the Voting Limit to which such Purchaser has agreed to be subject. During the period from the First Closing Date until the date the Common Stock begins trading on a national securities exchange registered under Section 6 of the Exchange Act (the “**Listing Date**”) (which, for the avoidance of doubt, shall be after the Second Closing), no Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons) shall be permitted to own, Control or have the power to vote any shares of Class A Voting Common Stock that would result in such Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons) exceeding its applicable Voting Limit (such excess shares of Class A Voting Common Stock rounded up to the nearest whole share, “**Excess Stock**”), except that during the period between the Second Closing Date and the Listing Date a Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons) may exceed its applicable Voting Limit, if and only if, such Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons), as applicable, has received all necessary approvals or clearances from each applicable Governmental Authority. Any vote cast with respect to shares of Excess Stock shall be void *ab initio*. In the case of any group of Affiliates or Persons acting in concert, this provision shall apply *pro rata* on the basis of the number of shares of Class A Voting Common Stock held by each such Affiliate or Person acting in concert.

(b) Automatic Conversion of Excess Stock.

(i) If during the period from the First Closing Date until the Listing Date there is any change in the capital structure of the Company or any issuance, purchase, sale, transfer, redemption, gift, assignment, devise or other disposition (each, a “**Transfer**”) of Class A Voting Common Stock (including (x) the granting of any option or entering into any agreement for the sale, transfer or other disposition of Class A Voting Common Stock or (y) the sale, transfer, assignment or other disposition of any securities or rights convertible into or exchangeable for Class A Voting Common Stock), whether voluntary or involuntary, whether of record or beneficially and whether by operation of law or otherwise, such that any Purchaser (or group of Affiliated Purchasers

or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons) would own, Control or have the power to vote shares of Class A Voting Common Stock in excess of the applicable Voting Limit, unless such change or Transfer occurs during the period between the Second Closing Date and the Listing Date and the relevant Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons), as applicable, has received in advance all necessary approvals or clearances from each applicable Governmental Authority, then each such share of Excess Stock shall automatically be converted into one fully paid and non-assessable share of Class B Non-Voting Common Stock. Such conversion shall be effective as of the close of business on the Business Day prior to the date of the Transfer or change in capital structure and shall be irrevocable and permanent, except with regard to permitted conversion of Class B Non-Voting Common Stock upon transfer. In the case of any group of Affiliated Purchasers or Purchasers acting in concert, such conversion shall be *pro rata* on the basis of the number of shares of Class A Voting Common Stock held by each such Affiliated Purchaser or Purchaser acting in concert.

(ii) At any time that any conversion of Class A Voting Common Stock into Class B Non-Voting Common Stock occurs, or is deemed to occur, pursuant to this Section 5.02(b), the Board of Directors shall recalculate the ownership percentages of (x) each holder of Class B Non-Voting Common Stock and (y) each holder (or group of Affiliated holders or holders acting in concert, including, but not limited to, a Purchaser and its Identified Persons) of Class A Voting Common Stock that the Board of Directors believes may own, Control or have the power to vote Excess Stock as a result of such conversion, and the Board of Directors shall apply the procedures of this Section 5.02(b) and effect such further conversions as may be required by this Section 5.02(b).

(iii) In addition to the automatic conversion of Class A Voting Common Stock into Class B Non-Voting Common Stock in accordance with this Section 5.02(b), the Company reserves the right to pursue any and all other remedies it may have under law, equity or contract against any Purchaser in the event such Purchaser takes any action in violation of its obligations under this Agreement or the Amended and Restated Certificate of Incorporation that causes such Purchaser to exceed its applicable Voting Limit.

(c) Ownership Limit.

(i) Each Purchaser party hereto has specified on its signature page hereto the Ownership Limit to which such Purchaser has agreed to be subject. As provided in Article II of this Agreement, no Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons) has any right under this Agreement to subscribe for shares of Common Stock that exceeds such Purchaser's or group's Ownership Limit or Voting Limit. As provided in Section 5.17(b) of this Agreement, neither shares of Common Stock nor Lead Investor Warrants may be transferred, and any such purported transfer will be void *ab initio*, to any Person or group of Affiliated Persons or Persons acting in concert if such Person or Persons, after giving effect to such transfer, would own,

Control or have the power to vote shares of Class A Voting Common Stock in excess of the applicable Voting Limit or, prior to the closing date of the first Bank Acquisition, shares of Common Stock in excess of the applicable Ownership Limit.

(ii) At or prior to the date of the closing of the first Bank Acquisition, except for Lead Investors who have elected in Lead Investor Agreements to be subject to the 24.9% Ownership Limit, no Purchaser or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons, may own or Control shares of Common Stock to the extent such Purchaser or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons, would own or Control more than 9.9% of the total outstanding shares of Common Stock (treating Class A Voting Common Stock and Class B Non-Voting Common Stock together as a single class) (the “**9.9% Ownership Limit**”); *provided*, that neither the Lead Investor Warrants nor the shares of Class B Non-Voting Common Stock for which they are exercisable shall count towards the 9.9% Ownership Limit. At or prior to the date of the closing of the first Bank Acquisition, no Lead Investor who has elected in its Lead Investor Agreement to be subject to the 24.9% Ownership Limit may own or Control (alone or with a group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons) more than 24.9% of the total outstanding shares of Common Stock (treating Class A Voting Common Stock and Class B Non-Voting Common Stock together as a single class) (the “**24.9% Ownership Limit**”); *provided*, that the shares of Class B Non-Voting Common Stock for which the Lead Investor Warrants held by the relevant Lead Investor (but only those held by the relevant Lead Investor) are exercisable shall count towards the 24.9% Ownership Limit.

(iii) If, at or prior to the closing date of the first Bank Acquisition, any Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons) owns shares of Common Stock in excess of the 9.9% Ownership Limit or 24.9% Ownership Limit, as applicable to such Purchaser, the Company may in its reasonable discretion pursuant to the Company's Amended and Restated Certificate of Incorporation: (i) elect to require such Purchaser(s) to promptly transfer such shares (and a *pro rata* portion of Its Unfunded Commitment) to a third party investor selected by such Purchaser(s) but approved by the Company or (ii) elect to redeem such excess shares (and terminate a *pro rata* portion of such Purchaser's (or Purchasers') Unfunded Commitment(s)) out of funds lawfully available therefor at a cash price per share redeemed equal to the Redemption Price or, if the applicable Ownership Limit is exceeded as a result of intentional and knowing actions of the Purchaser (or any Purchaser within such group) to exceed such limit, at a cash purchase price per share redeemed equal to 90% of the Issue Price; *provided*, that any funds deposited into escrow for which shares of Common Stock have not yet been issued to the Purchaser(s) shall be returned in full, which right of redemption the Company may exercise by notifying such Person (an “**Ownership Threshold Redemption**” and such date of notice the “**Ownership Threshold Redemption Effective Date**”).

(iv) In addition to the rights under Section 5.02(c)(iii), the Company reserves the right to pursue any and all other remedies it may have under law, equity or contract against any Purchaser in the event such Purchaser takes any action in violation of its obligations under this Agreement or the Amended and Restated Certificate of Incorporation that causes such Purchaser to exceed its applicable Ownership Limit.

(d) Stock Options; Lead Investor Warrants. Shares of Common Stock that a Person has a right to purchase pursuant to stock options or Lead Investor Warrants shall be treated as outstanding for such Person (but options and warrants held by any other Persons shall not be treated as outstanding) for purposes of determining (i) the percentage of outstanding shares of Class A Voting Common Stock that such Person has the power to vote and (ii) the percentage of outstanding shares of Common Stock (treating Class A Voting Common Stock and Class B Non-Voting Common Stock together as a single class) that such Person owns or Controls; *provided, however*, that the shares of Class B Non-Voting Common Stock for which the Lead Investor Warrants are exercisable shall not count towards the 9.9% Ownership Limit.

(e) Notice to Company; Information for Company. Any Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons) that knowingly owns, Controls or has the power to vote shares of Class A Voting Common Stock in excess of the Voting Limit or, prior to the closing date of the first Bank Acquisition, that knowingly owns shares of Common Stock in excess of the 9.9% Ownership Limit or 24.9% Ownership Limit, as applicable to such Purchaser(s), as a result of any change in the capital structure of the Corporation or any Transfer or otherwise shall immediately give written notice to the Company of such event. Each Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons) that owns, Controls or has the power to vote shares of Class A Voting Common Stock in excess of the applicable Voting Limit or that owns shares of Common Stock in excess of the 9.9% Ownership Limit or 24.9% Ownership Limit, as applicable to such Purchaser(s), shall upon demand provide in writing to the Company any information as the Board of Directors reasonably deems necessary to enforce the terms of this Section 5.02 and Sections 5.15, 5.16 and 5.17. For purposes of this Section 5.02(e), the Purchasers are entitled to rely on information made available by the Company with regard to its outstanding securities.

(f) Groups; Acting in Concert. If a Purchaser forms a group or acts in concert with another Person (which, in either case, has not been previously disclosed to the Company in accordance with Section 3.13 of this Agreement or this Section 5.02(f)) such that the Common Stock held by members of the group or Persons acting in concert (including such Purchaser) would be aggregated by virtue of any law, regulation or governmental order but such formation of a group or acting in concert does not (i) cause a Purchaser to exceed the Voting Limit or Ownership Limit applicable to such Purchaser or (ii) impede or delay by virtue of any law, regulation, governmental order or governmental process the ability of the Company to consummate a Bank Acquisition or otherwise conduct its business or affairs (the occurrence of any event or circumstances described in clauses (i) or (ii) is referred to as a “**Regulatory Default**”), then such Purchaser shall provide prompt written notice to the Company of the formation of such group or the fact that such Persons are acting in concert and shall provide the Company any related information the Company may reasonably request. A Purchaser shall obtain prior written consent of the Company and any applicable approvals of Governmental

Authorities if a Purchaser proposes to form a group or act in concert with any other Person such that the Common Stock held by members of the group or Persons acting in concert (including such Purchaser) would be aggregated by virtue of any law, regulation or governmental order and as a result of such formation of a group or acting in concert a Regulatory Default would occur. Should a Purchaser, without obtaining prior written consent of the Company or applicable approvals of Governmental Authorities, form a group or act in concert with any other Person such that the Common Stock held by members of the group or Persons acting in concert (including such Purchaser) would be aggregated by virtue of any law, regulation or governmental order and a Regulatory Default would occur, then the Company shall have the option at its reasonable discretion to repurchase that number of shares of Common Stock held by such Purchaser and the members of the group with, or the Persons acting in concert with, such Purchaser at the Redemption Price (and terminate a *pro rata* portion of such Purchaser's (or Purchasers') Unfunded Commitment(s)) as shall be necessary in the reasonable judgment of the Board to cure such Regulatory Default. In addition to such redemption right, the Company reserves the right to pursue any and all other remedies it may have under law, equity or contract against any Purchaser in the event such Purchaser takes any action in violation of its obligations under this Agreement or the Amended and Restated Certificate of Incorporation that causes such Purchaser to exceed its applicable Voting Limit or Ownership Limit.

(g) Transactions Executed on an Exchange. Nothing in this Section 5.02 shall preclude the settlement of any transaction entered into through the facilities of any nationally recognized stock exchange (including any such exchange capable of listing securities not registered under the U.S. federal securities laws). Any transferee in such transaction shall be subject to all of the provisions and limitations set forth in this Section 5.02.

Section 5.03 Board of Directors. The Board of Directors currently consists of six directors, three of whom are Members of Management and three of whom are Independent Directors. Prior to the Company completing its first Bank Acquisition, the Board shall expand the number of directors on the Board of Directors so that there are three unfilled director positions and fill such new director positions with persons who qualify as Independent Directors. At least 50% of the members of the Board of Directors shall be Unrelated Directors.

Section 5.04 Notice Filings. The Company agrees to timely file any notices and other filings that may be required under applicable federal and state securities laws.

Section 5.05 Information Provided to Governmental Authorities. The Company shall provide to the Federal Reserve and the FDIC a list of Purchasers who have signed this Agreement and related information as set forth on the FDIC Questionnaire; *provided, however*, that each Purchaser shall have the option to provide such information directly to the Federal Reserve and the FDIC in respect of this Agreement and the transactions contemplated hereby. Each Purchaser and the Company agree to reasonably cooperate with requests from Governmental Authorities. To the extent a Purchaser provides information directly to a Governmental Authority that is not confidential or proprietary, such Purchaser agrees to concurrently provide a copy of such information to the Company, if requested by the Company. Each Purchaser agrees to keep the Company informed of the status of communications between the Purchaser and any Governmental Authority with regard to this Agreement and the transactions contemplated hereby.

Section 5.06 First Bank Acquisition. No definitive agreement with respect to the first Bank Acquisition shall be entered into without the approval of a majority of the Board of Directors of the Company and a majority of the Independent Directors. The Purchasers shall be permitted to submit advice and recommendations to the Board of Directors of the Company in connection with a proposed first Bank Acquisition by the Company, but any such recommendations will be non-binding. Prior to the closing of the first Bank Acquisition the Company shall not raise any equity or equity-linked capital to facilitate a Bank Acquisition other than through Commitments (including Additional Commitments) and Lead Investor Warrants.

Section 5.07 Access to FDIC Information. If a Purchaser desires to obtain access to information provided by the FDIC regarding potential Failed Bank targets (“**FDIC Target Bank Information**”), such Purchaser shall be required to enter into customary confidentiality agreements with the FDIC and the Company. If the Company is able to provide access to FDIC Target Bank Information to only a limited number of Purchasers, the order of priority of access with regard to Purchasers shall be based upon the size of a Purchaser’s Commitment Amount (aggregating for this purpose the Commitment Amounts of any Purchaser with its Identified Persons, if any). With regard to any Purchaser who is not provided access to FDIC Target Bank Information, the Company shall provide such Purchaser with a summary of such information to the extent permitted by the FDIC.

Section 5.08 Use of Proceeds and Investment Account. The net proceeds of the sale of shares of Common Stock pursuant to the Initial Funded Commitments shall be deposited and held in an investment account established by the Company for the purpose of investing such proceeds on a short-term basis while the Company pursues a Bank Acquisition (the “**Investment Account**”). The Company may invest the proceeds in the Investment Account only in U.S. government securities with maturities of six months or less or certificates of deposit with maturities of six months or less that are issued by banks headquartered in the U.S. with market capitalization in excess of \$10 billion that are part of a financial holding company (as such term is defined in Section 2(p) of the Bank Holding Company Act). The Company may use the proceeds in the Investment Account, which will be under the control of the Company’s Management, only for the following purposes until the time the first Bank Acquisition occurs: (1) expenses associated with this offering and potentially with obtaining Additional Commitments after this offering is completed, the activities of the Company through the Signing Date and general office and administrative expenses, including but not limited to director and officer insurance and payments under the Management Employment Agreements; (2) expenses in connection with identifying and evaluating prospective targets for a Bank Acquisition, performing business and legal due diligence on prospective target businesses, traveling to and from prospective target businesses or their representatives or owners, selecting the target business to acquire or invest in, and structuring, negotiating and consummating a Bank Acquisition; (3) expenses related to performing due diligence on and acquiring the Platform Bank (including the payment of any extension and/or termination fees to and/or the purchase price for the Platform Bank) and the expenses in connection with the potential acquisition of ICS; (4) funding of the purchase of, or investment in, a Bank Acquisition and for working capital following a Bank Acquisition; (5) payment of past and future ICS Services Fees and Expenses; (6) expenses incurred in connection with pursuing preliminary conditional approval from the OCC to organize a new national bank (the “**Shelf Charter**”), including without limitation, traveling to and meeting with Governmental Authorities; and (7) expenses reasonably and

necessarily incurred in connection with any of the activities described in clauses (1) through (6). Including the Initial Fee paid to the Placement Agent, the maximum amount of costs and expenses that the Company may incur prior to the consummation of a Bank Acquisition shall not exceed 10% of the Initial Funded Commitment Amount, including the Additional Commitment Amount (to the extent a portion of the Additional Commitment is invested in the Company in advance of the Capital Call Notice for the first Bank Acquisition), (such U.S. dollar amount, the “*Expense Cap*”); *provided, however*, that the Expense Cap shall be reduced by the amount by which (a) the aggregate Redemption Price paid by the Company with regard to redeemed shares of Common Stock exceeds (b) 90% of the aggregate Issue Price with regard to such redeemed shares of Common Stock. Except as set forth in the proviso in the preceding sentence, for purposes of clarity, any amounts paid by the Company to redeem shares of Common Stock in accordance with the Company’s Amended and Restated Certificate of Incorporation shall not count against the Expense Cap. Any amounts the Company needs to pay for any federal, state and local tax obligations, including income taxes imposed at the applicable rates on income from investments held through the Investment Account, applicable franchise taxes and any other tax obligations imposed in respect of the Investment Account shall be paid using the income earned on the Investment Account and will not count against the Expense Cap. Upon consummation of the first Bank Acquisition, the remaining proceeds of the sale of shares of Common Stock pursuant to the Commitments together with any remaining proceeds may be removed from the Investment Account or escrow account with the Second Closing Escrow Agent under the Second Closing Escrow Agreement as the case may be and placed into a corporate account to be used to fund the Bank Acquisition and for general purposes thereafter. Prior to the first Bank Acquisition, the Company may incur costs and expenses only as described in this Section 5.08.

Section 5.09 Activity Limitations of the Company. Prior to the Company’s first Bank Acquisition, the Company shall not (i) engage in any business activities other than, seeking to acquire one or more Banks, the Platform Bank and potentially ICS and engaging in such other activities as may be reasonably necessary or appropriate in connection with the foregoing, including any permitted use of proceeds, (ii) issue, or agree to issue, any shares of capital stock other than issuances pursuant to the Commitments, issuances pursuant to the Lead Investor Warrants, issuances of capital stock or Equity Equivalents under the Equity Incentive Plan in accordance with Section 5.14, the issuance of shares of Class A Voting Common Stock as consideration in the ICS Transaction in accordance with Section 5.13, and issuances of equity and equity-linked securities as consideration in a Bank Acquisition, including the issuance to the FDIC of warrants to acquire capital stock of the Corporation; (iii) declare or pay (or set aside funds for) any dividend or other distribution, whether in cash, property, securities or otherwise, on any shares of capital stock; (iv) repurchase or redeem (or create any sinking fund for the repurchase or redemption) of any shares of the Company’s capital stock or any of the Company’s Subsidiaries except as provided in the Company’s Amended and Restated Certificate of Incorporation; (v) engage in any stock split, reclassification, recapitalization or other similar event; (vi) incur any indebtedness for borrowed money, other than indebtedness incurred in connection with the closing of a Bank Acquisition; (vii) consummate the acquisition of the Platform Bank unless the Company has previously acquired, or concurrently acquires in connection therewith, a Bank; or (viii) agree or commit to do any of the foregoing.

Section 5.10 FDIC Policy. The Company and each Purchaser shall comply with the FDIC Policy, to the extent it is or becomes applicable to the Company and/or such Purchaser.

Without limiting the foregoing, each Purchaser hereby agrees to provide to the Company or, in such Purchaser's sole discretion, directly to applicable Governmental Authorities such information as a Governmental Authority may reasonably request to comply with the disclosure requirements under the FDIC Policy, to the extent such disclosure requirements are applicable to such Purchaser, and to keep the Company informed with regard to communications such Purchaser receives from any Governmental Authority with regard to this Agreement and the transactions contemplated hereby. Each Purchaser to which the FDIC Policy is applicable hereby agrees it will complete and provide to the FDIC a customary FDIC Questionnaire. Each Purchaser shall agree to such reasonable restrictions as the Company may impose in order to ensure that neither the Company nor any of its Subsidiaries nor any of their securities are subject to "cross support" obligations as referred to in the FDIC Policy. Regardless of whether the FDIC Policy may otherwise be applicable to a given Purchaser, at a minimum, any Lead Investor, Member of Management or Investment Company that owns in excess of 4.9% of the Company's Class A Voting Common Stock will be subject to the FDIC Policy. Under the FDIC Policy, any Lead Investor or Member of Management that is subject to the FDIC Policy may not transfer any of its shares of Common Stock for three years from the closing date of a Failed Bank Acquisition, unless such transfer is permitted by the FDIC. Investment Companies are exempted from the FDIC Policy's three year transfer restriction. So long as the Purchaser holds any Offered Securities, the Company will not, without the consent of the Purchaser, take any action, directly or indirectly, through its subsidiaries or otherwise, that the Board of the Directors believes in good faith would reasonably be expected to cause the Purchaser to be subject to the FDIC Policy, other than a Purchaser who is a Lead Investor, Member of Management or any Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons) that owns more than 4.9% of the Company's Class A Voting Common Stock.

Section 5.11 Avoidance of Control; Passivity Agreements. Neither the Company nor any Purchaser will take any action that would reasonably be expected to cause any Purchaser's ownership of any class of the Company's voting securities (as calculated under the Bank Holding Company Act) to increase to the amount that would constitute "control" under the Bank Holding Company Act, or otherwise cause any Purchaser to control the Company under the Bank Holding Company Act. Each Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons) that owns, Controls or has the power to vote shares of Class A Voting Common Stock in excess of 4.9% hereby agrees that if required by the Federal Reserve in order to avoid a determination of "control," it will enter into such customary Passivity Commitments and Anti-Association Commitments as may be required. Each Purchaser hereby agrees to provide to the Company such information as the Company may reasonably request to comply with the disclosure requirements of the Federal Reserve, to the extent such disclosure requirements relate to such Purchaser; *provided, however*, that each Purchaser shall have the option to provide such information directly to the Federal Reserve.

Section 5.12 Liquidation if No Bank Acquisition by Bank Acquisition Deadline. If the Company has not completed a Bank Acquisition by the Bank Acquisition Deadline, the Company shall dissolve as promptly as practicable and liquidate and distribute *pro rata* to holders of Common Stock based on the number of outstanding shares held by each holder immediately prior to the Company's dissolution, as part of a plan of dissolution, the amount of

funds remaining in the Investment Account and any remaining assets and the proceeds of the sale of any assets less previously incurred but unpaid expenses described herein and wind-down expenses. Subject to the Company's obligations under Delaware law for claims of creditors, the amount distributed to holders of Common Stock per share will not be less than 90% of the Issue Price.

Section 5.13 Integrated Capital Strategies. As of the First Closing Date, the aggregate amount accrued by ICS for services provided to the Company and expenses paid by ICS on the Company's behalf may not exceed \$570,000, and the Company has agreed to pay ICS such amount as follows: \$370,000 shall be paid by the Company to ICS at the First Closing and \$200,000 (or such lesser amount as may be due) shall be paid by the Company to ICS if and when a Bank Acquisition occurs. Following the First Closing, (a) the Company may engage ICS to perform additional services needed by the Company provided that the terms on which such services are provided are no less favorable to the Company than the terms that could be obtained from a third party provider and that the engagement has been approved by a majority of the Independent Directors and (b) subject to the approval of a majority of the Independent Directors, the Company may request ICS to pay certain expenses on the Company's behalf. The fees for services performed, and the reimbursements for expenses paid, pursuant to the preceding sentence shall be paid and reimbursed by the Company as incurred. The amounts due to ICS for services and as reimbursements as set forth in this paragraph are referred to as the "**ICS Services Fees and Expenses**." The Company shall not consummate the ICS Transaction without first obtaining (i) an independent appraisal of the value of ICS; (ii) applicable approvals of Governmental Authorities; (iii) approval of a majority of the Independent Directors; and (iv) approval of the holders of a majority of the outstanding shares of Class A Voting Common Stock. The consideration payable by the Company to acquire ICS shall not exceed 350,000 shares of Class A Voting Common Stock.

Section 5.14 Equity Awards to Officers and Directors; Management Employment Agreements.

(a) Directors, employees (including executive officers) and/or consultants to the Company and any of its Subsidiaries and Affiliates are eligible to participate in the Equity Incentive Plan, under which grants may be made of incentive and nonqualified stock options, stock awards, stock units, stock appreciation rights and incentive awards, with regard to the Company's Class A Voting Common Stock. A number of shares of Class A Voting Common Stock equal to 10% of the total number of shares of Common Stock issuable pursuant to the Commitments (subject to proportionate reduction to the extent that any Commitments are terminated), shall be reserved for grants under the Equity Incentive Plan (such number of shares, the "**Available Grant Amount**"). No more than 30% of the Available Grant Amount may be granted in the form of stock awards and stock units. There is no limitation on the percentage of the Available Grant Amount that may be granted in the form of stock option and stock appreciation right awards. No more than 60% of the Available Grant Amount may be awarded at or prior to the time of the Company's first Bank Acquisition. Prior to the listing of the Company's Common Stock on the New York Stock Exchange ("**NYSE**"), The Nasdaq Global Market or other national stock exchange pursuant to the Registration Rights Agreement, the Company will not (i) adopt another equity compensation plan, (ii) amend the Equity Incentive Plan or (iii) amend in any material respect the terms of any grants made to Members of

Management under the Equity Incentive Plan (including, without limitation, the terms described in Section 5.14(c) below), in each case without the prior approval of the holders of the Company's Class A Voting Common Stock.

(b) On the First Closing Date, Messrs. Jones, Davis and Williams shall be granted awards in an aggregate amount equal to approximately 47% of the Available Grant Amount (subject to subsequent proportionate adjustment to the extent any of the Commitments are terminated) and shall receive no further equity incentive awards prior to the second anniversary of the first Bank Acquisition. No more than 30% of the equity incentive awards granted to Messrs. Jones, Davis and Williams prior to second anniversary of the first Bank Acquisition shall be in the form of stock awards and stock units. Such awards will be in the form of shares of Class A Voting Common Stock and options to purchase shares of Class A Voting Common Stock. On the First Closing Date, the Company will grant the non-employee members of the Board of Directors options to purchase in aggregate a number of shares of Class A Voting Common Stock equal to no more than 2% of the Available Grant Amount (subject to subsequent proportionate adjustment to the extent any of the Commitments are terminated). The stock options granted to Messrs. Jones, Davis and Williams and the non-employee directors shall have an exercise price equal to the Issue Price. Equity awards not granted pursuant to the foregoing will be reserved for future issuance under the Equity Incentive Plan at the discretion of the Company's Board of Directors.

(c) The equity awards issued to Messrs. Jones, Davis and Williams shall generally be subject to the following minimum vesting conditions, based on continued employment through the applicable vesting date:

- (i) 100% of the grants of shares will vest as follows: 33.3% will vest when the Class A Voting Common Stock price equals or exceeds \$25 per share, 33.3% will vest when the Class A Voting Common Stock price equals or exceeds \$28 per share and 33.3% will vest when the Class A Voting Common Stock price equals or exceeds \$32 per share;
- (ii) 50% of the stock options will vest on the second anniversary of the First Closing Date, and 50% will vest on the third anniversary of the First Closing Date; and
- (iii) no equity awards will vest (or, in the case of clause (i), begin vesting) until the Listing Date.

For purposes of vesting, share prices shall be calculated at a twenty-day volume weighted average price. The stock options issued to the non-employee members of the Board of Directors will be subject to the same vesting conditions as those described above in this Section 5.14(c) and will be based on the director's continued service on the Board of Directors through the applicable vesting date. If the Company does not consummate a Bank Acquisition on or before the Bank Acquisition Deadline, the equity awards will have no value and shall be forfeited for no consideration.

(d) On or before the First Closing Date, the Company shall have entered into a Management Employment Agreement with each of Messrs. Jones, Davis and Williams and Ms Angela Webb. The Company shall enter into no other Management Employment Agreements prior to the Second Closing Date, other than a Management Employment Agreement with an individual who will serve at the Company's Chief Financial Officer on terms substantially similar to the terms of the Management Employment Agreements entered into by the Company on or before the First Closing Date. Each Management Employment Agreement (and all amendments thereto) shall require the approval of a majority of the Independent Directors.

Section 5.15 Benefit Plan Investor Redemption. If, prior to the date (A) the Company qualifies as an "operating company" for purposes of ERISA (including for this purpose, a "venture capital operating company" as such term is defined in the Plan Asset Regulation), (B) each outstanding class of capital stock of the Company qualifies as a class of "publicly offered securities" for purposes of ERISA or (C) the Company complies with another available exception under the Plan Asset Regulation, Benefit Plan Investors own 25% or more of any class of capital stock of the Company (such excess shares, "***Benefit Plan Investor Excess Stock***"), then the Company may in its reasonable discretion under its Amended and Restated Certificate of Incorporation (i) elect to require each Benefit Plan Investor to transfer its *pro rata* share of such Benefit Plan Investor Excess Stock (and, as applicable, a *pro rata* portion of Its Unfunded Commitment) on a *pro rata* basis to one or more third parties selected by such Benefit Plan Investors but approved by the Company or (ii) elect to redeem such Benefit Plan Investor Excess Stock from each Benefit Plan Investor on a *pro rata* basis (and, as applicable, terminate a *pro rata* portion of such Benefit Plan Investors' Unfunded Commitments) out of funds lawfully available therefor at a cash price per share redeemed equal to 90% of the Issue Price, which right the Corporation may exercise by notifying such Benefit Plan Investors (a "***Benefit Plan Investor Redemption***" and such date of notice the "***Benefit Plan Investor Redemption Effective Date***"). If a Benefit Plan Investor's status as a Lead Investor terminates as a result of a Benefit Plan Investor Redemption or a transfer of Benefit Plan Investor Excess Stock, as contemplated by clause (i) of the immediately preceding sentence, all Lead Investor Warrants issued to such Benefit Plan Investor shall expire and become null and void and no additional Lead Investor Warrants will be issued to it. If a Benefit Plan Investor has some but not all of its shares of Common Stock redeemed or transferred pursuant to this Section 5.15 but after giving effect to such transaction it remains a Lead Investor, then that number of Lead Investor Warrants held by such Benefit Plan Investor equal to the same proportion as the number of shares of Common Stock held by such Benefit Plan Investor that are redeemed or transferred pursuant to this Section 5.15 shall expire and become null and void.

Section 5.16 Regulatory Redemption. At any time prior to the consummation of the first Bank Acquisition, if the direct or indirect ownership of any shares of the Common Stock by any Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons) would cause, in the reasonable judgment of the Company's Board of Directors, material adverse consequences for the Company with respect to any Governmental Authority having, or potentially having, jurisdiction over the Company, including, without limitation, any rule, regulation, policy or guideline of the Federal Reserve, the OCC, the Office of Thrift Supervision or the FDIC (including, without limitation, the FDIC Policy), then the Company shall have the right under its Amended and Restated Certificate of

Incorporation, in the reasonable discretion of the Company's Board of Directors, to redeem any or all shares of Common Stock held by such Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons) out of funds lawfully available therefor at a per share cash amount equal to the Redemption Price and terminate a *pro rata* portion of the Unfunded Commitments of such Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons), which right the Company may exercise by notifying such Purchaser (or group of Affiliated Purchasers or Purchasers acting in concert, including, but not limited to, a Purchaser and its Identified Persons) (a "**Regulatory Redemption**" and such date of notice the "**Regulatory Redemption Effective Date**"); *provided*, that any funds deposited into escrow with the Second Closing Escrow Agent under the Second Closing Escrow Agreement for which shares of Common Stock have not yet been issued to a Purchaser will be returned in full; *provided, further*, that such Regulatory Redemption would apply to a Lead Investor only in the event such adverse consequence would in the reasonable determination of the Company materially impede the Company's ability to consummate a Bank Acquisition; and *provided, further*, that in the event of any adverse consequence relating to a Lead Investor, the Company and such Lead Investor shall be required to use commercially reasonable efforts to work with such Governmental Authorities to mitigate such adverse consequences, which may include a restructuring of the Lead Investor's ownership interest in the Company or transfer by the Lead Investor of some or all of its shares of Common Stock. If a Lead Investor's status as a Lead Investor terminates as a result of a Regulatory Redemption, as contemplated by this Section 5.16, all Lead Investor Warrants issued to such Lead Investor shall expire and become null and void and no additional Lead Investor Warrants will be issued to it. If a Lead Investor has some but not all of its shares of Common Stock redeemed, or a portion but not all of its Unfunded Commitment terminated, pursuant to this Section 5.16 but after giving effect to such redemption or partial termination it remains a Lead Investor, then that number of Lead Investor Warrants held by such Lead Investor equal to the same proportion as the number of shares of Common Stock held by such Lead Investor that are redeemed pursuant to this Section 5.16 shall expire and become null and void.

Section 5.17 Transfer Restrictions.

(a) Prior to the closing date of the Company's first Bank Acquisition, neither shares of Common Stock nor Lead Investors Warrants, nor a Purchaser's rights and obligations under this Agreement (including its Commitment), may be transferred without the Company's prior written consent (which, subject to other applicable transfer restrictions, will not be unreasonably withheld, conditioned or delayed); *provided, however*, shares of Common Stock or Lead Investors Warrants, or a Purchaser's rights and obligations under this Agreement (including its Commitment), may be transferred by a Purchaser to an Identified Person with 5 Business Days' advance written notice to the Company and upon obtaining all required approvals of Governmental Authorities but only if such transfer would not result in a Regulatory Default. The Company's consent to any transfer under this Section 5.17 will be conditioned on both the transferor and the transferee involved in such transfer providing to the Company all such information and commitments as the Company reasonably requests to assure compliance with applicable transfer restrictions and to address any approvals of Governmental Authorities for such transfer (such obligation may be satisfied upon the provision of such information and

commitments directly to such Governmental Authorities with notice of such action to the Company).

(b) Until the Listing Date, neither shares of Common Stock nor Lead Investor Warrants may be transferred, and any such purported transfer will be void *ab initio*, to any Person or group of Affiliated Persons or Persons acting in concert if such Person or Persons, after giving effect to such transfer, would own, Control or have the power to vote shares of Class A Voting Common Stock in excess of the applicable Voting Limit or, prior to the closing date of the first Bank Acquisition, shares of Common Stock in excess of the applicable Ownership Limit; *provided, however*, during the period beginning on the day following the closing date of the Company's first Bank Acquisition and continuing until the Listing Date, shares of Common Stock and Lead Investor Warrants may be transferred to any Person or group of Affiliated Persons or Persons acting in concert if such transfer would result in such Person or Persons owning, Controlling or having the power to vote shares of Class A Voting Common Stock in excess of the applicable Voting Limit, if such Person or Persons have obtained all required approvals of Governmental Authorities to exceed the applicable Voting Limit.

(c) Until the offer and sale of the shares of Common Stock is registered under the Securities Act pursuant to an effective registration statement, or such time as the shares of Common Stock would no longer be deemed to be restricted securities as defined in Rule 144 promulgated under the Securities Act, the shares of Common Stock may not be transferred or resold except in compliance therewith or pursuant to an exemption from registration as permitted under the Securities Act and applicable state securities laws as confirmed to the Company by an opinion of counsel at the request of and reasonably acceptable to the Company.

(d) Until the offer and sale of the Lead Investor Warrants is registered under the Securities Act pursuant to an effective registration statement, the Lead Investor Warrants may not be transferred or resold except in compliance therewith or pursuant to an exemption from registration as permitted under the Securities Act and applicable state securities laws as confirmed to the Company by an opinion of counsel at the request of and reasonably acceptable to the Company; *provided, however*, that the Lead Investor Warrants may not be transferred pursuant to Rule 144 promulgated under the Securities Act.

(e) In addition to the other transfer restrictions in this Section 5.17, shares of Class B Non-Voting Common Stock (including the Warrant Shares) and Lead Investor Warrants are transferable only: (i) to an Affiliate of the transferor or to the Company, (ii) in a widely dispersed public offering, (iii) in a private sale in which the transferee does not acquire shares of Common Stock (which, for this purpose, shall include in the case of a transfer of Lead Investor Warrants the underlying Warrant Shares) in an amount that, after the conversion of any such transferred shares that are Class B Non-Voting Common Stock into Class A Voting Common Stock, is (or represents) 2% or more of the Class A Voting Common Stock, or (iv) to a Person acquiring majority control of the Company notwithstanding such transfer.

(f) Prior to the date (A) the Company qualifies as an "operating company" for purposes of ERISA, (including for this purpose, a "venture capital operating company," as such term is defined in the Plan Asset Regulation), (B) each outstanding class of capital stock of the Company qualifies as a class of "publicly offered securities" for purposes of ERISA or (C) the

Company complies with another available exception under the Plan Asset Regulation, the Company shall not approve the sale of shares of Common Stock, Lead Investor Warrants or other capital stock of the Company to a Benefit Plan Investor unless, following such sale, less than twenty-five percent (25%) of the outstanding Common Stock, Lead Investor Warrants or other class of capital stock of the Company is held by (1) employee benefit plans (as defined in section 3(3) of ERISA) that are subject to Title I of ERISA; (2) plans that are subject to section 4975 of the Internal Revenue Code of 1986, as amended; (3) entities whose underlying assets include plan assets by reason of a plan's investment in such entities; or (4) entities that otherwise constitute Benefit Plan Investors, determined without regard to the value of any such shares of Common Stock held by Persons (or Affiliates of Persons) with authority or control with respect to the assets of the Company other than Benefit Plan Investors (a "**Controlling Person**"), and any subsequent transferee will be deemed to have represented that it is neither a Benefit Plan Investor nor a Controlling Person, unless the Company otherwise consents in writing prior to such sale or transfer.

(g) Under the FDIC Policy, any Lead Investor or Member of Management that is subject to the FDIC Policy may not transfer any of its shares of Common Stock or, as applicable, Lead Investor Warrants for three years from the closing date of a Failed Bank Acquisition, unless such transfer is permitted by the FDIC. Investment Companies are exempted from the FDIC Policy's three year transfer restriction.

Section 5.18 Legends. In addition to any other legend required by applicable law or, with respect to Lead Investor Warrants, the Warrant Agreement, each certificate for shares of Class A Voting Common Stock, Class B Non-Voting Common Stock (including Warrant Shares) and Lead Investor Warrants shall bear substantially the following legends, as applicable:

(a) Transfer Restriction. Each certificate for shares of Class A Voting Common Stock, Class B Non-Voting Common Stock (including Warrant Shares) and Lead Investor Warrants shall bear substantially the following legends, until the closing date for the Company's first Bank Acquisition:

PRIOR TO THE CLOSING OF THE COMPANY'S FIRST ACQUISITION OF A BANKING INSTITUTION (THE "FIRST BANK ACQUISITION"), [SHARES OF CLASS A VOTING COMMON STOCK] [SHARES OF CLASS B NON-VOTING COMMON STOCK] [LEAD INVESTOR WARRANTS] ARE NOT TRANSFERABLE WITHOUT THE COMPANY'S PRIOR WRITTEN CONSENT (WHICH SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED); PROVIDED, HOWEVER, [SHARES OF CLASS A VOTING COMMON STOCK] [SHARES OF CLASS B NON-VOTING COMMON STOCK] [LEAD INVESTOR WARRANTS] MAY BE TRANSFERRED TO AN IDENTIFIED PERSON, AS DEFINED IN THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF THE COMPANY, WITH 5 BUSINESS DAYS' ADVANCE NOTICE TO THE COMPANY AND UPON OBTAINING ALL REQUIRED REGULATORY APPROVALS OF GOVERNMENTAL AUTHORITIES BUT ONLY IF SUCH TRANSFER WOULD NOT RESULT IN A REGULATORY DEFAULT, AS DEFINED IN

THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF THE COMPANY.

(b) Securities Act Legend for Common Stock. Each certificate for shares of Class A Voting Common Stock and Class B Non-Voting Common Stock (including Warrant Shares) shall bear substantially the following legends, until the offer and resale of such shares of Common Stock have been registered under the Securities Act or such time as such shares are no longer "restricted securities" as defined in Rule 144 promulgated under the Securities Act:

THE SHARES OF COMMON STOCK THIS CERTIFICATE REPRESENTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). UNTIL THE OFFER AND SALE OF SUCH SHARES IS REGISTERED UNDER THE SECURITIES ACT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT, OR SUCH TIME AS SUCH SHARES WOULD NO LONGER BE DEEMED TO BE RESTRICTED SECURITIES AS DEFINED IN RULE 144 PROMULGATED UNDER THE SECURITIES ACT, THE SHARES OF THE COMMON STOCK MAY NOT BE TRANSFERRED OR RESOLD EXCEPT IN COMPLIANCE THEREWITH OR PURSUANT TO AN EXEMPTION FROM REGISTRATION AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS AS CONFIRMED TO THE CORPORATION BY AN OPINION OF COUNSEL AT THE REQUEST OF AND REASONABLY ACCEPTABLE TO THE CORPORATION.

(c) Securities Act Legend for Lead Investor Warrants. Each certificate for the Lead Investor Warrants shall bear substantially the following legend, until the offer and resale of such Lead Investor Warrants have been registered under the Securities Act:

THE WARRANTS THIS CERTIFICATE REPRESENTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). UNTIL THE OFFER AND SALE OF SUCH WARRANTS IS REGISTERED UNDER THE SECURITIES ACT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT, THE WARRANTS MAY NOT BE TRANSFERRED OR RESOLD EXCEPT PURSUANT TO AN EXEMPTION FROM REGISTRATION AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS AS CONFIRMED TO THE CORPORATION BY AN OPINION OF COUNSEL AT THE REQUEST OF AND REASONABLY ACCEPTABLE TO THE CORPORATION; PROVIDED, HOWEVER, THAT THE WARRANTS MAY NOT BE TRANSFERRED PURSUANT TO RULE 144 PROMULGATED UNDER THE SECURITIES ACT.

(d) Registration Rights Legend. Each certificate for shares of Class A Voting Common Stock and Class B Non-Voting Common Stock (including Warrant Shares) shall bear substantially the following legend, for so long as any shares of Common Stock remain Registrable Shares:

THE SHARES EVIDENCED BY THIS CERTIFICATE ARE SUBJECT TO THE RIGHTS AND OBLIGATIONS OF AND ENTITLED TO THE BENEFITS OF A CERTAIN REGISTRATION RIGHTS AGREEMENT, DATED MAY 27, 2010.

(e) Ownership Restriction under Amended and Restated Certificate of Incorporation. Each certificate for shares of Class A Voting Common Stock, Class B Non-Voting Common Stock (including Warrant Shares) and Lead Investor Warrants shall bear substantially the following legend:

PRIOR TO THE COMPANY'S FIRST BANK ACQUISITION, NO PERSON OR GROUP OF AFFILIATES OR PERSONS ACTING IN CONCERT MAY OWN OR CONTROL SHARES OF COMMON STOCK, INCLUDING SHARES OF COMMON STOCK THAT MAY BE ISSUED UPON EXERCISE OF WARRANTS, IN EXCESS OF THE APPLICABLE OWNERSHIP LIMIT (AS DESCRIBED IN THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF THE CORPORATION, THE "OWNERSHIP LIMIT"). PRIOR TO THE COMPANY'S FIRST BANK ACQUISITION, ANY PERSON OR GROUP OF AFFILIATES OR PERSONS ACTING IN CONCERT THAT OWNS AND CONTROLS SHARES OF COMMON STOCK, INCLUDING SHARES OF COMMON STOCK THAT MAY BE ISSUED UPON EXERCISE OF WARRANTS HELD BY SUCH PERSON OR GROUP OF AFFILIATES OR PERSONS ACTING IN CONCERT, IN EXCESS OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE CORPORATION IN WRITING.

(f) Voting Restriction Under Amended and Restated Certificate of Incorporation. Each certificate for shares of Class A Voting Common Stock shall bear substantially the following legend:

UNTIL THE DATE THE COMMON STOCK BEGINS TRADING ON A NATIONAL SECURITIES EXCHANGE REGISTERED UNDER SECTION 6 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED (THE "LISTING DATE"), NO PERSON OR GROUP OF AFFILIATES OR PERSONS ACTING IN CONCERT MAY OWN, CONTROL OR HAVE THE POWER TO VOTE SHARES OF CLASS A VOTING COMMON STOCK IN EXCESS OF THE APPLICABLE VOTING LIMIT (AS DESCRIBED IN THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF THE COMPANY, THE "VOTING LIMIT") (SUCH EXCESS SHARES OF CLASS A VOTING COMMON STOCK, "EXCESS STOCK"); PROVIDED, HOWEVER, DURING THE PERIOD BEGINNING ON THE DAY FOLLOWING THE CLOSING DATE OF THE COMPANY'S FIRST BANK ACQUISITION AND CONTINUING UNTIL THE LISTING DATE, SHARES OF COMMON STOCK AND LEAD INVESTOR WARRANTS MAY BE TRANSFERRED TO ANY PERSON OR GROUP OF AFFILIATED PERSONS, OR PERSONS ACTING IN CONCERT IF SUCH TRANSFER WOULD

RESULT IN SUCH PERSON OR PERSONS OWNING, CONTROLLING OR HAVING THE POWER TO VOTE SHARES OF CLASS A VOTING COMMON STOCK IN EXCESS OF THE APPLICABLE VOTING LIMIT IF SUCH PERSON OR PERSONS HAVE OBTAINED ALL REQUIRED APPROVALS OF GOVERNMENTAL AUTHORITIES TO EXCEED THE APPLICABLE VOTING LIMIT. ANY VOTE CAST WITH RESPECT TO SHARES OF EXCESS STOCK SHALL BE VOID *AB INITIO*. ANY PERSON OR GROUP OF AFFILIATES OR PERSONS ACTING IN CONCERT THAT OWNS, CONTROLS OR HAS THE POWER TO VOTE SHARES OF CLASS A VOTING COMMON STOCK IN EXCESS OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE CORPORATION IN WRITING.

(g) Transfer Restriction Under Amended and Restated Certificate of Incorporation For Benefit Plan Investors Regarding Compliance with ERISA. Each certificate for shares of Class A Voting Common Stock, Class B Non-Voting Common Stock (including Warrant Shares) and Lead Investor Warrants shall bear substantially the following legends, until occurrence of one of the events specified in the legend:

PRIOR TO THE DATE (1) THE CORPORATION QUALIFIES AS AN "OPERATING COMPANY" FOR PURPOSES OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA") (INCLUDING FOR THIS PURPOSE, A "VENTURE CAPITAL OPERATING COMPANY," AS SUCH TERM IS DEFINED IN THE PLAN ASSET REGULATION ISSUED BY THE DEPARTMENT OF LABOR (THE "PLAN ASSET REGULATION")), (2) EACH OUTSTANDING CLASS OF CAPITAL STOCK OF THE CORPORATION QUALIFIES AS A CLASS OF "PUBLICLY OFFERED SECURITIES" FOR PURPOSES OF ERISA OR (3) THE CORPORATION COMPLIES WITH ANOTHER AVAILABLE EXCEPTION UNDER THE PLAN ASSET REGULATION, THE CORPORATION WILL NOT APPROVE THE SALE OR TRANSFER OF SHARES OF COMMON STOCK, WARRANTS OR OTHER CAPITAL STOCK OF THE COMPANY TO A BENEFIT PLAN INVESTOR UNLESS, FOLLOWING SUCH SALE OR TRANSFER LESS THAN TWENTY-FIVE PERCENT (25%) OF EACH OUTSTANDING CLASS OF CAPITAL STOCK OF THE CORPORATION IS HELD BY (A) EMPLOYEE BENEFIT PLANS (AS DEFINED IN SECTION 3(3) OF ERISA) THAT ARE SUBJECT TO TITLE I OF ERISA; (B) PLANS THAT ARE SUBJECT TO SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; (C) ENTITIES WHOSE UNDERLYING ASSETS INCLUDE PLAN ASSETS BY REASON OF A PLAN'S INVESTMENT IN SUCH ENTITIES; OR (D) ENTITIES THAT OTHERWISE CONSTITUTE "BENEFIT PLAN INVESTORS" WITHIN THE MEANING OF SECTION 3(42) OF ERISA AND THE PLAN ASSET REGULATION, DETERMINED WITHOUT REGARD TO THE VALUE OF ANY SHARES OF COMMON STOCK, WARRANTS OR OTHER CAPITAL STOCK OF THE COMPANY HELD BY PERSONS (OR AFFILIATES OF PERSONS) WITH AUTHORITY OR CONTROL WITH RESPECT TO THE ASSETS OF THE CORPORATION OTHER THAN BENEFIT PLAN

INVESTORS (A "CONTROLLING PERSON"), AND ANY SUBSEQUENT TRANSFEREE WILL BE DEEMED TO HAVE REPRESENTED THAT IT IS NEITHER A BENEFIT PLAN INVESTOR NOR A CONTROLLING PERSON, UNLESS THE COMPANY OTHERWISE CONSENTS IN WRITING PRIOR TO SUCH SALE OR TRANSFER.

(h) Additional Transfer Restrictions for Class B Non-Voting Common Stock and Lead Investor Warrants. Each certificate for shares of Class B Non-Voting Common Stock (including Warrant Shares) and Lead Investor Warrants shall bear substantially the following legend:

THE [SHARES OF CLASS B NON-VOTING COMMON STOCK] [WARRANTS (AND THE SHARES OF CLASS B NON-VOTING COMMON STOCK THAT MAY BE PURCHASED ON EXERCISE OF THE WARRANTS)] ARE TRANSFERABLE ONLY: (1) TO AN AFFILIATE OF THE TRANSFEROR OR TO THE CORPORATION, (2) IN A WIDELY DISPERSED PUBLIC OFFERING, (3) IN A PRIVATE SALE IN WHICH THE TRANSFEREE DOES NOT ACQUIRE COMMON STOCK (WHICH, FOR THIS PURPOSE, SHALL INCLUDE IN THE CASE OF A TRANSFER OF WARRANTS THE UNDERLYING SHARES OF CLASS B NON-VOTING COMMON STOCK) IN AN AMOUNT THAT UPON CONVERSION OF ANY SUCH TRANSFERRED SHARES THAT ARE CLASS B NON-VOTING COMMON STOCK INTO CLASS A VOTING COMMON STOCK WOULD REPRESENT 2% OR MORE OF THE CLASS A VOTING COMMON STOCK OR (4) TO A TRANSFEREE ACQUIRING MAJORITY CONTROL OF THE CORPORATION NOTWITHSTANDING SUCH TRANSFER.

(i) Expiration of Lead Investor Warrants Legend. Each certificate for Lead Investor Warrants shall bear substantially the following legend:

THE WARRANTS EVIDENCED BY THIS SECURITY SHALL EXPIRE ON THE EARLIER OF (I) THE DATE, IF ANY, ON WHICH THE HOLDER OF THIS WARRANT EXERCISES ITS "PURCHASER TERMINATION RIGHT" AS DEFINED IN THE STOCK PURCHASE AGREEMENT OR (II) THE CLOSE OF BUSINESS ON MAY 26, 2020.

IN ADDITION THE WARRANTS EVIDENCED BY THIS SECURITY SHALL EXPIRE AND BECOME NULL AND VOID IN THE EVENT OF A REDEMPTION PURSUANT TO SECTION 5.15 OR 5.16 OF THE STOCK PURCHASE AGREEMENT OR PARAGRAPH 8 OF THE LEAD INVESTOR AGREEMENT; PROVIDED, THAT IF SOME BUT NOT ALL OF A HOLDER'S COMMON STOCK IS SO REDEEMED AND SUCH HOLDER REMAINS A LEAD INVESTOR THE NUMBER OF WARRANTS THAT SHALL EXPIRE SHALL BE IN THE SAME PROPORTION AS THE NUMBER OF SHARES REDEEMED.

Section 5.19 Reports by Company. The Company agrees to make available to each Purchaser: (a) until the Second Closing Date, within 10 Business Days following each month-end, a report of cash on hand at the end of the immediately preceding month and a description of any individual expenditure that exceeds \$250,000 paid during the prior month, other than the payroll expenditure; and (b) following consummation of the first Bank Acquisition and until the Company becomes required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act, subject to applicable law: (i) as soon as practicable and in any event within ninety (90) days after the end of each fiscal year of the Company, an audited consolidated income statement for such fiscal year, an audited consolidated balance sheet and statement of stockholders' equity as of the end of such fiscal year, and an audited statement of cash flows for such fiscal year; and (ii) as soon as practicable, and in any case within sixty (60) days after the end of each of the first three quarters of each fiscal year, an unaudited consolidated income statement for such quarter, and an unaudited statement of cash flows for such quarter and an unaudited consolidated balance sheet as of the end of such quarter. At the end of any period for which the Company makes available financial information in accordance with this Section 5.19, the Company will hold an earnings conference call with such Purchasers.

Section 5.20 Right of First Offer.

(a) In the event the Company seeks to raise additional capital through the sale of Common Stock (the "***Offered Common Stock***"), other than Exempt Securities, during the ROFO Period, each Funding Purchaser shall have the right to purchase its Pro Rata Share of such shares of Offered Common Stock at the Issue Price (appropriately adjusted in the event of any stock split, reverse stock split, stock dividend, reclassification or other similar event) and in accordance with the terms of this Section 5.20. The "***ROFO Period***" shall commence on the date immediately following the Second Closing Date and shall expire on the earlier of (i) the one-year anniversary of the Second Closing Date, (ii) the date the Common Stock begins trading on a national securities exchange registered under Section 6 of the Exchange Act, and (iii) (A) the date on which the ROFO Period has terminated with respect to each and every Funding Purchaser in accordance with (B) below, and (B) as to any particular Funding Purchaser the date such Funding Purchaser has either (1) purchased from the Company pursuant to this Agreement an aggregate amount of shares of Common Stock (in the First Closing, the Second Closing and one or more subscriptions pursuant to this Section 5.20, if any) equal to or greater than the number of such Funding Purchaser's Commitment Shares as of the Signing Date (appropriately adjusted in the event of any stock split, reverse stock split, stock dividend, reclassification or other similar event) or (2) rejected any portion of a Subscription Offer under this Section 5.20, unless it was necessary for such Funding Purchaser to reject a portion of the Subscription Offer in order to avoid exceeding such Purchaser's applicable Voting Limit or Ownership Limit in which event this clause (2) shall not be applicable to such rejection. Each Funding Purchaser's "***Pro Rata Share***" of the Offered Common Stock shall be an amount equal to the outstanding shares of Common Stock owned by such Funding Purchaser divided by the total number of shares of outstanding Common Stock, in each case determined as of the close of business on the Business Day immediately preceding the date of the Offer Notice. For purposes of calculating Pro Rata Share, (x) all options, warrants and other securities that are convertible or exercisable into shares of Common Stock shall be deemed to have been exercised or converted, but only to the extent such securities are fully vested and/or immediately exercisable, and (y) shares of Common Stock subject to forfeiture shall not be included in the calculation of issued and

outstanding Common Shares. Notwithstanding anything to the contrary set forth in this Section 5.20, no Funding Purchaser shall have any right under this Section 5.20 to purchase shares of Common Stock that would cause such Funding Purchaser to exceed the Voting Limit or the Ownership Limit applicable to such Funding Purchaser.

(b) Prior to selling any Offered Common Stock that is subject to this Section 5.20, the Company shall give written notice (the "**Offer Notice**") to each Funding Purchaser which shall (a) state the Company's bona fide intention to sell Offered Common Stock, the amount to be sold, and a summary of the material terms of the proposed offering and (b) offer (a "**Subscription Offer**") to issue to each Funding Purchaser such Funding Purchaser's Pro Rata Share of such Offered Common Stock upon the terms and subject to the conditions set forth in the Offer Notice, which Subscription Offer by its terms shall remain open for a period of 10 calendar days from the date it is delivered by the Company to the Funding Purchasers (and, to the extent the Subscription Offer is accepted during such 10-day period, until the closing of the sales contemplated by the Subscription Offer).

(c) Notice of a Funding Purchaser's intention to accept a Subscription Offer, in whole or in part, shall be evidenced by a writing signed by the Funding Purchaser and delivered to the Company prior to the end of the 10 calendar day period of such Subscription Offer (each, a "**Notice of Acceptance**"), setting forth such portion of the Offered Common Stock that the Funding Purchaser elects to purchase consistent herewith.

(d) (i) In the event that a Notice of Acceptance is not given by Funding Purchasers accepting all of the Offered Common Stock, the Company shall have 120 days following the expiration of the 10 calendar day period referred to in Section 5.20(b) above, to issue all or any part of such remaining Offered Common Stock not covered by the Notices of Acceptance to any other Person or Persons, but only upon terms and conditions which are no more favorable, in the aggregate, to such other Person or Persons or less favorable to the Company than those set forth in the Offer Notice.

(ii) If the Company does not consummate the issuance of all or part of the remaining Offered Common Stock to such other Person or Persons within the 120-day period referred to in paragraph 5.20(d)(i) above, the rights provided hereunder shall be deemed to be revived and such securities shall not be offered thereafter unless first reoffered to each Funding Purchaser in accordance with this Section 5.20.

(iii) The purchase by any Funding Purchaser of any Offered Common Stock is subject in all cases to the execution and delivery by the Company and the Funding Purchaser of a purchase agreement, if any, relating to such Offered Common Stock in form and substance similar in all material respects to the extent applicable to that executed and delivered between the Company and such other Persons. The closing of any sale pursuant to this paragraph 5.20(d)(iii) shall occur on or before the date the sale to one or more other Persons takes place.

(e) As used herein, "**Exempt Securities**" shall mean: (i) any shares of Common Stock, stock units, stock appreciation rights, non-qualified stock options or incentive stock options, issuable or issued to officers, directors, employees and/or consultants of the

Company (or other qualified participants) pursuant to the Blue Ridge Holdings, Inc. 2010 Equity Incentive Plan; (ii) Common Stock issued or issuable as direct consideration for the acquisition by the Company of ICS, the Platform Bank or another Bank; (iii) Common Stock issued upon exercise of Lead Investor Warrants issued pursuant to this Agreement; (iv) all shares of Class B Non-Voting Common Stock issued upon conversion or exchange of shares of Class A Voting Common Stock; and (v) all shares of Class A Voting Common Stock issued upon conversion of shares of Class B Non-Voting Common Stock.

(f) In the event a Funding Purchaser does not accept in full its portion of a Subscription Offer (unless accepting the full amount of its Subscription Offer would result in such Purchaser exceeding its applicable Voting Limit or Ownership Limit in which event such Funding Purchaser must only accept that portion which will result in its ownership of shares of Common Stock or Class A Voting Shares equaling either such Purchaser's Ownership Limit or Voting Limit, as applicable), all of the rights provided under this Section 5.20 shall terminate with respect to such Funding Purchaser, except, to the extent it accepted a portion of such Subscription Offer, with respect to that Subscription Offer.

(g) During the ROFO Period, the Company may not issue or sell any equity or equity-linked securities other than Common Stock and Exempt Securities.

(h) Notwithstanding the foregoing, the Company need not comply with any of the other provisions of this Section 5.20 to the extent that the Company or a bank owned by the Company has received a "directive" under 12 C.F.R. Part 3, requiring a bank owned by the Company to raise capital and a majority of the Independent Directors determines in its reasonable discretion that timing constraints relating to the need to raise capital make it impracticable to follow the procedures set forth in this Section 5.20.

Section 5.21 Approval of Certain Transaction. The Company may not (and the Company shall not permit any of its Subsidiaries to) enter into any agreement or transaction with any officer or director, or a family member or Affiliate of an officer or director, without the consent of a majority of the Independent Directors.

ARTICLE VI. CLOSING CONDITIONS FOR FIRST CLOSING.

Section 6.01 Conditions to the Company's Obligations at First Closing. The obligation of the Company hereunder to issue and sell the Initial Funded Shares to each Purchaser at the First Closing is subject to the satisfaction, at or before the First Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Purchaser with prior written notice thereof:

(a) Stock Purchase Agreement. Each Purchaser shall have duly executed and delivered to the Company this Agreement.

(b) Registration Rights Agreement. Each Purchaser shall have duly executed and delivered to the Company the Registration Rights Agreement.

(c) First Closing Escrow Agreement. The First Closing Escrow Agent, the Placement Agent and each Purchaser shall have duly executed and delivered to the Company the First Closing Escrow Agreement.

(d) Lead Investor Agreement. Each Lead Investor shall have executed and delivered to the Company a Lead Investor Agreement.

(e) Employment Agreements. Each Member of Management shall have duly executed and delivered to the Company a Management Employment Agreement.

(f) ICS Reimbursement Agreement. ICS shall have duly executed and delivered to the Company the ICS Reimbursement Agreement.

(g) Purchaser Questionnaires. Each Purchaser shall have duly executed and delivered to the Company a fully completed Form of Ownership and Wire Information Questionnaire, Accredited Investor Questionnaire, Benefit Plan Questionnaire, in the forms attached hereto as Appendix I, Appendix II and Appendix III, respectively.

(h) Placement Agency Agreement. The Placement Agent shall have duly executed and delivered to the Company the Placement Agency Agreement.

(i) FDIC Policy. Upon receipt of the Initial Funded Commitment Amounts from each Purchaser, the Company determines to its reasonable satisfaction that Lead Investors subject to the FDIC Policy will own immediately after the First Closing either (i) one-third of the shares of Class A Voting Common Stock outstanding; or (ii) one-third of the shares of Common Stock (treating Class A Voting Common Stock and Class B Non-Voting Common Stock together as a single class) outstanding.

(j) Initial Funded Commitment Amount. The First Closing Escrow Agent shall have delivered as directed in joint instructions from both the Company and the Placement Agent the Initial Funded Commitment Amount for the Initial Funded Shares being purchased by each of the Purchasers at the First Closing, by wire transfer of immediately available funds pursuant to the wire instructions provided in such joint instructions.

(k) No Order or Injunction. There must not be issued and in effect any order by a Governmental Authority restraining or prohibiting the transactions contemplated by this Agreement to occur at the First Closing.

(l) Representations, Warranties and Performance of Purchasers. The representations and warranties of each Purchaser contained in Article III of this Agreement shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality, which shall be true and correct in all respects) as of the Signing Date and as of the First Closing Date as though made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specified date), and each Purchaser shall have performed, satisfied and complied in all material respects with the covenants,

agreements and conditions required by this Agreement to be performed, satisfied or complied with by each Purchaser at or prior to the First Closing Date.

(m) Approvals of Governmental Authorities. All authorizations, approvals or permits, if any, of any Governmental Authority of the United States or of any state that are required in connection with the lawful issuance and sale of the Initial Funded Shares and the First Closing Lead Investor Warrants pursuant to this Agreement shall be obtained and effective as of such Closing.

(n) Investor Letter. Each Purchaser shall have executed and delivered to the Placement Agent the Investor Letter dated as of the First Closing Date.

Section 6.02 Conditions to Each Purchaser's Obligations at First Closing. The obligation of each Purchaser to purchase the Initial Funded Shares at the First Closing is subject to the satisfaction, at or before the First Closing Date, of each of the following conditions, provided that these conditions are for each Purchaser's sole benefit and may be waived by such Purchaser at any time in its sole discretion by providing the Company with prior written notice thereof:

(a) Stock Purchase Agreement. The Company and each other Purchaser shall have duly executed and delivered to such Purchaser this Agreement.

(b) Registration Rights Agreement. The Company and each other Purchaser shall have duly executed and delivered to such Purchaser the Registration Rights Agreement.

(c) First Closing Escrow Agreement. The Company, the Placement Agent, the First Closing Escrow Agent and each other Purchaser shall have duly executed and delivered to such Purchaser the First Closing Escrow Agreement.

(d) Management Employment Agreements. Each Member of Management shall have duly executed and delivered to the Company, and the Company shall have executed, a Management Employment Agreement, which shall be in effect.

(e) ICS Reimbursement Agreement. ICS shall have duly executed and delivered to the Company, and the Company shall have executed, the ICS Reimbursement Agreement, which shall be in effect.

(f) Board Composition. As of the First Closing, the authorized size of the Board of Directors shall be six directors, and the Board of Directors shall be comprised of three Members of Management and three Independent Directors.

(g) Amended and Restated Certificate of Incorporation. The Company shall have filed with Secretary of State of the State of Delaware the Amended and Restated Certificate of Incorporation of the Company and the Amended and Restated Certificate of Incorporation shall be in effect and shall not have been amended after such filing.

(h) Amended and Restated Bylaws. The Amended and Restated Bylaws of the Company shall have been adopted by the Board of Directors and be in effect and shall not have been amended after such filing.

(i) No Order or Injunction. There must not be issued and in effect any order by a Governmental Authority restraining or prohibiting the transactions contemplated by this Agreement to occur at the First Closing.

(j) Opinion of Counsel to Company. Such Purchaser shall have received an opinion of Hunton & Williams LLP, counsel for the Company, dated the First Closing Date, in substantially the form of Exhibit H attached hereto.

(k) Secretary's Certificate. The Company shall have delivered to such Purchaser a certificate, executed by the Secretary of the Company and dated as of the First Closing Date, as to (i) resolutions adopted by the Company's Board of Directors as to the matters described in Section 4.04, (ii) the Amended and Restated Certificate of Incorporation of the Company, (iii) the Amended and Restated Bylaws of the Company, and (iv) the incorporation and good standing of the Company, each as in effect at the First Closing, in the form attached hereto as Exhibit I.

(l) Company Representations, Warranties and Performance. The representations and warranties of the Company contained in Article IV of this Agreement shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects) as of the Signing Date and as of the First Closing Date as though made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specified date), and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to the First Closing Date. Such Purchaser shall have received a certificate, executed by an officer of the Company, dated as of the First Closing Date, to the foregoing effect in the form attached hereto as Exhibit J.

(m) Initial Funded Shares; First Closing Lead Investor Warrants. The Placement Agent shall have provided written instructions to the First Closing Escrow Agent, on behalf of the Company, to notify the Transfer Agent to issue (i) the Initial Funded Shares to the Purchasers, according to instructions the Purchasers have provided and (ii) the First Closing Lead Investor Warrants to the Lead Investors, according to the instructions the Lead Investors have provided; the Escrow Agent shall have provided such notice to the Transfer Agent, and the Transfer Agent shall have so delivered the Initial Funded Shares to the Purchaser and the First Closing Lead Investor Warrants to the Lead Investors.

(n) Approvals of Governmental Authorities. All authorizations, approvals or permits, if any, of any Governmental Authority of the United States or of any state that are required in connection with the lawful issuance and sale of the Initial Funded Shares

and the First Closing Lead Investor Warrants pursuant to this Agreement shall be obtained and effective as of such Closing.

(o) Members of Management Subject to Lock-Up. Each Member of Management shall have entered into a Lock-Up Agreement in the form of Exhibit O hereto.

ARTICLE VII. CLOSING CONDITIONS FOR SECOND CLOSING.

Section 7.01 Conditions to the Company's Obligations at Second Closing. The obligation of the Company hereunder to issue and sell the Additional Shares to each Funding Purchaser at the Second Closing is subject to the satisfaction, at or before the Second Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Purchaser with prior written notice thereof:

- (a) First Closing. The First Closing shall have occurred.
- (b) Second Closing Escrow Agreement. The Second Closing Escrow Agent, the Placement Agent (if it elects to be a party thereto) and each Purchaser shall have duly executed and delivered to the Company the Second Closing Escrow Agreement.
- (c) No Order or Injunction. There must not be issued and in effect any order by a Governmental Authority restraining or prohibiting the transactions contemplated by this Agreement to occur at the Second Closing (or the closing of the first Bank Acquisition).
- (d) Purchaser Questionnaires. Each Funding Purchaser shall have duly executed and delivered to the Company a fully completed Accredited Investor Questionnaire, Benefit Plan Questionnaire and Registration Statement Questionnaire, in the forms attached hereto as Appendix II and Appendix III to this Agreement and Appendix A to the Registration Rights Agreement, respectively.
- (e) FDIC Policy. The Company determines to its reasonable satisfaction that upon receipt of each Funding Purchaser's Funding Amount, Lead Investors subject to the FDIC Policy will own immediately after the Second Closing either (i) one-third of the shares of Class A Voting Common Stock outstanding; or (ii) one-third of the shares of Common Stock (treating Class A Voting Common Stock and Class B Non-Voting Common Stock together as a single class) outstanding.
- (f) Funding Notice Conditions. The conditions for sending a Funding Notice pursuant to Section 2.02(c) have been satisfied and none of the conditions requiring the Company to send a Capital Call Termination Notice pursuant to Section 2.02(c) has occurred.
- (g) Definitive Purchase Agreement for Bank Acquisition. With regard to a Failed Bank Acquisition, the FDIC shall have accepted the Company's bid to acquire one or more Failed Banks and, with respect to such Failed Banks, the FDIC shall have

entered into a definitive purchase and sale agreement with the Company and all conditions to closing such Failed Bank Acquisition have been satisfied or waived, or, with respect to a Non-Failed Bank Acquisition, the Company shall have entered into a definitive agreement to acquire a Non-Failed Bank and all such conditions to closing such Non-Failed Bank Acquisition have been satisfied or waived.

(h) Capital Call Amount. The Second Closing Escrow Agent shall have delivered as directed in instructions from the Company the Capital Call Amount for the Additional Shares being purchased by the Funding Purchasers at the Second Closing, by wire transfer of immediately available funds pursuant to the wire instructions provided by the Company.

(i) Representations, Warranties and Performance of Purchasers. The representations and warranties of each Funding Purchaser contained in Article III of this Agreement shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality, which shall be true and correct in all respects) as of the Signing Date and as of the Second Closing Date as though made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specified date), and each Funding Purchaser shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by each Funding Purchaser at or prior to the Second Closing Date; provided, however, if a Funding Purchaser notifies the Company that the representations and warranties in Section 3.16(a)(vii) are not true and correct in all material respects as of the Second Closing Date, such Purchaser shall not be deemed in breach of this Agreement and the Company, at its option, may either waive the condition to closing or terminate such Purchaser's Unfunded Commitment and redeem all of its shares of Common Stock at the Redemption Price.

(j) Approvals of Governmental Authorities; Termination of Waiting Periods. All authorizations, approvals or permits, if any, of any Governmental Authority of the United States or of any state that are required in connection with the lawful issuance and sale of the Additional Shares and the Second Closing Lead Investor Warrants pursuant to this Agreement and the closing of the first Bank Acquisition, shall be obtained and effective as of such Closing, and any applicable waiting periods required by any Governmental Authority of the United States or of any state shall have terminated or expired.

(k) Investor Letter. Each Purchaser shall have executed and delivered to the Placement Agent the Investor Letter dated as of the Second Closing Date.

Section 7.02 Conditions to Each Funding Purchaser's Obligations at Second Closing. The obligation of each Funding Purchaser to purchase the Additional Shares at the Second Closing is subject to the satisfaction, at or before the Second Closing Date, of each of the following conditions, provided that these conditions are for each Funding Purchaser's sole benefit and may be waived by such Funding Purchaser at any time in its sole discretion by providing the Company with prior written notice thereof:

- (a) First Closing. The First Closing shall have occurred.
- (b) Second Closing Escrow Agreement. The Second Closing Escrow Agent, the Company, the Placement Agent (if it elects to be a party thereto) and each other Purchaser shall have duly executed and delivered to the Company the Second Closing Escrow Agreement.
- (c) No Order or Injunction. There must not be issued and in effect any order by a Governmental Authority restraining or prohibiting the transactions contemplated by this Agreement to occur at the Second Closing (or the closing of the first Bank Acquisition).
- (d) Opinion of Company Counsel. Such Funding Purchaser shall have received an opinion of Hunton & Williams LLP, counsel for the Company, dated the Second Closing Date, in substantially the form of Exhibit H attached hereto.
- (e) Board Composition. As of the Second Closing, the authorized size of the Board of Directors shall be nine directors, and the Board of Directors shall be comprised of three Members of Management and six Independent Directors. At least 5 members of the Board shall be Unrelated Directors.
- (f) Funding Notice Conditions. The conditions for sending a Funding Notice pursuant to Section 2.02(c) have been satisfied and none of the conditions requiring the Company to send a Capital Call Termination Notice pursuant to Section 2.02(c) has occurred.
- (g) Funding. Each other Funding Purchaser shall have delivered Its Funding Amount to the Second Closing Escrow Agent pursuant to Section 2.01(c)(iv).
- (h) Definitive Purchase Agreement for Bank Acquisition. With regard to a Failed Bank Acquisition, the FDIC shall have accepted the Company's bid to acquire one or more Failed Banks and, with respect to such Failed Banks, shall have entered into a definitive purchase and sale agreement with the Company and all conditions to closing such Failed Bank Acquisition have been satisfied or waived, or, with respect to a Non-Failed Bank Acquisition, the Company shall have entered into a definitive agreement to acquire a Non-Failed Bank and all such conditions to closing such Non-Failed Bank Acquisition have been satisfied or waived.
- (i) Company Secretary's Certificate. The Company shall have delivered to such Funding Purchaser a certificate, executed by the Secretary of the Company and dated as of the Second Closing Date, as to (i) resolutions adopted by the Company's Board of Directors as to the matters described in Section 4.04, (ii) the Amended and Restated Certificate of Incorporation of the Company and (iii) the Amended and Restated Bylaws of the Company, each as in effect at the Second Closing, in the form attached hereto as Exhibit I.
- (j) Company Representations, Warranties and Performance. The representations and warranties of the Company contained in Article IV of this Agreement

shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects) as of the Signing Date and as of the Second Closing Date as though made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specified date), and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to the Second Closing Date. Such Purchaser shall have received a certificate, executed by an officer of the Company, dated as of the Second Closing Date, to the foregoing effect in the form attached hereto as Exhibit J.

(k) Additional Shares; Second Closing Lead Investor Warrants. The Placement Agent (or the Company if the Placement Agent is not a party to the Second Closing Escrow Agreement) shall have provided written instructions to the Second Closing Escrow Agent on behalf of the Company, if applicable, to notify the Transfer Agent to issue (i) the Additional Shares to the Funding Purchasers, according to instructions the Funding Purchasers have provided and (ii) the Second Closing Lead Investor Warrants to the Lead Investors who are Funding Purchasers, according to the instructions provided by the Lead Investors who are Funding Purchasers; the Second Closing Escrow Agent shall have provided such notice to the Transfer Agent, and the Transfer Agent shall have so delivered the Additional Shares to the Funding Purchasers and the Second Closing Lead Investor Warrants to the Lead Investors who are Funding Purchasers..

(l) Approvals of Governmental Authorities; Termination of Waiting Periods. All authorizations, approvals or permits, if any, of any Governmental Authority of the United States or of any state that are required in connection with the lawful issuance and sale of the Additional Shares and the Second Closing Lead Investor Warrants pursuant to this Agreement and the closing of the first Bank Acquisition, shall be obtained and effective as of such Closing, and any applicable waiting periods required by any Governmental Authority of the United States or of any state shall have terminated or expired.

ARTICLE VIII. TERMINATION.

Section 8.01 Termination of Agreement. The Parties may terminate this Agreement as follows: (a) The Company and the Purchasers may terminate this Agreement by mutual written consent at any time prior to the First Closing; and (b) the Company or any Purchaser may terminate this Agreement upon delivery of notice to each of the other Parties if the First Closing has not occurred prior to June 30, 2010 (the "**Expiration Date**"), provided that the Party delivering such notice will not have caused such failure to complete the First Closing.

Section 8.02 Effect of Termination. Except for the obligations under this Article VIII and Article IX, if this Agreement is terminated under Section 8.01, then, except as provided in this Section 8.02 all further obligations of the Parties under this Agreement will terminate; *provided* that if such termination shall result from the willful breaching of any provision, the

breach Party shall be fully liable for any and all damages incurred or suffered by the other Parties as a result of such breach.

ARTICLE IX. MISCELLANEOUS.

Section 9.01 Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

Section 9.02 Survival. All representations, warranties and covenants shall survive until the first anniversary of the Second Closing except for those covenants that are to be performed following the Closings, which shall expire one year after the time specified in the particular covenant, and if no such time is specified, then such covenant shall expire on the first anniversary of the Listing Date except that the covenants set forth in Sections 5.10 and 5.11 shall not expire to the fullest extent permitted by law. Any investigation or other examination that may be made by or on behalf of a Party to which representations and warranties are made shall not limit, diminish or in any way affect the specific representations and warranties in this Agreement, and the parties may rely on the specific representations and warranties in this Agreement, irrespective of any information obtained by them by any investigation, examination or otherwise.

Section 9.03 Governing Law; Jurisdiction; Waiver of Jury Trial. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF, OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, WHICH SHALL APPLY HERETO). Each Party submits to the jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and the appellate courts from any thereof, in any proceeding arising out of or relating to this Agreement and agrees that all claims in respect of such proceeding may be heard and determined in any such court. Each Party waives any defense of inconvenient forum to the maintenance of any proceeding so brought and waives any bond, surety, or other security that might be required of any other Party with respect thereto. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 9.04 Counterparts. This Agreement may be executed and delivered by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of clarity, a facsimile signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile signature.

Section 9.05 Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

Section 9.06 Brokers and Finders. Each Purchaser agrees to indemnify and to hold harmless the Company from any liability for any commission or compensation in the nature of a finder's or broker's fee arising out of this transaction (and the costs and expenses of defending against such liability or asserted liability) for which such Purchaser or any of its officers, employees, or representatives is responsible. The Company agrees to indemnify and hold harmless each Purchaser from any liability for any commission or compensation in the nature of a finder's or broker's fee arising out of this transaction (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

Section 9.07 Expenses. Unless otherwise provided in this Agreement, each of the parties hereto will bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated under this Agreement, including fees and expenses of its own financial or other consultants, investment bankers, accountants and counsel.

Section 9.08 Severability. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

Section 9.09 Entire Agreement. This Agreement and the other Transaction Documents, together with the Appendixes and Exhibits hereto and thereto, supersede all other prior oral or written agreements between the Purchasers, the Company, their Affiliates and Persons acting on their behalf with respect to the matters discussed herein, and this Agreement, the other Transaction Documents and the instruments referenced herein and therein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor any Purchaser makes any representation, warranty, covenant or undertaking with respect to such matters; provided, however the risk factors set forth in Appendix IV shall not in any way modify or alter the terms and conditions set forth in this Agreement. For purposes of clarity, to the extent a provision of Article V conflicts with, or is inconsistent with, a provision of the Amended and Restated Certificate of Incorporation, the Amended and Restated Certificate of Incorporation shall control.

Section 9.10 Amendments and Waivers. No amendment to this Agreement may limit the right of a Purchaser to waive any provision which they have the right to waive, and no provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Purchasers listed on the signature pages hereto as being obligated to purchase at least two-thirds of the amount of the Commitment Shares to be sold hereunder; *provided, however*, that without the express written consent of a Purchaser no amendment may increase such Purchaser's Commitment or Commitment Amount and without the express written consent of each Purchaser, no amendment may be made to this proviso; *provided, further*, that any amendment to Article II, III or VIII or to Section 5.02, Section 5.10 (last sentence only), Section 5.11, Section 5.12, Section 6.02, Section 7.02 or this Section 9.10 shall require the written consent of Purchasers listed on the signature pages hereto as being obligated to purchase

at least 75% of the amount of the Commitment Shares to be sold hereunder; *provided, further*, that if such 75% approval is obtained any Purchaser who has not consented may notify the Company that Its Commitment is terminated and the Company shall be obligated to repurchase at the Redemption Price all shares of Common Stock held by such Purchaser; provided, further, no amendment to this Agreement that disproportionately affects any Purchaser may be made without the consent of such Purchaser and if such consent is not obtained the Company may redeem all shares of Common Stock held by such Purchaser at the Redemption Price (and terminate such Purchaser's Unfunded Commitment). For the avoidance of doubt, nothing in the last proviso to the immediately preceding sentence shall limit a Purchaser's rights in any other proviso to such sentence. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought.

Section 9.11 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

Section 9.12 Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

BLUE RIDGE HOLDINGS, INC.
2100 Rexford Road, Suite 100
Charlotte, North Carolina 28211
Facsimile: (704) 364-4826
Attention: Walter L. Davis

with a copy (for informational purposes only) to:

HUNTON & WILLIAMS, LLP
1445 Ross Avenue, Suite 3700,
Dallas, Texas 75202
Facsimile: (214) 468-3599
Attention: Peter Weinstock, Esq.

If to a Purchaser, to its address and facsimile number set forth under such Purchaser's name on the signature page hereto, with copies to such Purchaser's representative as set forth under such Purchaser's name on the signature page hereto, or to such other address and/or facsimile number and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five days prior to the effectiveness of such change. Written confirmation of receipt (i) given by the recipient of such notice, consent, waiver or other communication, (ii) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission or (iii) provided by an overnight courier service, shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

Section 9.13 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any Purchasers of the Commitment Shares. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the holders of at least two-thirds of the aggregate number of Commitment Shares issued hereunder. A Purchaser may assign some or all of its rights hereunder with the consent of the Company to another Purchaser hereunder if in compliance with this Agreement and applicable law, in which event such assignee shall be deemed to be a Purchaser hereunder with respect to such assigned rights and shall be bound by the terms and conditions of this Agreement that apply to "Purchasers."

Section 9.14 No Third Party Beneficiaries. Except as expressly set forth herein, this Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

Section 9.15 No Strict Construction. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party because of the authorship of any provision of this Agreement.

Section 9.16 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under any Transaction Document. The decision of each Purchaser (other than those Purchasers that are Affiliates of each other) to purchase the Offered Securities pursuant to the Transaction Documents has been made by such Purchaser independently of any other non-Affiliated Purchaser and independently of any

information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Company, which may have been made or given by any other non-Affiliated Purchaser or by any agent or employee of any other non-Affiliated Purchaser, and no Purchaser or any of its agents or employees shall have any liability to any other Purchaser (or any other Person) relating to or arising from any such information, materials, statement or opinions. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group, and the Company will not assert any such claim with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser (other than those Purchasers that are Affiliates of each other) confirms that it has independently participated in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors and no other non-Affiliated Purchaser has acted as agent for such Purchaser in connection with making its investment hereunder and that no non-Affiliated Purchaser will be acting as agent of such Purchaser (and its Affiliates) in connection with monitoring its investment in the Offered Securities or enforcing its rights under the Transaction Documents. Each Purchaser shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.

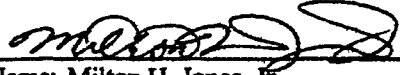
Section 9.17 Acknowledgement Regarding Counsel. Each party to this Agreement acknowledges that Hunton & Williams LLP, counsel for the Company, has in the past performed and may continue to perform legal services for certain of the Purchasers and the Placement Agent in matters unrelated to the transactions described in this Agreement, including the representation of such Purchasers and the Placement Agent in offerings and other matters. Accordingly, each party to this Agreement hereby (a) acknowledges that they have had an opportunity to ask for information relevant to this disclosure; and (b) gives its informed consent to Hunton & Williams LLP's representation of certain of the Purchasers and the Placement Agent in such unrelated matters and to Hunton & Williams LLP's representation of the Company in connection with this Agreement and the transactions contemplated hereby.

Section 9.18 Publicity. Except as may be required by applicable law, neither the Company nor any representative of the Company (including the Placement Agent) will issue any press release or public statement that identifies any Purchaser or any investment advisor to a Purchaser, or otherwise makes any public statement with respect to any Purchaser or any investment advisor to a Purchaser hereby without the prior written consent of such Purchaser. Any such press release or public statement required by applicable law shall only be made by the Company after reasonable notice and opportunity for review by the Purchasers.

[Signatures appear on the following pages.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

BLUE RIDGE HOLDINGS, INC.

By: 
Name: Milton H. Jones, Jr.
Title: Chairman, President and
Chief Executive Officer

[Remainder of page intentionally left blank]

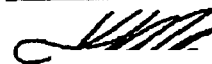
[Signature pages for Purchasers appear on the following pages.]

Signature Page to Stock Purchase Agreement

NAME OF PURCHASER

3-Sigma Value Financial Opportunities, LP

By: 3-Sigma Value Investment Management LLC

By: 

Name: _____

Title: Managing Member

Address: _____

Contact: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$21,500,000.00

Number of Shares of
Common Stock: 1,075,000

Tax ID No.: _____

Voting Limit: \$66,745 or 4.9%

Ownership Limit: 200,255 or 2.8% 9.9%

Purchaser ☐ is or ☒ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____

Legal Representative Address:

Attn: Richard Lepowaky

Title: Partner, Vlasas Lepowsky Hauss & Danke

Address: 630 Third Avenue, 5th Floor New York, NY 10017

Telephone: (212)779-3207

Facsimile: (212)983-9210

E-mail: rlpowaky@vlhd-law.com

Purchaser Signature Page to Agreement



P2 of 7

CONFIDENTIAL
BLUE RIDGE HOLDINGS, INC. STOCK PURCHASE AGREEMENT

4/30/2010 DRAFT

NAME OF PURCHASER

Richard Jacinto II, R.H. IRA, JPMCC, as Custodian

By: [Signature]By: [Signature]

Name: _____

Title: _____

Address: _____

Contact: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00Commitment Amount (U.S. dollar
commitment): \$8,000,000Number of Shares of
Common Stock: 400,000

Tax ID No.: _____

Voting Limit: 4.9%Ownership Limit: 9.9%

Legal Representative Address:

Attn: None

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.

If acting as part of a group or in concert with
any other Persons, list such Persons: _____

Pentagram Partners, L.P.

Purchaser Signature Page to Agreement

[Signature]

2 of 14

NAME OF PURCHASER

Pentagram Partners, L.P.

By: _____

By: _____

Name: L.Title: General Partner

Address: _____

Contact: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00Commitment Amount: \$1.00 dollarcommitted: \$1.00, 0.00%

Number of Shares of

Common Stock: 5,250,000

Tax ID No.: _____

Voting Limit: 4.9%Ownership Limit: 9.9%

Purchaser ☒ is acting as part of a group or in concert with any other Persons. If acting as part of a group or in concert with any other Persons, list each Person:

Richard J. Jacobs, J. Paul, III
OF MDC, INC.

Legal Representative Address:

Attn: None

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

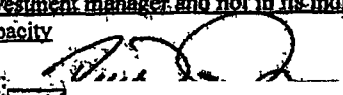
E-mail: _____

B

NAME OF PURCHASER

ACP Master, Ltd.

By: Aurelius Capital Management, L.P. solely as
investment manager and not in its individual
capacity

By: 

Name

Title: Chief Operating Officer

Address:

Contact ?
Telephon
Facsimile
E-mail: :

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): 9,392,400

Number of Shares of
Common Stock: 469,620

Tax ID No.:

Voting Limit: 4.9% in aggregate with
affiliates

Ownership Limit: 4.9% in aggregate with
affiliates 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____
Aurelius Capital Master, Ltd.

Legal Representative Address:

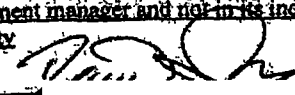
Attn: Jason Kaplan, Schulte Roth
Title: Partner
Address: 919 Third Avenue, New York, NY 10022
Telephone: 212.756.2760
Facsimile: 212.593.5955
E-mail: jason.kaplan@srz.com

Purchaser Signature Page to Agreement

NAME OF PURCHASER

Aurelius Capital Master, Ltd.

By: Aurelius Capital Management, LP, solely as
investment manager and not in its individual
capacity

By: 

Name:

Title: Chief Operating Officer

Address

Contact
Telepho
Facsimil
E-mail:

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): 12,107,600

Number of Shares of
Common Stock: 605,380

Tax ID No.: _____

Voting Limit: 4.9% in aggregate with
affiliates

Ownership Limit: 4.9% in aggregate with
affiliates 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____
ACP Master, Ltd. _____

Legal Representative Address:

Attn: Jason Kaplan, Schulte Roth
Title: Partner
Address: 919 Third Avenue, New York, NY 10022
Telephone: 212.756.2760
Facsimile: 212.593.5955
E-mail: jason.kaplan@srz.com

Purchaser Signature Page to Agreement

NAME OF PURCHASER

Barclays Bank PLC

By: _____

By: Barclays Bank PLC

Name: _____

Title: ANY

Address: _____

Contact: _____

Telephone: _____

Fax/facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. Dollar)

20,000,000

Number of Shares of

Common Stock 1,000,000

For All Mon

Waiting Time: 9.9%

Ownership Limit: 9.9%

Purchaser ☐ is or ☒ is not acting as part of a group or in concert with any other Person. If acting as part of a group or in concert with any other Persons, list such Person:

Legal Representative Address:

Name: Jessica Fairman

Title: Director

Address: 745 7th Ave 30th Fl New York NY 10019

Telephone: 212-412-7594

Fax/facsimile: 212-244-0765

E-mail: Jessica.Fairman@barclay.com

(STS)

Purchaser Signature Page to Agreement

BLUE MOUNTAIN FINANCIAL HOLDINGS, LLC

By: BLUE MOUNTAIN CREDIT ALTERNATIVES MASTER
FUND L.P., Managing Member

By: BLUE MOUNTAIN CAPITAL MANAGEMENT, LLC,
Authorized Investment Advisor

By: 

Name: David Rubenstein

Contact Name: Scott Lessing

Purchase Price Per Share: \$29.00

Commitment Amount (U.S. dollar commitment):
\$49,500,000

Number of Shares of Common Stock: 2,475,000

Tax ID No.: _____

Voting Limit: 9.9%

Ownership Limit: 9.9%

Purchaser ☐ is, or ☒ is not acting as part of a
group or in concert with any other Person. If acting
as part of a group or in concert with any other
Persons, list such Persons: _____

Legal Representative Address:

Attn: Imad Qasim
Title: Partner
Firm: Sidley Austin
Address: One South Dearborn Street
Chicago, IL 60603
Telephone: 312-853-7094
Facsimile: 312-853-7036
E-mail: iqasim@sidley.com

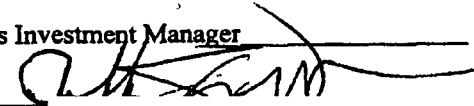
Purchaser Signature Page to Agreement

NAME OF PURCHASER

JUGGERNAUT FUND, L.P.

By: Duquesne Capital Management L.L.C.

as Investment Manager

By: 

Name:

Title: Assistant Vice President

Address:

Contact

Telephone:

Facsimil

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar

commitment): \$24,500,000

Number of Shares of

Common Stock: 1,225,000

Tax ID No.: _____

Voting Limit: 4.9%

Ownership Limit: 9.9%

Purchaser ☒ is or ☐ is not acting as part of a group or in concert with any other Person. If acting as part of a group or in concert with any other Persons, list such Persons: Malta Partners L.P., Malta Hedge Fund, L.P., Malta Hedge Fund II, L.P., Malta MLC Fund, L.P., Malta Offshore, Ltd., Malta MLC Offshore Ltd., SOAM Capital Partners, L.P., SOAM Azul I, LLC, SOAM Azul II, LLC, Volturus Capital, LLC, Sandler O'Neill Asset Management, LLC, SOAM Holdings, LLC, SOAM Ventures, LLC, SOAM Venture Holdings, LLC, JBR INVESTMENTS LLC, Duquesne Capital Management, L.L.C., JUGGERNAUT FUND, L.P.¹

¹ For purposes of this agreement the following were identified to the Issuer prior to the date hereof.

Purchaser Signature Page to Agreement

Legal Representative Address:

Attn: Laurence D. Weltman
Willkie Farr & Gallagher LLP____
Title: Partner_____
Address: 787 Seventh Avenue, New York, NY 10019-6099
Telephone: 212.728.8278_____
Facsimile: 212.728.3957_____
E-mail: L.weltman@willkie.com_____

Purchaser Signature Page to Agreement

2010/06/16 11:30:07

2 /9

NAME OF PERSON OR
 COMPANY
 ADDRESS
 CITY
 STATE
 ZIP
 PHONE
 FAX
 E-MAIL

Address:

Contact Name

Telephone

Facsimile

E-mail

Purchase Price Per Share: \$28.00

Consideration Amount: \$2,800.00

Commitment: \$2,800.00

Number of Shares of

Common Stock: 100,000

Tax ID No.

Voting Limit: 1,000

Ownership Limit: 1,000

Purchaser ☒ is or ☐ is not acting as part of
 a group or in concert with any other Person.
 If acting as part of a group or in concert with
 any other Persons, list such Persons.

IPMCC FBO J Stephen Emerson IRO

Rollover II

Legal Representative Address

Attn:
 Title:
 Address:
 Telephone:
 Facsimile:
 E-mail:

Purchaser Signature Page to Agreement

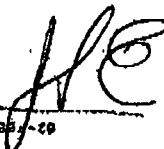
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Please initial X 

NAME OF PURCHASER

EBS Opportunity Fund II, L.P.

By: _____

By: _____

Name: _____

Title: Co-Chief Investment Officer

Address: _____

Contact Name: _____

Telephone: _____

Facsimile: _____

E-mail:

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$4,725,000

Number of Shares of _____

Common Stock: 236,250

Tax ID No. _____

Voting Limit: 4.9%

Ownership Limit: 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.

If acting as part of a group or in concert with
any other Persons, list such Persons: _____

EBS Opportunity Fund, L.P.

Legal Representative Address:

Attn: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchaser Signature Page to Agreement

MB/S

NAME OF PURCHASER

EBS Opportunity Fund, L.P.

By: _____

By: _____

Name: _____

Title: Co-Chief Investment Officer

Address: _____

Contact Name: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$4,275,000

Number of Shares of
Common Stock: 213,750

Tax ID No.: _____

Voting Limit: 4.9%

Ownership Limit: 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.

If acting as part of a group or in concert with
any other Persons, list such Persons: _____

EBS Opportunity Fund II, L.P.

Legal Representative Address:

Attn: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchaser Signature Page to Agreement

M/B

FVP Master Fund, L.P.
By: FVP GP, LLC, its general partner

By: _____
Name: _____
Title: Member

Purchase Price Per Share: \$20.00
Commitment Amount (U.S. dollar
commitment): 3,400,000
Number of Shares of
Common Stock: 170,000
Tax ID No.: _____
Voting Limit: 1/10 4.9%
Ownership Limit: 1/10 9.9%

FVP US-Q, LP

Attn: Evan Gelacek
 Title: Purchaser Ingersoll & Roney
 Address: 2016 Grant St. #201 Pittsburgh PA 15219
 Telephone: 412-562-1691
 Facsimile: 412-562-1041
 E-mail: evan.gelacek@b.p.c.com

AN

NAME OF PURCHASER

FVP US-G, LP

By: FVP GP, LLC, its general partner

By: _____

Name: _____

Title: Member

Address: _____

Contact Na _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$,100,000

Number of Shares of
Common Stock: 25,000

Tax ID No.: _____

Voting Limit: nta 4.9%

Ownership Limit: nta 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____

FVP Master Fund, LP

Legal Representative Address:

Attn: Evan Gelack

Title: Archana Farnell & Rooney

Address: 301 Grant St, 20th Fl Pittsburgh PA 15219

Telephone: 412-562-1651

Facsimile: 412-562-1041

E-mail: evangelack@bpc.com

Purchaser Signature Page to Agreement

AN

NAME OF PURCHASER

Investment Evergreen Fund, LP - 2010 Special Term
By: Investment Evergreen (LP), LLC Tranche

By: [Signature]
Name: _____
Title: Chief Operating Officer

Address: _____

Contact: _____
Telephone: _____
Facsimile: _____
E-mail: _____

Purchase Price Per Share: \$20.00
Commitment Amount (U.S. dollar
commitment): 14,000,000
Number of Shares of
Common Stock: 700,000
Tax ID No.: 1
Voting Limit: 4.9 %

Ownership Limit: ~~2.9%~~ 9.9% CCM

Purchaser ☐ is or ☒ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____

Legal Representative Address:

Attn: Niamh Curry
Title: Associate
Address: Dechert, LLP, 1045 Ave of the Americas, NY NY 10036
Telephone: 212. 641. 5627
Facsimile: 212. 698. 3599
E-mail: niamh.curry@dechert.com

Purchaser Signature Page to Agreement

NAME OF PURCHASER

FALCON EASTERN SOUTH, L.L.C.

By: [Signature]
Name: _____
Title: President

Address: _____

Contact No: _____
Telephone: _____
Facsimile: _____
E-mail: _____

Purchase Price Per Share: \$20.00
Commitment Amount (U.S. dollar
commitment): \$49,500,000*
Number of Shares of
Common Stock: 2,475,000*
Tax ID No.: _____
Voting Limit: 9.9%*
Ownership Limit: 9.9%*

*Collectively with Falcon Eastern, L.L.C.

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____
Falcon Eastern, L.L.C.

Legal Representative Address:

Attn: Gregory J. Lyons
Title: Partner
Address: Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Telephone: (212)909-6566
Facsimile: (212)909-6836
E-mail: gilvons@debevoise.com

Purchaser Signature Page to Agreement

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NAME OF PURCHASER

FALCON EASTERN, L.L.C.

By: [Signature]
Name: _____
Title: President

Address: _____

Contact N

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$49,500,000*

Number of Shares of _____

Common Stock: 2,475,000*

Tax ID No.: 1

Voting Limit: 9.9%*

Ownership Limit: 9.9%*

*Collectively with Falcon Eastern South,
L.L.C.

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____
Falcon Eastern South, L.L.C.

Legal Representative Address:

Attn: Gregory J. Lyons
Title: Partner
Address: Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Telephone: (212)909-6566
Facsimile: (212)909-6836
E-mail: gilyons@debevoise.com

Purchaser Signature Page to Agreement

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NAME OF PURCHASER

GAM EQUITY SIX, INC.

By: LUXOR CAPITAL GROUP, LP
INVESTMENT MANAGER

By: Mr. [Signature]

Name: [Signature]

Title: General Counsel

Address:

Contact:

Telephon:

Facsimile:

E-mail:

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): 1,799,800

Number of Shares of
Common Stock: 89,990

Tax ID No.: N/A

Voting Limit: 4.9%

Ownership Limit: 4.9% 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: LUXOR
CAPITAL PARTNERS, LP; LUXOR CAPITAL
PARTNERS DEEPHORE MASTER FUND, LP;
LUXOR WAVEFRONT, LP

Legal Representative Address:

Attn: c/o Luxor Capital Group LP

Title: 787 6th Avenue

Address: 18th Floor

Telephone: New York, NY 10158

Facsimile: _____

E-mail: _____

NP

Purchaser Signature Page to Agreement

NAME OF PURCHASER

LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND LP

By: LUXOR CAPITAL GROUP, LP

By: [Signature]

Name: _____

Title: _____

Address: _____

Contact No: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar

commitment): 9,189,600

Number of Shares of

Common Stock: 459,480

Tax ID No.: _____

Voting Limit: 4.9%

Ownership Limit: 4.9% 9.9%

Purchaser ☒ is or ☐ is not acting as part of a group or in concert with any other Person.

If acting as part of a group or in concert with any other Persons, list such Persons: (VXOR

CAPITAL PARTNERS, LP - LUXOR

WARRANTY OF GAIN EXCEPT AS SET

Legal Representative Address:

Attn: LEGAL

Title: _____

Address: Luxor Capital Group LP

Telephone: 787 8th Avenue

Facsimile: 1st Floor

E-mail: 1st Floor 1000

Purchaser Signature Page to Agreement

[Signature]

NAME OF PURCHASER

LUXOR CAPITAL PARTNERS, LP

By: _____

By: Norma Nissim

Name: Norma Nissim

Title: General Counsel

Address: _____

Contact: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar

commitment): 6,056,400

Number of Shares of

Common Stock: 200,000

Tax ID No.: _____

Voting Limit: 4.9%

Ownership Limit: 4.9% 9.9%

Purchaser ☒ is or ☐ is not acting as part of a group or in concert with any other Person.

If acting as part of a group or in concert with any other Persons, list such Persons: _____

LUXOR CAPITAL PARTNERS, LP

MACTER FUND, LP

6AM EQUITY FUND, INC.

Legal Representative Address: _____

Attn: Same as above

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchaser Signature Page to Agreement

NAME OF PURCHASER

LUXOR WAVEFRONT, LP

By: _____

By: April Allen

Name: Nomadic Mission

Title: General Counsel

Address: _____

Contact Name: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar commitment): 2,954,200

Number of Shares of Common Stock: 147,710

Tax ID No.: _____

Voting Limit: 4.9%

Ownership Limit: 4.9% - 9.9%

Purchaser ☒ is or ☐ is not acting as part of a group or in concert with any other Person.

If acting as part of a group or in concert with any other Persons, list such Persons: LUXOR CAPITAL PARTNERS, LP; LUXOR CAPITAL PARTNERS OFF-SHORE MASTER FUND, LP; GAMMA EQUITY S/P, INC.

Legal Representative Address:

Attn: c/o Luxor Capital C, LP

Title: 787 6th Avenue

Address: 18th Floor

Telephone: New York, NY 10155

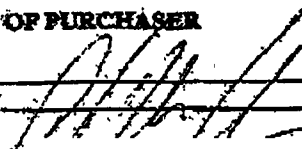
Facsimile: _____

E-mail: _____

Purchaser Signature Page to Agreement

up

NAME OF PURCHASER

By: By: Name
Title~~Street~~

Address:

Contact:

Telephone:

Facsimile:

E-mail:

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar

commitment): \$100,000

Number of Shares of:

Common Stock: 5,000

Tax ID No.:

Voting Limit: 4.4%

Ownership Limit: 9.9%

Purchaser ☐ is or ☒ is not acting as part of
 a group or in concert with any other Person.
 If acting as part of a group or in concert with
 any other Persons, list such Persons:

Legal Representative Address:

Age: _____
 Title: _____
 Address: _____
 Telephone: _____
 Facsimile: _____
 E-mail: _____

Purchaser Signature Page to Agreement

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p.2

NAME OF PURCHASER

Howard C. BluverBy: Howard C. Bluver

By: _____

Name: _____

Title: _____

Address: _____

Contact Name: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar

commitment): \$100,000.00

Number of Shares of

Common Stock: 5,000

Tax ID No.: _____

Voting Limit: N.A. 4.9%Ownership Limit: N.A. 9.9%

Purchaser ☐ is or ☒ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____

Legal Representative Address:

Attn: N.A.

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Thank you for your purchase of American

HCB

NAME OF PURCHASER

By: _____

By: _____

Name: _____

Title: _____

Address: _____

Contact No: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$50,000

Number of Shares of

Common Stock: 2,500

Tax ID No.: _____

Voting Limit: 4.9%

Ownership Limit: 9.9%

Purchaser ☐ is or ☒ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____

Legal Representative Address:

Attn: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____



Purchaser Signature Page to Agreement

NAME OF PURCHASER

By: _____

By: 6
Name
Title: Director

Address: _____

Contact No.
Telephone
Facsimile
Email: ✓

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): 100,000

Number of Shares of
Common Stock: 5000

Tax ID No.: _____

Voting Limit: 4.9%

Ownership Limit: 9.9%

Purchaser ☐ is or ☒ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Person, list such Person(s): _____

Legal Representative Address:

Attn: _____
Title: _____
Address: _____
Telephone: _____
Facsimile: _____
Email: _____

Purchaser Signature Page to Agreement

PK

NAME OF PURCHASER

By: _____

By: _____

Name: _____

Title: Executive Vice President and Chief
Administrative Officer

Address: _____

Contact: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar)

commitment: \$100,000.00

Number of Shares of

Common Stock: 5,000

Tax ID No: _____

Warrant Limit: 9.9% KAOwnership Limit: 9.9% KA

Purchaser ☐ is or ☐ is not acting as part of
a group or in concert with any other person.
If acting as part of a group or in concert with
any other persons, list such persons: _____

Legal Representative Address:

Attn: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchaser Signature Page to Agreement

KA

NAME OF PURCHASER

By: _____

By: 

Name: _____

Title: Chairman and Chief Executive Officer

Address: _____

Contact: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar)

Commitment: \$350,000

Number of Shares of:

Common Stock: 17,500

Tax ID No.: _____

Voting Limit: 1.17%

Ownership Limit: 9.9%

Purchaser ☐ is or ☒ is not acting as part of a group or in concert with any other Person. If acting as part of a group or in concert with any other Persons, list each Person: _____

Legal Representative Address:

Att: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchaser Signature Page 2 Agreement



NAME OF PURCHASER

By: _____

By: _____

Name: _____

Title: _____

Address: _____

Contact N

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$100,000

Number of Shares of
Common Stock: 5,000

Yet ID No.: _____

Voting Limit: 4.9% *tw*

Ownership Limit: 4.9% *tw*

Purchaser ☐ is or ☒ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____

Legal Representative Address:

Attn: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchaser Signature Page Agreement

NAME OF PURCHASER

By: _____
By: [Signature]
Name: _____
Title: Vice Chairman and Chief
Operating Officer

Address: _____

Contact: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00Commitment Amount (U.S. dollar
commitment): \$100,000.00

Number of Shares of

Common Stock: 5000

Tax ID No.: _____

Voting Limit: 9.9% MDOwnership Limit: 9.9% MD

Purchaser ☐ is or ☒ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____

Legal Representative Address

Attn: _____
Title: _____
Address: _____
Telephone: _____
Facsimile: _____
E-mail: _____

Purchaser Signature Page to Agreement

MD

CONFIDENTIAL
BLUE RIDGE HOLDINGS, INC. STOCK PURCHASE AGREEMENT

NAME OF PURCHASER

NSP Hold

By: _____

By: _____

Name: Andrew K Jones
Title: Managing Member of GP

Address: _____

Contact N
Telephone
Facsimile
E-mail: _____

Purchase Price Per Share: \$20.00
Commitment Amount (U.S. dollar
commitment): \$13,000,000
Number of Shares of
Common Stock: 650,000
Tax ID No.: _____
Voting Limit: 4.9%
Ownership Limit: 9.9%

Purchaser ☐ is or ☒ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____

Legal Representative Address:

Attn: _____
Title: _____
Address: _____
Telephone: _____
Facsimile: _____
E-mail: _____

Purchaser Signature Page to Agreement

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NAME OF PURCHASER

Paulson Recovery Master Fund Ltd.
By: P

By: _____
Name
Title

Address:

Contact:
Telephone:
Facsimile:
E-mail: _____

Purchase Price Per Share: \$20.00
Commitment Amount (U.S. dollar
commitment): \$49,500,000
Number of Shares of 1,751,179 A
Common Stock: 722,221 B
Tax ID No.: _____
Voting Limit: 9.9%
Ownership Limit: 9.9%

Purchaser ☐ is or ☒ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____

Legal Representative Address:

Attn: Michael Waldorf
Title: Managing Director
Address: see above
Telephone: _____
Facsimile: _____
E-mail: _____

Purchaser Signature Page to Agreement

NAME OF PURCHASER

Blackwell Partners, LLC

By: *[Signature]*

Name: _____

_____, LLC, Authorized Agent _____

By: *[Signature]*

Name: _____

Title: Secretary, DUMAC, LLC,
Authorized Agent _____

Address _____

Contact _____

Telepho _____

Facsimi _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$1,928,000

Number of Shares of
Common Stock: 96.400

Tax ID No.: _____

Voting Limit: 4.9%

Ownership Limit: 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.

If acting as part of a group or in concert with
any other Persons, list such Persons: _____

Point Lobos Master Fund, L.P.

Legal Representative Address:

Attn: Robin Powers,
Title: Sutherland Asbill & Brennan LLP
Address: 1114 Avenue of the Americas NYC 10036
Telephone: 212-389-5067 _____
Facsimile: 212-389-5099 _____
E-mail: Robin.Powers@sutherland.com_

Purchaser Signature Page to Agreement

*DOB BJB
6/14/10 6/14/10*

NAME OF PURCHASER

Point Lobos Master Fund, L.P.

By: Point Lobos Capital, LLC, its General Partner

By: [Signature]
Name: _____
Title: Managing Member

Address _____

Contact _____

Telepho. _____

Facsimil _____

E-mail: _____

Purchase Price Per Share. \$20.00

Commitment Amount (U.S. dollar
commitment): \$6,072,000

Number of Shares of
Common Stock: 303,600

Tax ID No: _____

Voting Limit: 4.9%

Ownership Limit: 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.

If acting as part of a group or in concert with
any other Persons, list such Persons _____

Blackwell Partners, LLC

Legal Representative Address:

Attn: Christopher J. Rupright, Esq
Title: Shartsis Fries, LLP
Address: One Maritime Plaza, 18th Floor
San Francisco, CA 94111
Telephone: 415-421-6500
Facsimile: 415-421-2922
E-mail: crupright@sflaw.com

Purchaser Signature Page to Agreement

RS

NAME OF PURCHASER

Quintessence Fund L.P.

By: its general partner, QVT Associates GP LLC

By: [Signature]
Name: _____
Title: _____

Address: _____

Contact: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$2,954,400.00

Number of Shares of
Common Stock: 147,720

Tax ID No.: _____

* Voting Limit: 1%

* Ownership Limit: 9.9%

Purchaser ☐ is or ☒ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: N/A

* QVT Fund LP, which is under common control with Quintessence Fund L.P.,
is also a Purchaser and the two are collectively subject to the
foregoing Voting and Ownership Limits.

Legal Representative Address:

Attn: Oren Eisner
Title: Senior Counsel
Address: 1177 Avenue of the Americas, 9th Fl. New York, NY 10036
Telephone: (212) 705-6213
Facsimile: (212) 705-8820
E-mail: legalnotices@qvt.com

Purchaser Signature Page to Agreement

NAME OF PURCHASER

QVT Fund LP

By: its general partner, QVTA Associates GP LLC

By: _____

Name: _____

Title: Managing member

Address: _____

Contact I

Telephon

Facsimile

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar

commitment): \$27,045,600.00

Number of Shares of

Common Shares 1,357,280

Tax ID No.: _____

* Voting Limit: 4.9%

* Ownership Limit: 9.9%

Purchaser ☐ is or ☒ is not acting as part of a group or in concert with any other Person.

If acting as part of a group or in concert with any other Persons, list such Persons: N/A

* Quintessence Fund L.P., which is under common control with QVT Fund LP, is also a Purchaser and the two are collectively subject to the foregoing Voting and Ownership Limits.

Legal Representative Address:

Attn: Oren Eisner

Title: Senior Counsel

Address: 1177 Avenue of the Americas, 9th Fl. New York, NY 10036

Telephone: (212) 705-6213

Facsimile: (212) 705-8820

E-mail: legalaffices@qvt.com

Purchaser Signature Page to Agreement

NAME OF PURCHASER

Malta Hedge Fund II, L.P.

By: SOAM Holdings, LLC, its General Partner

By: [Signature]

Name: Terry Maltese

Title: Managing Member

Address:

Contact Na

Telephone:

Facsimile:

E-mail:

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$8,453,000

Number of Shares of
Common Stock: 422,650

Tax ID No.:

Voting Limit: *

Ownership Limit: *

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.

If acting as part of a group or in concert with
any other Persons, list such Persons: Malta

Partners, L.P., Malta Hedge Fund, L.P.,

Malta Hedge Fund II, L.P., Malta MLC

Fund, L.P., Malta Offshore, Ltd., Malta

MLC Offshore Ltd., SOAM Capital

Partners, L.P., SOAM Azul I, LLC, SOAM

Azul II, LLC, Volturus Capital, LLC,

Sandler O'Neill Asset Management, LLC,

SOAM Holdings, LLC, SOAM Ventures,

LLC, SOAM Venture Holdings, LLC,

Duquesne Capital Management, LLC,

JUGGERNAUT FUND, L.P., JBR

INVESTMENTS LLC

*The Purchaser is managed by Sandler O'Neill Asset Management, LLC or one of its affiliates (collectively, "SOAM"). In the aggregate, Purchasers managed by SOAM will have a 4.9% Voting Limit and a 4.9% Ownership Limit.

† For purposes of this agreement, the following were identified to the Issuer prior to the date hereof.

9.9%

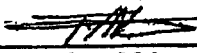
Purchaser Signature Page to Agreement

, together with other Persons in its group or with whom it is acting in concert,

NAME OF PURCHASER

Malta Hedge Fund, L.P.

By: SOAM Holdings, LLC, its General Partner

By: 

Name: Terry Maltese

Title: Managing Member

Address:

Contact N

Telephone:

Facsimile

E-mail:

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$1,468,000

Number of Shares of

Common Stock: 73,400

Tax ID No.: _____

Voting Limit: *

Ownership Limit: *

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.

If acting as part of a group or in concert with
any other Persons, list such Persons: Malta

Partners, L.P., Malta Hedge Fund, L.P.,

Malta Hedge Fund II, L.P., Malta MLC

Fund, L.P., Malta Offshore Ltd., Malta

MLC Offshore Ltd., SOAM Capital

Partners, L.P., SOAM Azul I LLC, SOAM

Azul II LLC, Volturnus Capital, LLC,

Sandler O'Neill Asset Management, LLC,

SOAM Holdings, LLC, SOAM Ventures,

LLC, SOAM Venture Holdings, LLC,

Duquesne Capital Management, LLC,

JUGGERNAUT FUND, L.P., JBR

INVESTMENTS LLC¹

¹The Purchaser is managed by Sandler O'Neill Asset Management, LLC or one of its affiliates (collectively, "SOAM"). In the aggregate, Purchasers managed by SOAM will have a 4.9% Voting Limit and a 4.9% Ownership Limit.

² For purposes of this agreement, the following were identified to the issuer prior to the date hereof.

9.9%

Purchaser Signature Page to Agreement

, together with other Persons in its group or with whom it is acting in concert,

NAME OF PURCHASER

Malta MLC Fund, L.P.

By: SOAM Holdings, LLC, its General Partner

By: [Signature]

Name: Terry Maltese

Title: Managing Member

Address:

Contact N

Telephone:

Facsimile:

E-mail:

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$4,145,000

Number of Shares of

Common Stock: 207,250

Tax ID No.:

Voting Limit: *

Ownership Limit: *

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.

If acting as part of a group or in concert with
any other Persons, list such Persons: Malta

Partners, L.P., Malta Hedge Fund, L.P.,

Malta Hedge Fund II, L.P., Malta MLC

Fund, L.P., Malta Offshore Ltd., Malta

MLC Offshore Ltd., SOAM Capital

Partners, L.P., SOAM Azul I, LLC, SOAM

Azul II, LLC, Volturnus Capital, LLC,

Sandler O'Neill Asset Management, LLC,

SOAM Holdings, LLC, SOAM Ventures,

LLC, SOAM Venture Holdings, LLC,

Duquesne Capital Management, LLC,

JUGGERNAUT FUND, L.P., JBR

INVESTMENTS LLC¹

¹The Purchaser is managed by Sandler O'Neill Asset Management, LLC or one of its affiliates (collectively, "SOAM"). In the aggregate, Purchasers managed by SOAM, will have a 4.9% Voting Limit and a 4.9% Ownership Limit.

²For purposes of this agreement, the following were identified to the Issuer prior to the date hereof.

9.9%

Purchaser Signature Page to Agreement

, together with other Persons in its group or with whom it is acting in concert,

[Signature]

Malta MLC Offshore, Ltd.

Name: Terry Maltese
Title: Director

Contact Na
Telephone:
Facsimile:
E-mail:

Purchaser ☒ is or ☐ is not acting as part of a group or in concert with any other Person. If acting as part of a group or in concert with any other Persons, list such Persons: Malta Partners, L.P., Malta Hedge Fund, L.P., Malta Hedge Fund II, L.P., Malta MLC Fund, L.P., Malta Offshore, Ltd., Malta MLC Offshore Ltd., SOAM Capital Partners, L.P., SOAM Azul I, L.L.C. SOAM Azul II, L.L.C. Volturnus Capital, L.L.C. Sandler O'Neill Asset Management, L.L.C. SOAM Holdings, L.L.C. SOAM Ventures, L.L.C. SOAM Venture Holdings, L.L.C. Duquesne Capital Management, L.L.C. JUGERNAUT FUND, L.P., JBR INVESTMENTS LLC

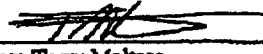
¹ For purposes of this agreement, the following were identified to the lawyer prior to the date hereof.

Purchaser Signature Page to Agreements

, together with other Persons in its group or with whom it is acting in concert.

NAME OF PURCHASER

Malta Offshore, Ltd.

By: 

Name: Terry Maltese

Title: Director

Address:

Contact N:

Telephone:

Facsimile:

E-mail:

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$2,877,000

Number of Shares of

Common Stock: 143,850

Tax ID No.: n/a

Voting Limit: *

Ownership Limit: *

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.

If acting as part of a group or in concert with

any other Persons, list such Persons: Malta

Partners, L.P., Malta Hedge Fund, L.P.,

Malta Hedge Fund II, L.P., Malta MLC

Fund, L.P., Malta Offshore, Ltd., Malta

MLC Offshore Ltd., SOAM Capital

Partners, L.P., SOAM Azul I, LLC, SOAM

Azul II, LLC, Volturnus Capital, LLC,

Sandler O'Neill Asset Management, LLC,

SOAM Holdings, LLC, SOAM Ventures,

LLC, SOAM Venture Holdings, LLC,

Duquesne Capital Management, LLC,

JUGGERNAUT FUND, L.P., JBR

INVESTMENTS LLC¹

¹The Purchaser is managed by Sandler O'Neill Asset Management, LLC or one of its affiliates (collectively, "SOAM"). In the aggregate, Purchasers managed by SOAM, will have a 4.9% Voting Limit and a 4.9% Ownership Limit.

²For purposes of this agreement, the following were identified to the Issuer prior to the date hereof.

99%

Purchaser Signature Page to Agreement

, together with other Persons in its group or with whom it is acting in concert,



NAME OF PURCHASER

Malta Partners, L.P.

By: SOAM Holdings, LLC, its General Partner

By: [Signature]

Name: Terry Maltese

Title: Managing Member

Address:

Contact Name:

Telephone:

Facsimile:

E-mail:

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$370,000

Number of Shares of

Common Stock to be sold

Tax ID No:

Voting Limit: 9.9%

Ownership Limit: 9.9%

Purchaser ☒ is or ☐ is not acting as part of a group or in concert with any other Person. If acting as part of a group or in concert with any other Persons, list such Persons: Malta Partners, L.P., Malta Hedge Fund, L.P., Malta Hedge Fund II, L.P., Malta MLC Fund, L.P., Malta Offshore Ltd., Malta MLC Offshore Ltd., SOAM Capital Partners, L.P., SOAM Azul I, LLC, SOAM Azul II, LLC, Volturus Capital, LLC, Sandler O'Neill Asset Management, LLC, SOAM Holdings, LLC, SOAM Ventures, LLC, SOAM Venture Holdings, LLC, Duquesne Capital Management, LLC, JUGGERNAUT FUND, L.P., JBR INVESTMENTS LLC

*The Purchaser is managed by Sandler O'Neill Asset Management, LLC or one of its affiliates (collectively, "SOAM"). In the aggregate, Purchasers managed by SOAM will have a 4.9% Voting Limit and a 4.9% Ownership Limit.

*For purposes of this agreement, the following were identified to the Issuer prior to the date hereof.

9.9%

Purchaser Signature Page to Agreement

, together with other Persons in its group or with whom it is acting in concert,

NAME OF PURCHASER

SOAM Capital Partners, L.P.

By: SOAM Venture Holdings, LLC, its General Partner

By: 

Name: Terry Maiese

Title: Managing Member

Address:

Contact Na

Telephone:

Facsimile:

E-mail:

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$5,000,000

Number of Shares of
Common Stock: 250,000

Tax ID No.

Voting Limit: *

Ownership Limit: *

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.

If acting as part of a group or in concert with
any other Persons, list such Persons: Malta

Partners, L.P., Malta Hedge Fund, L.P.,

Malta Hedge Fund II, L.P., Malta MLC

Fund, L.P., Malta Offshore Ltd., Malta

MLC Offshore Ltd., SOAM Capital

Partners, L.P., SOAM Azul I, LLC, SOAM

Azul II, LLC, Volturnus Capital, LLC,

Sandler O'Neill Asset Management, LLC,

SOAM Holdings, LLC, SOAM Ventures,

LLC, SOAM Venture Holdings, LLC,

Duquesne Capital Management, LLC,

JUGGERNAUT FUND, L.P., JBR

INVESTMENTS LLC

*The Purchaser is managed by Sandler O'Neill Asset Management, LLC or one of its affiliates (collectively, "SOAM"). In the aggregate, Purchasers managed by SOAM will have a 4.9% Voting Limit and a 4.9% Ownership Limit.

*For purposes of this agreement, the following were identified to the issuer prior to the date hereof.

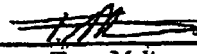
4.9%

Purchaser Signature Page to Agreement

, together with other Persons in its group or with whom it is acting in concert,

NAME OF PURCHASER

Voltumus Capital, LLC

By: 

Name: Terry Maltese

Title: Managing Member

Address:

Contact N:

Telephone:

Facsimile:

E-mail:

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$1,250,000

Number of Shares of
Common Stock: 62,500

Tax ID No:

Voting Limit: -

Ownership Limit: *

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: Malta
Partners, L.P., Malta Hedge Fund, L.P.,
Malta Hedge Fund II, L.P., Malta MLC
Fund, L.P., Malta Offshore, Ltd., Malta
MLC Offshore Ltd., SOAM Capital
Partners, L.P., SOAM Azul I, LLC, SOAM
Azul II, LLC, Voltumus Capital, LLC,
Sandler O'Neill Asset Management, LLC,
SOAM Holdings, LLC, SOAM Ventures,
LLC, SOAM Venture Holdings, LLC,
Duquesne Capital Management, LLC,
JUGGERNAUT FUND, L.P., JBR
INVESTMENTS LLC*

*The Purchaser is managed by Sandler O'Neill Asset Management, LLC or one of its affiliates (collectively, "SOAM"). In the aggregate, Purchasers managed by SOAM will have a 4.9% Voting Limit and a 4.9% Ownership Limit.

*For purposes of this agreement, the following were identified to the Issuer prior to the date hereof.

9.9%

Purchaser Signature Page to Agreement

, together with other Persons in its group or with whom it is acting in concert,



NAME OF PURCHASER

Taconic Capital Partners I.5 L.P.

By: Taconic Capital Advisors L.P.

By: Christopher Delong
Name: Christopher Delong
Title: Portfolio Manager

Address:

Contact I

Telephor

Facsimile

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$17,334,900.00

Number of Shares of

Common Stock:

260,024

Class A Shares

414,977

Class B Shares

Tax ID No.:

Voting Limit: 4.9% (combined with Taconic
Opportunity Fund L.P.)

Ownership Limit: 9.9% (combined with
Taconic Opportunity Fund L.P.)

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons:
Taconic Opportunity Fund L.P.

Legal Representative Address:

Attn: _____
Title: _____
Address: _____
Telephone: _____
Facsimile: _____
E-mail: _____

Purchaser Signature Page to Agreement

NAME OF PURCHASER

Taconic Opportunity Fund L.P.

By: Taconic Capital Advisors L.P.

By: Christopher Delong

Name: Christopher Delong

Title: Portfolio Manager

Address:

Contact N:

Telephone

Facsimile:

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$27,665,100.00

Number of Shares of

Common Stock:

606,721

Class A Shares

968,278

Class B Shares

Tax ID No.:

Voting Limit: 4.9% (combined with Taconic
Capital Partners 1.5 L.P.)

Ownership Limit: 9.9% (combined with
Taconic Capital Partners 1.5 L.P.)

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons:
Taconic Capital Partners 1.5 L.P.

Legal Representative Address:

Attn: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchaser Signature Page to Agreement

NAME OF PURCHASER

Tiger Veda Global LP

By: _____

By: Mamish Chopra

Name: Mamish Chopra

Title: Managing Member of LP

Address: _____

Contact Na _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$3,960,000

Number of Shares of

Common Stock: 198.000

Tax ID No.: _____

Voting Limit: 4.9%

Ownership Limit: 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____

Tiger Veda LP

Legal Representative Address:

Attn: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchaser Signature Page to Agreement

MC

NAME OF PURCHASER

Tiger Veda LP

By: _____

By: Mamish Chopra

Name: Mamish Chopra

Title: Managing Member of GP

Address: _____

Contact N

Telephone: _____

Facsimile _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): \$5,040,000

Number of Shares of
Common Stock: 252,000

Tax ID No.: _____

Voting Limit: 4.9%

Ownership Limit: 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.

If acting as part of a group or in concert with
any other Persons, list such Persons: _____

Tiger Veda Global LP

Legal Representative Address:

Attn: _____

Title: _____

Address: _____

Telephone: _____

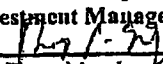
Facsimile: _____

E-mail: _____

Purchaser Signature Page to Agreement

MC

SCOPESII Equity Investments A LLC
By Tricadia Capital Management, LLC as
Investment Manager


By: Barry Monday
Chief Administrative Officer

Purchase Price Per Share: \$20.00
Commitment Amount (U.S. dollar
commitment): 24,750,000
Number of Shares of
Common Stock: 1,237,500
Tax ID No.: NA
Voting Limit: 4.95% 9.9% (X)
Ownership Limit: 4.95% 9.9% (X)

Purchaser X ☐ is or ☐ is not acting as part
of a group or in concert with any other
Person. If acting as part of a group or in
concert with any other Persons, list such
Persons:

TDSS Equity Investments A LLC

Legal Representative Address:

Attn: James Mckee
Title: General Counsel and Chief Compliance Officer
Address: 780 Third Avenue, 29th Floor NY, NY 10017
Telephone: 646-525-3824
Facsimile: 646-218-1585
E-mail: jmckee@tricadiacapital.com

(*) TOGETHER WITH THE SHARES SUBSCRIBED FOR
BY TDSS EQUITY INVESTMENTS A LLC

Purchaser Signature Page to Agreement

TDSS Equity Investments A LLC
By Tricadia Capital Management, LLC as
Investment Manager

By Barry Monday
Chief Administrative Officer

Purchase Price Per Share: \$20.00
Commitment Amount (U.S. dollar
commitment): 24,750,000
Number of Shares of
Common Stock: 1,237,500
Tax ID No.:
Voting Limit: 4.95% 7.1% 10% 11/10/11
Ownership Limit: 4.95% 9.9% 11/10/11

Purchaser X ☒ is or ☐ is not acting as part
of a group or in concert with any other
Person. If acting as part of a group or in
concert with any other Persons, list such
Persons: SCOPESTII Equity Investments A LLC

Legal Representative Address:

Attn: James Mckee
Title: General Counsel and Chief Compliance Officer
Address: 780 Third Avenue, 29th Floor NY, NY 10017
Telephone: 646-525-3824
Facsimile: 646-218-1585
E-mail: jmckee@tricadiacapital.com

ⓧ TOGETHER WITH THE SHARES SUBSCRIBED FOR
BY SCOPESTII EQUITY INVESTMENTS A LLC

Purchaser Signature Page to Agreement

5/12/2010 DRAFT

NAME OF PURCHASER

IAM Mini-Fund 21 Limited

By: [Signature]

By: _____

Name: _____

Title: CEO

Address: _____

Contact Name: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): ~~716,180~~ 718,000

Number of Shares of
Common Stock: ~~35,734~~ 35,900

Tax ID No.: NA Cayman Islands

Voting Limit: 4.9%

Ownership Limit: 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____

IAM Mini-Fund 21 Limited; Prime Capital
Master SPC, GOT WAT MAC Segregated
Portfolio; Waterstone Market Neutral Mac
51, Ltd; Waterstone Market Neutral Master
Fund, Ltd; and Waterstone MF Fund, Ltd

Legal Representative Address:

Attn: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchaser Signature Page to Agreement

5/12/2010 DRAFT

NAME OF PURCHASER

Prime Capital Master SPC, GOT WAT MAC

By: Segregated Portfolio

By: _____

Name: _____

Title: CEO

Address: _____

Contact Name: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): 486,900 504,000

Number of Shares of
Common Stock: 24,245 25,200

Tax ID No.: N/A Cayman Islands

Voting Limit: 4.9%

Ownership Limit: 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____

IAM Mini-Fund 21 Limited; Prime Capital
Master SPC, GOT WAT MAC Segregated
Portfolio; Waterstone Market Neutral Mac
51, Ltd; Waterstone Market Neutral Master
Fund, Ltd; and Waterstone MF Fund, Ltd

Legal Representative Address:

Attn: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchaser Signature Page to Agreement

5/12/2010 DRAFT

NAME OF PURCHASER

Waterstone Market Neutral Master, Ltd

By: [Signature]

By: [Signature]

Name: Martin Kalish

Title: CFO

Address: _____

Contact Name: _____

Telephone: _____

Facsimile: _____

E-mail: [Redacted]

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): 2,081,060

Number of Shares of
Common Stock: 104,200

Tax ID No.: N/A Cayman Islands

Voting Limit: 9.9%

Ownership Limit: 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____

IAM Mini-Fund 21 Limited; Prime Capital
Master SPC, GOT WAT MAC Segregated
Portfolio; Waterstone Market Neutral Mac
51, Ltd; Waterstone Market Neutral Master
Fund, Ltd; and Waterstone MF Fund, Ltd

Legal Representative Address:

Attn: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchaser Signature Page to Agreement

5/12/2010 DRAFT

NAME OF PURCHASER

Waterstone Market Neutral Master Fund, Ltd

By: _____

By: _____

Name: Martin Kalish

Title: CFO

Address: _____

Contact Name: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): ~~14,930,000~~ 14,930,000

Number of Shares of
Common Stock: 747,400 746,500

Tax ID No.: _____

Voting Limit: 4.9%

Ownership Limit: 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.

If acting as part of a group or in concert with
any other Persons, list such Persons: _____

IAM Mini-Fund 21 Limited; Prime Capital
Master SPC, GOT WAT MAC Segregated
Portfolio; Waterstone Market Neutral Mac
51, Ltd; Waterstone Market Neutral Master
Fund, Ltd; and Waterstone MF Fund, Ltd

Legal Representative Address:

Attn: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchaser Signature Page to Agreement



5/12/2010 DRAFT

NAME OF PURCHASER

Waterstone MF Fund, Ltd

By: _____

By: _____

Name: Martin Kalish

Title: CFO

Address: _____

Contact Name: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchase Price Per Share: \$20.00

Commitment Amount (U.S. dollar
commitment): ~~2,764,260~~ 2,764,000

Number of Shares of
Common Stock: 138,200

Tax ID No.: _____

Voting Limit: 4.9%

Ownership Limit: 9.9%

Purchaser ☒ is or ☐ is not acting as part of
a group or in concert with any other Person.
If acting as part of a group or in concert with
any other Persons, list such Persons: _____

IAM Mini-Fund 21 Limited; Prime Capital
Master SPC, GOT WAT MAC Segregated
Portfolio; Waterstone Market Neutral Mac
51, Ltd; Waterstone Market Neutral Master
Fund, Ltd; and Waterstone MF Fund, Ltd

Legal Representative Address:

Attn: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Purchaser Signature Page to Agreement

**BLUE RIDGE HOLDINGS, INC.
SUMMARY INSTRUCTION SHEET FOR PURCHASER**

(1) Please complete and sign (as indicated) the following items:

- a) Provide the information requested on and sign the signature page to the Agreement.
- b) Provide the information requested in the Form of Ownership and Wire Information Questionnaire attached hereto as Appendix I, including wire instructions for the return of funds if the Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii).
- c) Provide the information requested by and sign the Accredited Investor Questionnaire attached hereto as Appendix II.
- d) Complete and sign the Benefit Plan Investor Questionnaire attached hereto as Appendix III.
- e) Sign the Registration Rights Agreement attached hereto as Exhibit C (and complete and sign the Registration Statement Questionnaire attached as Appendix B thereto).
- f) Sign the First Closing Escrow Agreement attached hereto as Exhibit K.
- g) Sign the Investor Letter attached hereto as Exhibit O.

Applicable to Lead Investors only:

- h) Complete and sign the Lead Investor Agreement attached hereto as Exhibit M.

(2) Please e-mail to dfarrell@fbr.com or fax to (703) 469-1131 the properly completed sections of and executed signature pages for each of the items listed in (1) above.

Please send the originals to:

FBR Capital Markets & Co.
1001 Nineteenth Street
North Arlington, Virginia 22209
Attention: Dawn Farrell

(C) Wire funds to Bank of New York
Bank of New York Mellon

ABA #

Accou

FFC -

A/C Name – Esc for Purch of Blue Ridge Hldgs

Attn: Regina Jones

FBO: Investor Name

Purchaser Signature Page to Agreement

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐

Book-Entry: ☒

Company Name: 3- Sigma Value Investment Management, LLC

By: [Signature]

Name: _____

Title: Managing Member

Name to appear on certificate: 3-Sigma Value Financial Opportunities, LP

Tax ID: _____

Mailing address: _____

Mailing address for notices, if any: Same as above

Email address for notices, if any: info@3sigmavalue.com

(If not holding at American Stock Transfer) Physical Delivery Address:

Number of Shares Subscribed for*: 1,075,000 Class A 866,745 86,675

Total Commitment Amount: \$ 21,150,000 Class B 208,255 20,825

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: JP Morgan Chase

Bank Address: 270 Park Avenue, 42nd Floor New York, NY 10017

Account Number:

ABA Number:

* May change depending on amount of commitments received.

Appendix I

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your Offered Securities or will hold your Offered Securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Want shares in my FBR acct
Richard Jacinto II Roth IRA, JPMCC as Custodian
FBR Capital Markets

Company Name: _____

By: [Signature]

Name: _____

Title: _____

Name to appear on certificate: _____

Tax ID: _____

Mailing address: _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

JP Morgan
2nd Center
alc 150-95343

Number of Shares Subscribed for: 400,000

Class A 400,000 / 40,000 (10%)
Class B _____

Total Commitment Amount: \$ 8,000,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Chase

Bank Address _____

Account Number [Signature]

Wire funds back to Richard Jacinto II Roth IRA
JPMCC as Custodian
FBR Capital Markets

May change depending on amount of commitments received.

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Pentaaram Partners, L.P.

By: _____

Name: _____

Title: General Partner

Name to appear on certificate: Pentaaram Partners, L.P.

Tax ID: _____

Mailing address: Pentaaram Partners, L.P.

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address:

Pentaaram Partners, L.P.

Number of Shares Subscribed for: 925,000 Class A 1 (10% - 2,500)

Class B _____

Total Commitment Amount: \$ 500,000-

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: _____

* May change depending on amount of commitments received.

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information.

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent

Certificates: ☐

Book-Entry ☒

Company Name: ACP Master, Ltd.

By: Aurelius Capital Management, LP, solely as investment manager and not in its individual capacity

Name: _____

Title: Chief Operating Officer

Name to appear on certificate: ACP Master, Ltd.

Tax ID: _____

Mailing address: ACP Master, Ltd.

Mailing address for notices, if any ACP Master, Ltd.

Email address for notices, if any. echan@aurelius-capital.com, ops@aurelius-capital.com

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for * 469,620 Class A 378,645
Class B 90,975

Total Commitment Amount \$9,392,400

* May change depending on amount of commitments received

Appendix I

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: JP Morgan Chase _____
ABA #:
Account:
Account #:
F/C Acct.:
F/C Acct. #:

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent

Certificates: ☐

Book-Entry: ☒

Company Name. Aurelius Capital Master, Ltd.

By: Aurelius Capital Management, LP, solely as investment manager and not in its individual capacity

Name _____

Title. Chief Operating Officer

Name to appear on certificate: Aurelius Capital Master, Ltd.

Tax ID _____

Mailing address Aurelius Capital Master, Ltd.

Mailing address for notices, if any. Aurelius Capital Master, Ltd.

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for: 605,380 Class A 488,100
Class B 117,280

Total Commitment Amount. \$12,107,600

* May change depending on amount of commitments received.

Appendix I

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: JP Morgan Chase _____
ABA #:
Account:
Account #:
F/C Acct.:
F/C Acct. #:

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Barclays Bank PLC
 By: _____
 Name: _____
 Title: AVP
 Name to appear on certificate: Barclays Bank PLC
 Tax ID: _____
 Mailing address: _____

Mailing address for notices, if any: SAME AS ABOVE

Email address for notices, if any: _____
 (If not holding at American Stock Transfer) Physical Delivery Address: SAME AS ABOVE

Number of Shares Subscribed for: 2,000,000 Class A 866,745 10% - 86,675
 Class B 133,255 10% - 13,325
 Total Commitment Amount: \$ 20,000,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Barclays Bank PLC
 Bank Address: _____
 Account Number: _____
 ABA Number: _____

* May change depending on amount of commitments received.

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐

Book-Entry: ☒

Company Name: BlueMountain Financial Holdings, LLC

By: BlueMountain Capital Management, LLC, Authorized Investment Advisor to Blue Mountain Credit Alternatives Master Fund L.P., Managing Member of BlueMountain Financial Holdings, LLC

Name:

Title: Head of Operations

Name to appear on certificate: BlueMountain Financial Holdings, LLC

Trust ID:

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for: 2,475,000

Class A 1,751,179

Class B 723,821

1,751,179
723,821

Total Commitment Amount: \$49,500,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Bank of New York

Bank Address: New York, New York

Account Number:

ABA Number:

* May change depending on amount of commitments received.

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: JUGGERNAUT FUND, L.P. _____

By: DUQUESNE CAPITAL MANAGEMENT, L.L.C. _____

Name _____

Title: Assistant Vice President _____

Name to appear on certificate: JUGGERNAUT FUND, L.P. _____

Tax ID: _____

Mailing address: _____

Mailing address for notices, if any: SAME AS ABOVE

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

J.P. Morgan Clearing Corp.

JUGGERNAUT FUND LP JPMORGAN

Number of Shares Subscribed for[†]: 1,225,000 _____ Class A 0

Class B 1,225,000

Total Commitment Amount: \$ 24,500,000 _____

[†] May change depending on amount of commitments received.

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: JPMorgan Chase _____
Bank Address New York _____
Account Number: _____
For further Credit:

2010/06/16 11:30:07

7 /9

21/05/2010 21:50 Rose garden place 2100 spa

FAX06481580

F.0021003

CONFIDENTIAL
 Rose Garden Holdings, Inc. Stock Purchase Agreement

3/12/2010 EXACT

APPENDIX I

ROSE GARDEN HOLDINGS, INC.
FORM OF OWNERSHIP AND OTHER INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TREASURY AGENT

These individuals must be U.S. citizens or legal residents of the U.S. and must be at least 18 years of age at the time of the purchase of the shares of Common Stock and must be authorized to execute the purchase of the shares of Common Stock and to execute the transfer of the shares of Common Stock.

Corporate Name

Address

City

State

Zip

Phone

Fax

E-mail

Business

Residential

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

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Other

B. SIGNATURE WIRE TRANSACTION INFORMATION

Purchaser's Wire Instructions for funds received if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Repulsion Notice pursuant to Section 2.02(c)(3) is as follows:

Bank Name

Bank Address

City

State

Zip

Phone

Fax

E-mail

Business

Residential

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Appendix I

Please insert X *HE*

2010/06/16 11:30:07

3 /9

21/05/2010 21.50 8000 garden palace 8000 sps

F4106518006

F.002/003

CONFIDENTIAL
EMERSON HOLDINGS, INC. STOCK PURCHASE AGREEMENT

5/12/2010 DRAFT

APPENDIX I

**EMERSON HOLDINGS, INC.
FORM OF OWNERSHIP AND SOME INFORMATION OF STOCKHOLDERS**

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT

Please indicate whether you wish to provide certificates for/keeping your shares of Common Stock (and, as applicable, Limited Investment Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates ☒ _____

Book Entry ☐ _____

Company Name _____

Address _____

City _____

Name to appear _____

Telephone _____

Mailing Address _____

Mailing address for notices, if any: _____

Email address, if any: _____

(If any)

Number of shares owned, as of _____

Class B _____

Total Commitment Amount: \$ 2,000,000.00

B. RETURN OF THE INSTRUCTION INFORMATION

Purchaser's written instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Redemption Notice pursuant to Section 2.02(b)(ii) is as follows:

Bank Name: TD Bank

Bank Address: One Market Street, Suite 1000, New York, NY 10038

11201-5000

* May change depending on receipt of commitment received.

Appendix I

Please initial X JE

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐

Book-Entry: ☒

Company Name: EAS Opportunity Fund II, L.P.
 By: Mark E. Brady
 Name: Mark E. Brady

Mailing address for notices, if any: _____

Email address for notices, if any: _____
 (If not holding at American Stock Transfer) physical delivery Address: _____

Number of Shares Subscribed for: 236,250 Class A x 23,625 236,250

Total Commitment Amount: \$ 4,725,000 Class B 472,500

B. RETURN WIRE INSTRUCTION INFORMATION: 10%

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Wachovia Bank
 Bank Address: _____
 Account Number: _____
 ABA Number: _____

* May change depending on amount of commitments received.

MB

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐

Book-Entry: ☒

Company Name: FRS Investment Fund L.P.

By: _____

Name: _____

Title: Co-Chief Investment Officer

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for: 213,750 Class A ☒ 213,750 213,750

Total Commitment Amount: \$ 4,275,000 Class B 427,500

10%

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: _____

Bank Address _____

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received.

Appendix I

77/3

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Firefly Value Partners, LP

By: _____

Name: _____

Title: _____

Name to a _____

Tax ID: _____

Mailing address _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for: 170,000 Class A 170,000 17,000 = 10%

Total Commitment Amount: \$ 3,400,000 Class B _____ \$510,000 = 10%

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name

Bank Address

Account Number

ABA Number

FFC F

* May change depending on amount of commitments received.

Appendix I

APPENDIX I

BLUE RIDGE HOLDINGS, INC.FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Firefly Value Partners, LP

By: _____

Name: Ariel Waszawski

Title: Partner

Name to appear on certificate: FVP US-Q, LP

Tax ID: _____

Mailing address: _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for: 25,000 Class A 25,000 25,500 = 10%
 Class B _____
 Total Commitment Amount: \$ 5,100,000 5,100,000 = 10%

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: UBS AG

Bank Address: Stamford CT

Account Number: _____

ABA Number: _____

FEC FVP

* May change depending on amount of commitments received.

Appendix I

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Investure Evergreen Fund, LP - 2010 Special Term Tranche

By: [Signature]

Name: Edward P. Meisner

Title: Chief Operating Officer

Name to appear on certificate: Investure Evergreen Fund, LP - 2010 Special Term Tranche

Tax ID: _____

Mailing add _____

Mailing address for notices, if any: same

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address:

Mail - Special Term L

Number of Shares Subscribed for: (10%) 1,400,000 Class A X

\$14,000,000 Class B _____

Total Commitment Amount: \$ (10%) 1,400,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: JP Morgan Chase

Bank Address: 270 Park Ave. NY NY

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received.

Appendix I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐

Book-Entry: ☒

Company Name: Falcon Eastern South, L.L.C.

By: _____

Name: _____

Title: _____

Name to appear on certificate: _____

Tax ID: _____

Mailing: _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for*: <u>1,757,250</u>	Class A <u>1,243,337</u>	<u>108%</u> <u>124334</u>
	Class B <u>513,913</u>	<u>51391</u>
Total Commitment Amount: <u>\$35,145,000</u>		

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: _____

Bank Address: _____

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received.

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent.

Certificates: ☐

Book-Entry: ☒

Company Name: Falcon Eastern, L.L.C.

By: _____

Name: _____

Title: _____

Name to appear on certificate: _____

Tax ID: _____

Mailing address: _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for* : <u>717,750</u>	Class A <u>507,842</u>	100%
	Class B <u>209,908</u>	50.784
		20991

Total Commitment Amount: \$14,355,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: _____

Bank Address: _____

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: GAM EQUITY HK, INC.

By: UXOR CAPITAL GROUP, LP INVESTMENT MANAGER

Name: Nordia Nissim

Title: General Counsel

Name to appear on certificate: GAM EQUITY HK, INC.

Tax ID: N/A

Mailing address: _____

Mailing address for notice: _____

Email address for notice: _____

(If not holding at American Stock Transfer) physical delivery address: _____

Number of Shares Subscribed for: 89,990 Class A 78,000 7800
Class B 11,990 1199

Total Commitment Amount: \$ 1,799,800

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: JPMorgan Chase

Bank Address: _____

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received.

Appendix I

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APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP
By: LUXOR CAPITAL GROUP, LP INVESTMENT MANAGER

Name: Norris Nassim
Title: General Counsel

Name to appear on certificate: LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP

Tax ID: _____

Mailing address: SU

Mailing address for notices, if any:

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address:

Goldman Sachs & Co Attn: Bryan Shah
200 West St. 5th Fl New York, NY 10038

Number of Shares Subscribed for :	<u>454,450</u>	Class A	<u>398,250</u>	<u>10%</u>
		Class B	<u>61,230</u>	<u>39,825</u>
				<u>6,123</u>

Total Commitment Amount: \$ 9,189,600

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: JPMorgan Chase

Bank Address: _____

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received.

Appendix I

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Luxor Capital Group, LP
 By: _____
 Name: _____
 Title: General Counsel
 Name to: _____
 Tax ID: _____
 Mailing address: _____

Mailing address for notices, if any: _____

 Email address for notices, if any: _____
 (If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of shares purchased for: 100,000 Class A 262,470 10%
 Class B 40,350 26,247
4,035
 Total Commitment Amount: \$ 6,056,400

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: JPMorgan Chase
 Bank Address: _____
 Account Number: _____
 ABA Number: _____

* May change depending on amount of commitments received.

Appendix I

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates. ☒

Book-Entry: ☐

Company Name. LUXOR WAVEFRONT, LP

By: _____

Name: _____

Title: General Counsel

Name to _____

Tax ID: _____

Mailing address: _____

Mailing address for _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of shares subscribed for: 14,710 Class B 14,680

Total Commitment Amount: \$ 2,954,200

10%
12803
1968

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: JP Morgan Chase

Bank Address: _____

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received.

Appendix I

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐

Book-Entry: ☒

Company Name: _____

By: _____

Name: _____

Title: _____

Name to appear on certificate: Charles M. Williams _____

Tax ID: _____

Mailing _____

Mailing address for notices, if any: same as above _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for*: 5,000 Class A X

Class B _____

Total Commitment Amount: \$ \$100,000 _____

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Bank of America _____

Bank Address _____

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received.

Appendix I

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐

Book-Entry: ☒

Company Name: N.A.
 By: N.A.
 Name: Howard C. Bluver
 Title: Individual Holder
 Name to appear on certificate: Howard C. Bluver
 Tax ID: _____
 Mailing address: _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for*: 5000 Class A 5000/5000
 Class B _____
 Total Commitment Amount: \$ \$ 100,000. \$10,000.00%

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Charles Schwab & Co., Inc.
 Bank Address: _____
 Account Number: _____
 ABA Number: _____

* May change depending on amount of commitments received.

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐

Book-Entry: ☒

Company Name: _____

By: _____

Name: _____

Title: _____

Name to appear on certificate: _____

Tax ID: _____

Mailing address: _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for*: 2,500 Class A X

Class B _____

Total Commitment Amount: \$ 50,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Bank of America _____

Bank Address _____

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received.

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: American Stock Transfer

By: _____

Name: _____

Title: _____

Name to appear on certificate: _____

Tax ID: _____

Mailing address: _____

Mailing address for notices, if any: SAME

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Same as above

Number of Shares Subscribed for: 5000 Class A X

Class B _____

Total Commitment Amount: \$ 100,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII of the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Bank of America

Bank Address: _____

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received.

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐

Book-Entry: ☒

Company Name: American Stock Transfer ^{KA}

By: _____

Name: _____

Title: _____

Name to appear on certificate: Kathy Anselm Walsh

Tax ID: _____

Mailing _____

Mailing address for notices, if any: Same as above

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for*: 5,000 Class A X ^{10%}

Class B: _____ ⁵⁰⁰

Total Commitment Amount: \$ 100,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Wachovia Bank

Bank Address: _____

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received.

Appendix I

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: American Stock Transfer

By: _____

Name: _____

Title: _____

Name to appear on certificate: Milton H. Jones, Jr.

Tax ID: _____

Mailing address: _____

Mailing address for notices, if any: same as above

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Same as above

Number of Shares Subscribed for*: 17,500 Class A X 10%
Class B _____ 1750

Total Commitment Amount: \$ 350,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Bank of America

Bank Address: _____

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received.

Appendix I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: American Stock Transfer ^(A)

By: _____

Name: _____

Title: _____

Name to appear on certificate: Robert L. Wright

Tax ID: _____

Mailing address: _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for: 5000 Class A X

Class B _____

Total Commitment Amount: \$ 100,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Columbus Bank and Trust

Bank Address: _____

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received.

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐

Book-Entry: ☒

Company Name: American Stock Transfer

By: _____

Name: _____

Title: _____

Name to appear on certificate: Walter L. Davis

Tax ID: _____

Mailing _____

Mailing address for notices, if any: Same

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for*: 5,000 Class A X

Class B _____

Total Commitment Amount: \$ 100,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Wachovia

Bank Address _____

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received.

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐

Book-Entry: ☒

Company Name: NSP Holdings LLC
By: Andrew D. Jones
Name: Andrew D. Jones
Title: Managing Member
Name to appear: _____
Tax ID: _____
Mailing address: _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for: 650,000 Class A 165,000 (10%) 650,000

Total Commitment Amount: \$ 1,300,000 (10%) \$13,000,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Chase Manhattan Bank
Bank Address: 1 Chase Manhattan Plaza, NY, NY 10005

* May change depending on amount of commitments received.

Appendix I

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CONFIDENTIAL
BLUE RIDGE HOLDINGS, INC. STOCK PURCHASE AGREEMENT

Appendix I

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APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒
 Book-Entry: ☐

Company Name: Paulson & Co., Inc.
 By: _____
 Name: Gregory Sutton
 Title: Vice President
 Name to ap: _____
 Tax ID: _____
 Mailing address: _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____
 (If not holding at American Stock Transfer) Physical Delivery Address: See attached page

Number of Shares Subscribed for:	<u>2,475,000</u>	Class A	<u>1,751,179</u>	<u>10%</u>
		Class B	<u>723,821</u>	<u>175,118</u>
Total Commitment Amount:	<u>\$ 49,500,000 -</u>			<u>72,382</u>

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: JP Morgan Chase
 Bank Address: _____
 Account Number: Name
 ABA Number: _____

* May change depending on amount of commitments received.

Appendix I

**PAULSON
& CO.
INC.**

Investment Management
590 Madison Ave., 29th floor
New York, NY 10022

Tel: 212-956-2221
Fax: 212-977-9505

Date: July 31, 2009
To: Whom it may concern
From: Paulson & Co.
Re: Paulson Recovery Master Fund Ltd.

Please find below SSI for Paulson Recovery Master Fund Ltd.

Bank:
ABA #:
DDA #:
F/A/O
FFC
A/C



**Stuart Merzer
General Counsel**



**Chris Bodak
Chief Financial Officer**

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐

Book-Entry: ☒

Company Name: Blackwell Partners, LLC _____

By: _____

Name: Bart J. Brunk _____

Title: Secretary _____

Name to appear on certificate: _____

Tax ID _____

Mailin _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) physical Delivery Address.

Number of Shares Subscribed for: 96,400 _____ Class A 96,400

Class B _____

Total Commitment Amount: \$ 1,928,000 _____

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Citibank, NY

Bank Address

Account Number:

* May change depending on amount of commitments received.

Appendix I

*OK 12/13
6/14/10 6/14/10*

ABA Number:

Appendix I

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent.

Certificates: ☐

Book-Entry: ☒

Company Name: Point Lobos Master Fund, L.P.
 By: Point Lobos Capital LLC its General Partner
 Name: _____
 Title: Managing Member of the GP
 Name to receive certificates: _____
 Tax ID: _____
 Mailing: _____

Email address for notices, if any: _____
 (If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for: 303,600 Class A 303,600
 Class B _____
 Total Commitment Amount: \$ \$6,072,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Citibank, N.A.
 Bank Address: New York
 Account Number: _____
 ABA Number: _____

For further

* May change depending on amount of commitments received.

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Quantessence Fund L P

By: _____

Name: Arthur Chu

Title: Managing Member of Quantessence GP LLC

Mailing address for notices, if any: Same as above

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address:
Same as above

Number of Shares Subscribed for: 147,720 Class A 85,357 { 8,536 }
 Class B 62,363 { 6,236 } $\Rightarrow$ 10% to be delivered in first closing
 Total Commitment Amount: \$ 2,954,400.00

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Bank of New York

Bank Address _____

Account Number: _____

ABA Number: _____

FFC Name: _____

* May change depending on amount of commitments received.

Appendix I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: QVT Fund LP

By: [Signature]

Name:

Title: Managing Member

Mailing address for notices, if any: Same as above

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address:

Same as above

Number of Shares Subscribed for: 1,352,280 Class A 781,388 { 78,139 } 10% to be delivered in first closing
 Class B 570,892 { 57,089 }

Total Commitment Amount: \$ 27,045,600.00

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name:

Bank of New York

Bank Address

Account Number:

ABA Number:

FFC Name:

* May change depending on amount of commitments received.

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Malta Hedge Fund II, L.P.

By: SOAM Holdings, LLC, its General Partner

By: 1778

Name:

Title:

Name to

Tax ID:

Mailing

Mailing

Email address for notices, if any:

(If not holding at American Stock Transfer) Physical Delivery Address: same as above

Number of Shares Subscribed for: 42,265 Class A 29,905
 Class B 12,360

422650

A - 299050
 B - 123600

Total Commitment Amount: \$ 845,300

10%

\$ 8,453,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Citibank, N.A. New York

Address: 1221 Avenue of the Americas, 4th Floor

ABA #:

Account Name:

Account #:

For further cred

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* May change depending on amount of commitments received.

Appendix I

92

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Malta Hedge Fund, L.P.

By: SOAM Holdings, LLC, its General Partner

By: _____

Name: _____

Title: _____

Name to _____

Tax ID: _____

Mailing _____

Mailing _____

Email address for notices, if any: _____

Stock Transfer) Physical Delivery Address: same as above

Number of Shares Subscribed for: 7,340 Class A 5,193
 Class B 2,147

Total Commitment Amount: \$ 146,800

10%

\$1,468,000

73400 A 51,930
 B 21,470

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Citibank, N.A. New York

Address: 1221 Avenue of the Americas, 4th Floor
New York, NY 10020

ABA #: _____

Account Name _____

Account #: _____

For further credit to:

Account name: Malta Hedge Fund, L.P.

Account numb _____

* May change depending on amount of commitments received.

Appendix I

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APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Malta MLC Fund, L.P.
 By: SOAM Holdings, LLC, its General Partner
 By: [Signature]
 Name: Terry Maltese
 Title
 Nam
 Tax
 Mail

Mailing address for notices, if any: same as above

Email address for notices, if any:

(If not holding at American Stock Transfer) Physical Delivery Address: same as above

Number of Shares Subscribed for: 20,725 Class A 14,664 207250
 Class B 6,061

Total Commitment Amount: \$414,500 10% \$4,145,000

A-146640
 B- 60610

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Citibank, N.A. New York
 Address: 1221 Avenue of the Americas, 4th Floor

ABA #:
 Account Name:
 Account #:

For further credit to:
 Account name
 Account number

* May change depending on amount of commitments received.

Appendix I

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APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Malta MLC Offshore, Ltd.

By: [Signature]

Name

Title: Director

Name to appear on certificate: Malta MLC Offshore, Ltd.

Tax ID: n/a

Mailing address

Mailing address

Email address for notices, if any

(If not holding at American Stock Transfer) Physical Delivery Address: same as above

Number of Shares Subscribed for: 4,685 Class A 3,315
 Class B 1,370

Total Commitment Amount: \$93,700

10%

46850 A 33150
 B 13700
 \$937,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Citibank, N.A. New York

Address: 1771 Avenue of the Americas 4th Floor

ABA #:

Account Name

Account #:

For further info

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Accot

¹ May change depending on amount of commitments received.

Appendix I

7

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Malta Offshore, Ltd.

By: [Signature]

Name: Terry Maltese

Title: Director

Name to appear on certificate: Malta Offshore, Ltd.

Tax ID: n/a

Mailing address: g

Mailing address for notices, if any: same as above

Email address for notices, if any:

(If not holding at American Stock Transfer) Physical Delivery Address: same as above

Number of Shares Subscribed for: 14,385 Class A 10,178
Class B 4,207

Total Commitment Amount: \$287,700

10%

\$2,877,000

143850 A - 101780
B - 42070

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Citibank, N.A. New York

Address: 1221 Avenue of the Americas, 4th Floor
New York, NY 10020

ABA #:

Account Name: Morgan Stanley & Co.

Account #:

For further credit to:

Account n

Account n

* May change depending on amount of commitments received.

Appendix I

9

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Malta Partners, L.P.
 By: SOAM Holdings, LLC, its General Partner
 By: [Signature]
 Name _____
 Title: Managing Member
 Name to appear on certificate: Malta Partners, L.P.
 Tax ID _____
 Mailing _____

Mailing _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: same as above

Number of Shares Subscribed for:	1,850	Class A	1,309	18500 - A	13090
		Class B	541	- B	5410
Total Commitment Amount:	\$ 37,000			\$370,000	

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Citibank, N.A. New York
 Address: 1221 Avenue of the Americas, 4th Floor
 New York, NY 10020

ABA #:

Account Name:

Account #:

For further credit to:

Account name: Malta Partners, L.P.
 Account number _____

* May change depending on amount of commitments received.

Appendix I

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APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: SOAM Capital Partners, L.P.

By: SOAM Venture Holdings, LLC, its General Partner

By: [Signature]

Name:

Title: Managing Member

Name to receive certificates: SOAM Capital Partners, L.P.

Tax ID

Mailing

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: same as above

Number of Shares Subscribed for: 25,000 Class A 17,688.50 ¹⁷⁶⁸⁸ 250,000 A 176890
Class B 7,311.50 ⁷³¹¹ 73110 B 73110
Total Commitment Amount: \$ 500,000 10% \$5,000,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Citibank, N.A. New York

Address: 1221 Avenue of the Americas, 4th Floor
New York, NY 10020

ABA #:

Account Name:

Account #:

For further cred., ...

Account name:

Account number

* May change depending on amount of commitments received.

Appendix I

[Signature]

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Volturus Capital, LLC

By: [Signature]

Name:

Title: Managing Member

Name to appear on certificate: Volturus Capital, LLC

Tax ID:

Mailing:

Mailing address for notices, if any: same as above

Email address for notices, if any:

(If not holding at American Stock Transfer) Physical Delivery Address: same as above

Number of Shares Subscribed for:	<u>6,250</u>	Class A	<u>4,422</u>	<u>62500</u>	A	<u>44220</u>
		Class B	<u>1,828</u>		B	<u>18280</u>
Total Commitment Amount:	<u>\$ 125,000</u>		<u>10%</u>	<u>\$1,250,000</u>		

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Gibraltar Bank FSCB

Miami, Florida

Routing/ABA

Beneficiary:

Beneficiary A

¹ May change depending on amount of commitments received.

[Signature]

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent.

Certificates: ☒

Book-Entry: ☐

Company Name: Taconic Capital Partners 1.5 L.P.

By: Christopher Delong

Name: Christopher Delong

Title: Principal of Taconic Capital Advisors L.P.

Name to appear on certificate: Taconic Capital Partners 1.5 L.P.

Tax ID

Mailin

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address:

*The Bank of New York Mellon
 One Wall Street - 3rd Floor
 Custodian Account Number:
 Custodian Account Name:*

Number of Shares Subscribed for*: 675,001

Class A 260,024

Class B 414,977

Total Commitment Amount: \$17,334,900.00

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(11) is as follows:

* May change depending on amount of commitments received

Bank Name: PLEASE SEE ATTACHED

Bank Address

Account Number:

ABA Number:

Appendix I

**Information Sheet for Taconic Capital Partners 1.5 L.P.
(eff. 03/09/07)**

Legal Name of Lending Institution to Appear in Documentation

Taconic Capital Partners 1.5 L.P.
By: Taconic Capital Advisors LP, as Investment Advisor

General Information – Domestic Office

Contacts (when private)

Credit Contact

Admin Contact

Contacts (when public)

116-1000/misc/283121.2

Payment Instructions

USD

Institution: DEUTSCHE BANK TRUST COMPANY AMERICAS

ABA Number

A/C DEUTS

Account Number

Further Credit To: Tropic Capital Partners L.P.

116-1000/misc/283121.2

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Taconic Opportunity Fund L.P.

By: Christopher Delong

Name: Christopher Delong

Title: Principal of Taconic Capital Advisors L.P.

Name to appear on certificate: Taconic Opportunity Fund L.P.

Tax ID

Mailing

Mailing address for notices, if any: _____

Email address for notices, if any: amoolji@taconiccap.com

(If not holding at American Securities Corporation, Inc.)

Number of Shares Subscribed for*: 1,574,999

Class A 606,721

Class B 968,278

Total Commitment Amount: \$ \$27,665,100.00

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

* May change depending on amount of commitments received.

Bank Name: PLEASE SEE ATTACHED

Bank Address

Account Number:

ABA Number:

**Information Sheet for Taconic Opportunity Fund L.P.
(eff. 03/09/07)**

Legal Name of Lending Institution to Appear in Documentation

Taconic Opportunity Fund L.P.
By: Taconic Capital Advisors LP, as Investment Advisor

General Information -- Domestic Office

Contacts (when private)

Credit Contact

Taconic Opportunity Fund L.P.
c/o Taconic Capital Advisors LP

Admin Contact

Taconic Opportunity Fund L.P.
c/o Taconic Capital Advisors LP

Contacts (when public)

Taconic Opportunity Fund L.P.
c/o Taconic Capital Advisors LP

116-1000/misc/283121.2

Payment Instructions

USD

Institution: DEUTSCHE BANK TRUST COMPANY AMERICAS

116-1000/misc/283121.2

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐

Book-Entry: ☒

Company Name: Tiger Veda Management LLC
 By: Manish Chopra
 Name: Manish Chopra
 Title: Managing Member
 Name to appear on certificate: Tiger Veda Global LP
 Tax ID: _____
 Mailing address: _____

Mailing address for notices, if any: Same

Email address for notices, if any: _____
 (If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for: 198,000 Class A ☒ 19800^{10%}
 Class B _____
 Total Commitment Amount: \$ 3,960,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Chase Manhattan Bank
 Bank Address: _____
 Account Number: _____
 ABA Number: _____

* May change depending on amount of commitments received.

Appendix I

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐Book-Entry: ☒Company Name: Tiger Veda Management LLCBy: Manish ChopraName: Manish ChopraTitle: Managing MemberName to appear on certificate: Tiger Veda LLC

Tax ID: _____

Mailing address: _____

Mailing address for notices, if any: _____

Same

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for: 252,000 Class A ☒ 10% 25,200

Class B _____

Total Commitment Amount: \$ 5,040,000**B. RETURN WIRE INSTRUCTION INFORMATION:**

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: Chase Manhattan Bank

Bank Address: _____

Account Number: _____

ABA Number: _____

* May change depending on amount of commitments received.

Appendix I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent.

Certificates: ☐

Book-Entry. X ☒ X

Company Name: **SCOPESII Equity Investments A LLC**

By: Tricadia Capital Management, LLC as Investment Manager

Name: Barry Monday

Title: Chief Administrative Officer

Name to appear on certificate: **SCOPESII Equity Investments A LLC** _____

Tax ID: NA

Mailing address

 Mailing address for notices, if any: _____

 Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address:

 Number of Shares Subscribed for*: 1,237,500

Class A 875,589

Class B 361,911

Total Commitment Amount: \$ 24,750,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

JPMorgan Chase

ABA

DDA

FFC

A/C

* May change depending on amount of commitments received.

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☐

Book-Entry: X ☒ X

Company Name: **TDSS Equity Investments A LLC**

By: Tricadia Capital Management, LLC as Investment Manager

Name: Barry Monday

Title: Chief Administrative Officer

Name to appear on certificate: **TDSS Equity Investments A LLC**

Tax ID: _____

Mailing _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for*: 1,237,500

Class A 875,590

Class B 361,910

Total Commitment Amount: \$ 24,750,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

JPMorgan Chase

* May change depending on amount of commitments received

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: IAM Mini-Fund 21 Limited
By: [Signature]
Name: Marko Kalish
Title: CEO
Name to appear on certificate: IAM Mini-Fund 21 Limited
Tax ID: _____
Mailing address: _____

Mailing address for no _____

Email address for notices, if any: _____
(If not holding at American Stock Exchange, please provide delivery address.)

See Above

Number of Shares Subscribed for: 35,900 Class A 29,650 29,600 10% 2,960
Class B 6,250 6,200 630
Total Commitment Amount: \$ 716,650 718,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(II) is as follows:

Bank Name: * See Attached *
Bank Address: _____

* May change depending on amount of commitments received.

Appendix I

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Prime Capital Master SP, GOT WAT MAC Segregated Portfolio

By: [Signature]

Name: Marina Kulish

Title: C

Name to appear on c

Tax ID: _____

Mailing address: _____

Mailing address for delivery, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

Number of Shares Subscribed for: 25,200 Class A 20,096 21,000

Class B 4,200 4,200

Total Commitment Amount: \$ 486,900 504,000

10%
2,100
420

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(i) is as follows:

Bank Name: * See Attached *

Bank Address: _____

* May change depending on amount of commitments received.

Appendix I

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Waterstone Market Neutral MACSI, Ltd
By: [Signature]
Name: Martin Kalish
Title: CEO
Name to appear on certificate: Waterstone Market Neutral MACSI, Ltd
Tax ID: _____
Mailing address: _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer & Trust Company, please provide physical delivery address.)

Number of Shares Subscribed for: 104,200 Class A 86,000
Class B 18,200
Total Commitment Amount: \$ 2,084,060

10%
8600
1820

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: * See Attached *
Bank Address: _____

* May change depending on amount of commitments received.

Appendix I

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Watershore Market Neutral Master Fund, L.P.
By: [Signature]
Name: Martin Kalich
Title: CFO
Name to appear on ct: _____
Tax ID: _____
Mailing address: _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address:

Deutsche Bank Securities Inc.
60 Wall Street, 13th Floor New York, NY 10005

Attn: Erin Lukus
Number of Shares Subscribed for: 746,500 Class A 616,957 616,045
Class B 129,543 130,455

Total Commitment Amount: \$ 14,948,000 14,930,000

10% 61,605
13,045

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: * See Attached *
Bank Address: _____

* May change depending on amount of commitments received.

Appendix I

5/12/2010 DRAFT

APPENDIX I

BLUE RIDGE HOLDINGS, INC.
FORM OF OWNERSHIP AND WIRE INFORMATION QUESTIONNAIRE

Please provide the Company with the following information:

A. INFORMATION FOR TRANSFER AGENT:

Please indicate whether you wish to receive certificates evidencing your shares of Common Stock (and, as applicable, Lead Investor Warrants) or will hold such securities in book-entry form with the stock transfer agent:

Certificates: ☒

Book-Entry: ☐

Company Name: Waterstone MF Fund, Ltd
By: [Signature]
Name: Martin Kalish
Title: CEO
Name to appear on certificate: Waterstone MF Fund, Ltd
Tax ID: _____
Mailing address: _____

Mailing address for notices, if any: _____

Email address for notices, if any: _____

(If not holding at American Stock Transfer) Physical Delivery Address: _____

See Above

Number of Shares Subscribed for: 138,200 Class A 114,000 11,410
Class B 24,190 2,410
Total Commitment Amount \$ 2,764,360 2,764,000

B. RETURN WIRE INSTRUCTION INFORMATION:

Purchaser's wire instructions for return of funds invested if the Stock Purchase Agreement is terminated pursuant to Article VIII or the Company delivers a Rescission Notice pursuant to Section 2.02(d)(ii) is as follows:

Bank Name: * See Attached *
Bank Address: _____

* May change depending on amount of commitments received.

Appendix I

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

ALAN WILSON, SECURITIES
COMMISSIONER OF SOUTH
CAROLINA,

Applicant,

v.

INTEGRATED CAPITAL
STRATEGIES, LLC,

Respondent.

Case No. 2014-CP-

APPLICATION FOR AN ORDER
REQUIRING COMPLIANCE WITH
A SUBPOENA

RICHLAND COUNTY
FILED
2014 MAY 23 PM 3:15
JEANETTE W. BRIDGES
C.C.P. & J.

Alan Wilson, Securities Commissioner of South Carolina (the "Commissioner"), through his undersigned attorneys, pursuant to S.C. Code Ann. § 35-1-602(c), hereby applies for an order directing Integrated Capital Strategies, LLC ("ICS") to comply with an administrative subpoena (the "Subpoena") served on it by the Securities Division of the Office of the Attorney General of South Carolina (the "Securities Division") on April 9, 2014, in connection with investigative File No. 14023. In support of his Application, the Commissioner would show as follows:

I. SUMMARY

1. The Securities Division has properly issued and served the Subpoena on ICS in connection with an investigation being conducted pursuant to the authority granted by the South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101, *et seq.* (the "Securities Act"). The Subpoena seeks documents related to the services performed by ICS for Certus Holdings, Inc. and CertusBank, N.A. (collectively, "Certus"), entities which have offered securities within the State

of South Carolina. Because the Commissioner has fulfilled all administrative and legal prerequisites to enforcement of the Subpoena, the Court should enter an order directing ICS to comply with the Subpoena.

2. In support of this application, the Commissioner submits the accompanying Memorandum of Law in Support of Application for an Order Requiring Compliance with a Subpoena.

II. JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction over this action pursuant to S.C. Code Ann. § 35-1-602(c). Venue properly lies with the Court pursuant to the same.

III. RESPONDENT

4. ICS is a Delaware limited liability company with its principal place of business in Charlotte, North Carolina. Certus operates in South Carolina, North Carolina, Georgia, and Florida, and its banking operations are headquartered in Greenville, South Carolina.

5. ICS has extensive contacts with the South Carolina through, among other things, the various management services ICS provided to Certus in Greenville and elsewhere within this State.

IV. FACTUAL BACKGROUND

6. Pursuant to the Commissioner's statutory authority to investigate possible violations of the Securities Act, the Securities Division is conducting an investigation into alleged fraud and other violations concerning the offer and sale of

securities in and from South Carolina.

7. On April 9, 2014, the Securities Division served the Subpoena on ICS at its Charlotte address. A copy of the Subpoena is attached hereto as Exhibit A.

8. The Subpoena was issued to ICS requesting documents relevant to the investigation, related to work performed for Certus by ICS, the relationship between the entities, the shared employees between the entities, and the amount and nature of compensation paid to ICS by Certus.

9. Subsequently, Counsel for ICS met with staff of the Securities Division on May 2, 2014. On May 6, 2014, in a letter, a copy of which is attached hereto as Exhibit B, ICS objected to the Subpoena.

10. ICS' invalid objections are impeding the Securities Division's lawful investigation, and therefore, pursuant to S.C. Code Ann. § 35-1-602(c), the Commissioner brings the instant application and seeks the relief set forth below.

V. REQUESTED RELIEF

WHEREFORE, the Commissioner respectfully requests that the Court:

(A) Enter a Rule to Show Cause directing the Respondent to show cause why this Court should not enter an order requiring production of all documents responsive to the Subpoena; and

(B) After ICS has had an opportunity to be heard, enter an Order, in the form submitted and attached hereto as Exhibit C, directing ICS to comply fully with the Subpoena and produce documents as directed; and

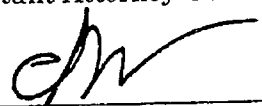
(C) Order such other and further relief as may be necessary and appropriate to achieve compliance with the Subpoena.

Respectfully Submitted,

ALAN WILSON
Securities Commissioner

TRACY A. MEYERS
Deputy Securities Commissioner

IAN P. WESCHLER
Assistant Attorney General

By: 

Ian P. Weschler
Assistant Attorney General
Securities Division
1000 Assembly Street
Columbia, SC 29201
(803) 734-9916

Attorneys for the Applicant

May 23, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

ALAN WILSON, SECURITIES
COMMISSIONER OF SOUTH
CAROLINA,

Applicant,

v.

INTEGRATED CAPITAL
STRATEGIES, LLC,

Respondent.

Case No. 2014-CP-_____

MEMORANDUM OF LAW IN
SUPPORT OF THE SECURITIES
COMMISSIONER'S APPLICATION
FOR AN ORDER REQUIRING
COMPLIANCE WITH A SUBPOENA

2014 MAR 13 12:15
JEANETTE W. WILSON
CLERK OF COURT
RICHLAND COUNTY
FILED

This action seeks enforcement of an administrative subpoena (the "Subpoena") issued by the Securities Division of the Office of the Attorney General of South Carolina (the "Securities Division") to Integrated Capital Strategies, LLC ("ICS") as part of an investigation under File No. 14023. For the reasons set forth below, the Court should issue the proposed Order Requiring Compliance with a Subpoena.

I. FACTUAL BACKGROUND

On April 9, 2014, the Securities Division issued the Subpoena to ICS. The Subpoena was addressed to ICS' address in Charlotte, North Carolina, as listed on the website for the North Carolina Secretary of State. The Subpoena sought various documents related to an ongoing investigation being conducted into the offer and sale of securities by Certus Holdings, Inc. and CertusBank, N.A. (collectively, "Certus") in and from South Carolina. Certus is an offeror and seller of securities, having offered and sold securities to at least twenty-nine South Carolina

residents. Additionally, as Certus is headquartered in Greenville, South Carolina, numerous statements in connection with the offer and sale of securities were made from South Carolina. The documents sought pursuant to the Subpoena were required to be produced by Friday, April 25, 2014. To date, the records have not been produced, and production is not expected absent an order by this Court.

ICS' managers were the founders of and, until their termination in April of 2014, employees of Certus. While the relationship between ICS and Certus cannot be fully understood without the production sought by the Subpoena, it appears that ICS provided extensive services to Certus, for which ICS was well compensated. Indeed, and evincing the interrelated relationship between the two companies, not only were ICS' managers executives at Certus, ICS' records custodian is or was herself an employee of Certus.

On April 23, 2014, ICS' attorney contacted the Securities Division and requested an extension of time in which to examine the Subpoena and prepare a response. ICS was granted an extension until Friday, May 2, 2014 to produce the documents on the understanding that additional time to respond, if required, would be granted. On Friday, May 2, 2014, representatives of the Securities Division met with ICS' attorney and reiterated the request for documents. On Tuesday, May 6, 2014, ICS, by a letter attached hereto as Exhibit B (the "Objection Letter"), formally objected to the subpoena, alleging that the Securities Division lacked the requisite jurisdiction. This Application follows.

II. ARGUMENT

A. This Court has Jurisdiction over this Action and over the Respondent

The Court has jurisdiction over this action pursuant to Article 6 of the South Carolina Uniform Securities Act of 2005 (the “Securities Act”). As the Securities Act sets forth, the mechanism for subpoena enforcement is for the Commissioner to “apply to the Richland County Court of Common Pleas or a court of another State to enforce compliance.” S.C. Code Ann. § 35-1-602(c) (Supp. 2013). Whereupon, the Court may, *inter alia*, “order the production of records.” *Id.* Accordingly, this Court is the appropriate venue in which to seek the enforcement of the Subpoena.

ICS, in its Objection Letter, alleges that the Commissioner lacks jurisdiction over it because the Subpoena was “not served pursuant to South Carolina’s long arm statute.” Objection Letter, p. 2. However, that assertion is incorrect as the Subpoena was validly served pursuant to the Securities Act. Pursuant to S.C. Code Ann. § 35-1-611 (c), the Securities Act permits the service of subpoenas to in-state and out-of-state respondents, through the mailing, return receipt requested, of the document or documents in question to a respondents’ address and the execution of an affidavit of compliance. As is evidenced by the Subpoena, attached hereto as Exhibit A, the requirements for proper service as set forth in the Securities Act were followed when the Subpoena was served on ICS.

B. The Commissioner Has Met the Burden for Enforcement of the Subpoena.

A court should enforce an administrative subpoena when “the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant.” *United States v. Morton Salt*, 338 U.S. 632, 650 (1950); *see also SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1023-24 (D.C. Cir. 1978); *In re Administrative Subpoena John Doe v. United States*, 253 F.3d 256,262 (6th Cir. 2001); S.C. Code Ann § 35-1-602, cmt. 2 (citing 10 Louis Loss & Joel Seligman, *Securities Regulation* 4917-4937 (3d ed. Rev. 1996) and explaining “[t]he standards for the issuance of subpoenas have been generally established in federal and state securities laws.”). Because these criteria are met here, the Court should enforce the Subpoena.

i. The Subpoena is within the Commissioner’s authority.

Pursuant to S.C. Code Ann. § 35-1-602, the Commissioner and his designee, the Securities Division, are vested with broad authority to conduct investigations into possible violations of the Securities Act and to require production of evidence relevant to such investigations. The Securities Division’s administrative investigative power is statutory and is analogous to that of a grand jury. *Morton Salt*, 338 U.S. at 642-43. Like a grand jury, an administrative agency “can investigate merely on suspicion that the law is being violated, or just because it wants assurance that it is not.” *Id.* Like its federal counterpart, the Securities and Exchange Commission, the Securities Division is acting within the scope of its

legislatively granted authority even where its investigation is based on nothing more than “official curiosity.” *See, e.g., Arthur Young & Co*, 584 F.2d at 1023-24 & n. 45. In furtherance of this investigative power, S.C. Code Ann. § 35-1-601(b) permits the Commissioner or his designees to “subpoena witnesses, seek the compulsion of evidence, take evidence, require the filing of statements, and require the production of any records that the Securities Commissioner considers relevant or material to [an] investigation.” As this language is modeled on similar language in the federal securities laws, the Court may be guided by the interpretation of those provisions by the federal courts. *Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners, Inc.*, 320 S.C 113, 122, 463 S.E.2d 600, 606 (1995) (citations omitted) (“Federal courts’ interpretations of the corresponding federal securities laws...may be applied as guidance in interpretation.”). Furthermore, the dearth of case law related to the enforcement of administrative subpoenas in South Carolina suggests that the Court may likewise take guidance from federal courts’ interpretation of similar provisions. Accordingly, as set forth in Section 35-1-601(b), the Securities Division’s authority to issue subpoenas is broad. *See SEC v. Jerry T. O’Brien, Inc.*, 467 U.S. 735, 743 (1984) (“The provisions vesting the SEC with the power to issue and seek the enforcement of subpoenas are expansive.”); *SEC v. Dresser Indus.*, 628 F.2d 1368, 1379-80 (D.C. Cir. 1980).

Respondents raise the claim, apparently on behalf of Certus itself, that the Securities Division’s investigation is preempted by the National Bank Act of 1864, 12 U.S.C.A. § 484 (West 2013) (the “NBA”), and the regulations promulgated

thereunder by the Office of the Comptroller of the Currency (the "OCC"). The Respondents cite *Cuomo v. Clearing House Ass'n, LLC*, 557 U.S. 519 (2009), for this presumption. In *Cuomo*, the Attorney General of New York sought, pursuant to the State of New York's inherent powers of visitation,¹ information related to *bank lending practices* from a number of nationally chartered banks. Following a suit by the OCC and others, the Supreme Court determined that the State's visitation powers over the bank were preempted by the NBA and the rules promulgated thereunder. Those facts are entirely inapplicable in this action. Further, it is important to note that Certus itself has not raised any objection to the Securities Division's exercise of investigatory jurisdiction, and that ICS, while closely related to Certus, cannot assert any claims on Certus' behalf.² In this case, the Securities Division, pursuant to the investigative authority conferred by the General Assembly and granted to it by the Commissioner, is conducting a lawful investigation in order to determine whether or not the Securities Act has been violated. The Securities Division is not seeking to investigate a bank *qua* bank, and therefore is not attempting to exercise the sovereign power of visitation over Certus. It has long been recognized that such investigations are not preempted by the NBA. *Peoples Bank of Danville v. Williams*, 449 F.Supp. 254, 260 (4th Cir. 1978) (An "SEC inquiry

¹ At the time of the enactment of the National Bank Act in 1864, the term visitation "was accordingly understood as the act of examining into the affairs of a corporation by the government itself. Lower courts understood visitation to mean the act of a superior or superintending officer, who visits a corporation to examine into its manner of conducting business, and enforce an observance of its laws and regulations. A State was the visitor of all companies incorporated in the State, simply by virtue of the State's role as sovereign." *Cuomo*, at 526 (2009) (Scalia, J) (citations and internal quotation marks omitted)

² Likewise, no claim on behalf of Certus can be raised by ICS' principals who were terminated by Certus on April 9, 2014. David Dykes, *Industry Veteran to Lead CertusBank After 3 Terminations*, Greenville News, April 10, 2014, <http://www.greenvilleonline.com/story/money/business/2014/04/09/certusbank-terminates-top-execs-interim-leader-named/7513165/>.

is not a 'visitorial power' within the understanding" of the NBA); *see also Bank of America Nat. Trust & Savings Ass'n v. Douglas*, 70 App.D.C. 221, 227 (D.C. Cir. 1939) (SEC subpoena to a bank as part of a securities investigation was not an "exercise of visitorial powers."); *Cuomo*, at 528-29.

Additionally, ICS, alleges that the Commissioner has no jurisdiction over it or Certus under the mistaken assumption that Certus did not offer or sell securities in South Carolina. Regardless of ICS' mistaken belief, the issue of subject matter jurisdiction is "not to be decided in subpoena enforcement actions" as the Securities Division, like its federal counterpart, the SEC, "must be free without undue interference or delay to conduct an investigation which will adequately develop a factual basis for a determination as to whether particular activities come within...[its]...regulatory authority." *SEC v. Brigadoon Scotch Distributing Co.*, 480 F.2d 1047, 1053-54 (2nd Cir. 1973). Indeed, "it has long been established that the question of inclusion of a particular person or entity within the coverage of a regulatory statute is generally for initial determination by an agency, subject to review on direct appeal, rather than for a...court whose jurisdiction is invoked to enforce an administrative subpoena." *SEC v. Wall Street Transcript Corp.*, 422 F.2d 1371, 1375 (2nd Cir. 1970), *cert. denied*, 398 U.S. 958 (citing, *inter alia*, *United States v. Powell*, 379 U.S. 48, 57-58 (1964); *FTC v. Crafts*, 355 U.S. 9 (1957); *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501 (1948)).

ii. The information sought is reasonably relevant and not too indefinite.

Like the issue of coverage, as discussed *supra*, the issue of relevance is a threshold matter to be determined by the Securities Division. *See, e.g., Arthur Young & Co.*, 584 F.2d at 1031 (holding that the scope of the SEC's subpoena power is "co-extensive" with its investigative power, and that the SEC is given the sole discretion to determine what is relevant to an investigation.). Indeed, information is reasonably relevant to an investigation when it is "not plainly incompetent or irrelevant to any legal purpose." *Endicott Johnson*, 317 U.S. at 509; *see also United States v. Golden Valley Elec. Ass'n*, 689 F.3d 1108, 1111 (9th Cir. 2012) (Drug Enforcement Agency administrative subpoena issued to a power company upheld, because the information sought was relevant to a lawful investigation.). In the present case, the Securities Division has determined that the information and documents sought from ICS are relevant to its investigation. For instance, the billing records, the contracts related to work to be performed on behalf of Certus, and a list of the employees of ICS are each relevant to determine ICS' relationship with Certus. These documents, collectively, are important to the process of determining whether or not Certus or any of its employees committed violations of the Securities Act. Indeed, the relevance of the documents sought is only amplified by the fact that ICS' managers, through their managerial positions at Certus, were involved in the offer and sale of securities in this State. When an inquiry such as this is legally authorized and the information sought is relevant to the inquiry, the

burden of showing unreasonableness shifts to the Respondent, and such a burden "is not easily met." *Brigadoon Scotch*, 480 F.2d at 1056. Furthermore, the Attachment to the Subpoena clearly sets forth the nature of the documents sought, and thus the Subpoena itself is not too indefinite. Therefore, the Securities Division has met the threshold requirements for the enforcement of the Subpoena.

III. CONCLUSION

The Securities Division is unable to gain access to relevant information and documents in an investigation being conducted pursuant to its lawful authority, notwithstanding the fact that the Securities Division has properly served an administrative subpoena on ICS. Accordingly, the Commissioner requests that the Court act expeditiously to grant this application and issue: (i) an order requiring ICS to comply with the subpoena by producing all responsive documents; and (ii) such other and further relief as may be necessary and appropriate to achieve compliance with the Subpoena.

Respectfully submitted,

ALAN WILSON
Securities Commissioner

TRACY A. MEYERS
Deputy Securities Commissioner

IAN P. WESCHLER
Assistant Attorney General

By: 

Ian P. Weschler
Assistant Attorney General
Securities Division
1000 Assembly Street
Columbia, SC 29201
(803) 734-9916

Attorneys for the Applicant

May 23, 2014.

EXHIBIT A



ALAN WILSON
SECURITIES COMMISSIONER

April 9, 2014

VIA FEDERAL EXPRESS

Integrated Capital Strategies, LLC
2100 Rexford Road, Suite 110
Charlotte, North Carolina 28211

RE: File No. 14023

To the Custodian of Records:

The Securities Division of the Office of the Attorney General (the "Securities Division") is conducting an investigation in the above-referenced matter to determine whether there have been violations of the South Carolina Uniform Securities Act of 2005 (the "Act"). Enclosed is a subpoena for documents that requires Integrated Capital Strategies, LLC to produce documents no later than April 25, 2014 to the following address:

Securities Division
Office of the Attorney General
1000 Assembly Street, Suite 501
Columbia, South Carolina 29201
ATTN: Thresechia Navarro

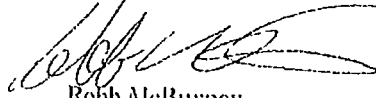
The Securities Division requests that documents or information be produced in electronic format, wherever possible.

This investigation is non-public and should not be construed as an indication by the Securities Division that any violations of law have occurred, or as a reflection upon any person, entity, or security. You may not disclose the existence or contents of this subpoena in any manner that would impede the investigation and therefore interfere with the enforcement of the Act.

Integrated Capital Strategies, LLC
April 7, 2014
Page 2

Should you have any questions, please contact me at (803) 731-9921

With regards,

A handwritten signature in black ink, appearing to read 'Robb McBurney', written over a horizontal line.

Robb McBurney
Enforcement Specialist

Enclosures

cc: Tracy A. Meyers, Deputy Securities Commissioner
Ian P. Weschler, Assistant Attorney General



SUBPOENA
STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
SECURITIES DIVISION

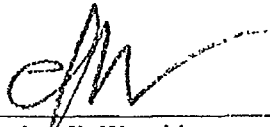
IN THE MATTER OF: File No. 14023

TO: Integrated Capital Strategies, LLC
2100 Rexford Road, Suite 110
Charlotte, North Carolina 28211

☒ **YOU ARE ORDERED TO PRODUCE** everything specified in the Attachment to this Subpoena to the Securities Division, at the place and by the date and time specified below:

1000 Assembly Street, Suite 501, Columbia, South Carolina.
on April 25, 2014, at 10:30 a.m. ET.

SOUTH CAROLINA LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA
Failure to comply as directed may result in your being adjudged guilty of contempt of court


By: Ian P. Weschler
Assistant Attorney General

Date: April 9, 2014

This Subpoena is issued pursuant to the statutory authority granted to the Securities Commissioner of South Carolina and his authorized designees under the South Carolina Uniform Securities Act, S.C. Code Ann. § 35-1-101, *et seq*

ATTACHMENT TO SUBPOENA ISSUED TO
Integrated Capital Strategies, LLC
File Number: 14023
April 9, 2014

I. INSTRUCTIONS AND DEFINITIONS

Unless otherwise stated the terms set forth below are defined as follows:

- A. The term "document" or "documents" encompasses all items, including, but not limited to, correspondence, memoranda (including without limitation all internal, external, interim, or final memoranda), notes (including notes documenting or evidencing telephone calls), drafts, records, agreements, meeting agenda, reports, legal or financial instruments, electronic mail ("e-mail"), instant messages, archived information in backups, and all copies of such documents unless such document is identical in every respect with the original thereof produced, whether written, printed, typed, drawn, recorded, electronically, magnetically, or mechanically stored, tape-recorded, computerized, photographed, or stored as voice mail, website, or e-mail (including all attachments thereto).
- B. The terms "Integrated Capital Strategies, LLC," "ICS" and "the Company" include, without limitation, Integrated Capital Strategies, LLC, any of its subsidiaries, and any of their affiliates.
- C. The terms "you" and "yours" mean and include "ICS" and "the Company," including any subsidiary or holding company of "ICS" or "the Company."
- D. Documents or communications "regarding," "related to," "concerning," or "evidencing" a given subject matter means and includes, without limitation, any document or communication that constitutes, contains, embodies, comprises, reflects, states, refers to, deals with, comments on, responds to, bears upon, discusses, describes, analyzes, or is in any way pertinent to the subject, in the broadest possible sense.
- E. The following rules of construction apply to this Attachment:
 - a. The terms "any" and "all" mean "each and every."
 - b. The connectives "and" and "or" shall be construed either disjunctively or connectively as necessary to bring within the scope of the request all responses and production of documents that might otherwise be construed to be outside of its scope.
 - c. The use of the singular form of any word includes the plural and vice versa.
 - d. "Concerning" shall mean directly or indirectly, in whole or in part, relating to, referring to, describing, evidencing, or construing.
 - e. The "Relevant Period" shall mean January 1, 2010 through the present, unless otherwise stated.
- F. With respect to each statement and document produced pursuant to this Subpoena, indicate the paragraph to which each statement and document is responsive.
- G. You shall identify the persons responsible for preparing the response to this Subpoena.

- H. In order for your response to this Subpoena to be complete, the attached "Verification" must be completed and executed on your behalf by the person supervising compliance with the Subpoena and submitted with the responsive statements and documents.
- I. If any requested document was, but is no longer, in your possession or subject to your custody or control, state what disposition was made of the document and, if the document is to the best of your knowledge still in existence, identify the person or entity that has possession, custody, or control of the document.
- J. With respect to each document which is withheld from production for any reason of privilege, provide a statement in a privilege log setting forth:
 - a. The name and title of the author(s);
 - b. The name and title of the person(s) to whom the document was addressed;
 - c. The name and titles of those to whom copies of the document were sent;
 - d. The date on which the document was written or otherwise produced and the date on which it was mailed, sent, or delivered to its recipients;
 - e. The number of pages of the document;
 - f. A brief description of the document and its contents; and
 - g. A brief legal explanation supporting the grounds upon which the document is being withheld.
- K. In producing documents, all documents that are physically attached to each other in the files shall be left so attached and produced fully without limitation.
- L. To the full extent permitted by South Carolina laws, these requests are continuing and require supplemental response and production.

II. DOCUMENTS TO BE PRODUCED

Please produce each of the following documents for the Relevant Period unless otherwise noted:

- A. Documents sufficient to identify all employees, including but not limited to full time and part times employees, independent contractors, and interns.
- B. Documents sufficient to quantify all compensation paid to Walter Davis, Angela Webb, and Charles Williams.
- C. All documents, including contracts, related to the Company's dealings with Certusbank N.A., Certus Holdings, Incorporated, and Blue Ridge Holdings, Incorporated.
- D. Documents sufficient to quantify all compensation paid to the Company by Certusbank N.A., Certus Holdings, Incorporated, and Blue Ridge Holdings, Incorporated.

Attachment to Subpoena
Integrated Capital Strategies, LLC
April 9, 2014

- E. Documents sufficient to identify all investors in the Company, and the date and amount of each investment.
- F. All documents provided to investors in the Company.

Attachment to Subpoena
Integrated Capital Strategies, LLC
April 9, 2014

VERIFICATION

This response to the Subpoena dated April 9, 2014, including, without limitation, responses to statements to be filed and documents to be produced, was prepared and assembled under my personal supervision from the records of Integrated Capital Strategies, LLC ("the Company"), in accordance with the instructions and definitions set forth in such Subpoena and is complete and correct to the best of my knowledge and belief.

To the best of my knowledge and belief, the documents produced in response to such Subpoena (a) are authentic, genuine, and what they appear to be, and (b) accurately reflect those documents as they appeared in the Company's records on the date of the Subpoena. No documents have been added to or removed from the records of the Company in connection with the preparation and assembly of this response other than documents that may have been removed in connection with the assertion of a privilege. Any documents removed in connection with the assertion of a privilege are described on the attached privilege log.

(Signature of Official)

(Title of Official)

(Date)

(Typed or Printed Name of Official)

Subscribed and sworn to before me this _____ day of _____, 2014.

Notary Public

My commission expires:

STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
SECURITIES DIVISION

CERTIFICATE OF SERVICE AND
AFFIDAVIT OF COMPLIANCE
File Number 14023

I hereby certify that I served upon the individual/entity listed below a copy of the document indicated below and dated April 9, 2014, by serving a copy of said document upon the Securities Commissioner of the State of South Carolina and by placing a copy of said document via Federal Express delivery and addressed to:

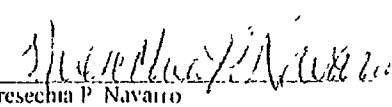
Integrated Capital Strategies, LLC
2100 Rexford Road, Suite 110
Charlotte, NC 28211

Document(s). Subpoena

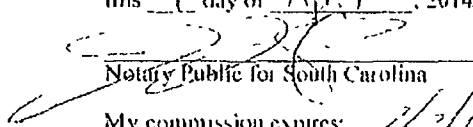
Mailed April 9, 2014 from Columbia, South Carolina

I further hereby certify, swear and affirm that, service of the above-listed entity is in compliance with Section 35-1-611 Code of Laws of South Carolina

By:


Thereschia P. Navarro
South Carolina Attorney General's Office
Securities Division
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-4731

Subscribed and sworn to before me on
this 9 day of April, 2014.


Notary Public for South Carolina

My commission expires: 4/2/18

EXHIBIT B

A. CAMDEN LEWIS
KEITH M. BABCOCK
JAMES M. GRIFFIN
ARIAN E. KING
J. RYAN HESKELL*
MARGARET N. FOX**

* ALSO ADMITTED IN D.C.
** ALSO ADMITTED IN N.C.

LB&G

LEWIS, BABCOCK & GRIFFIN L.L.P.

1513 HAMPTON STREET
P.O. BOX 11208 (29211)
COLUMBIA, S.C. 29201
FACSIMILE: 803-733-3541
TELEPHONE: 803-771-8000

WEBSITE: WWW.LBGLLEGAL.COM

EMAIL: JMG@LBGLLEGAL.COM

May 6, 2014

VIA HAND DELIVERY

Ian P. Weschler, Assistant Attorney General
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

Re: Integrated Capital Strategies, LLC
File No. 14023

Dear Ian:

I am writing to formally object to the subpoena issued to Integrated Capital Strategies, LLC ("ICS") from the Attorney General in his capacity as South Carolina Securities Commissioner on the ground that the Attorney General lacks jurisdiction over ICS. The Attorney General has no authority to investigate the issuance of stock at issue or to investigate the banking practices of CertusBank, N.A. ("CertusBank") for the reasons listed below.

First, ICS is a corporation organized under the laws of Delaware with its principal place of business in Charlotte, North Carolina. Thus, ICS is neither organized under nor has its principal place of business in South Carolina.

Second, ICS has never offered for sale or sold any securities in South Carolina. Under the South Carolina Uniform Securities Act, the Attorney General's authority is limited to conduct relating to the offer or sale of securities in South Carolina. See S.C. Code § 35-1-301 (sale of securities in this State); S.C. Code §§ 35-1-401(a), 403(a) (broker dealers and investment advisers who transact business in the State); S.C. Code 35-1-501 (anti-fraud provisions relating to the offer, sale, or purchase of a security within the State). Here, ICS previously raised approximately \$575,000 from five investors (other than the founders, who are residents of North Carolina and Georgia), none of whom were located in South Carolina. Four of the investors were from North Carolina and one was from Connecticut. Further, the investors' loans were repaid in 2011.

Moreover, as I am sure you are aware, ICS performed contractual services for CertusBank, a nationally chartered bank with more than thirty (30) branches in South Carolina, Georgia, and Northern Florida. Although CertusBank's headquarters are located in South Carolina, this does not give the Attorney General in his capacity as Securities Commissioner jurisdiction to investigate ICS' relationship with CertusBank. In fact, ICS recently received a

letter dated April 30, 2014 from the Office of the Comptroller of Currency ("OCC"). The OCC communicated its authority over ICS' performance of services for CertusBank and requested the production of documents for inspection. Thus, the OCC is actively examining the matters that appear to be of interest to the Attorney General. An additional effort by the South Carolina Attorney General is duplicative, unlawful, and unduly burdensome.

The National Bank Act (NBA) expressly precludes States from investigating and/or regulating the practices of nationally chartered banks such as CertusBank. The NBA provides: "No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts ..., or ... directed by Congress." 12 U.S.C. § 484(a). Among other things, the Comptroller's regulation implementing § 484(a) forbids States to "exercise visitorial powers with respect to national banks, such as conducting examinations, inspecting or requiring the production of books or records," or, as here pertinent, "prosecuting enforcement actions" "except in limited circumstances authorized by federal law." 12 CFR § 7.4000(a)(1). See, Cuomo v. Clearing House Ass'n, L.L.C., 557 U.S. 519, 129 S. Ct. 2710, 2712, 174 L. Ed. 2d 464 (2009).

In Cuomo v. Clearing House Association, the Attorney General for the State of New York requested certain national banks to informally provide non-public information about their practices. This action was challenged by the OCC and a banking trade group. The United States Supreme Court held, however, that the New York Attorney General did *not* have jurisdiction to informally request documents via letter or subpoena from national banks. Therefore, the Court enjoined the Attorney General from moving forward with his informal request. Here, the South Carolina Attorney General seeks to investigate a national bank's practices through a subpoena to ICS. This action has been expressly prohibited by the United States Supreme Court.

Furthermore, CertusBank has never offered or sold any securities in South Carolina. Rather, it is a wholly owned subsidiary of CertusHoldings, Inc. ("CertusHoldings"), a Delaware corporation with its principal place of business in Atlanta, Georgia. CertusHoldings is subject to the jurisdiction of the Federal Reserve under the Bank Company Holding Act. In addition, CertusHoldings has never offered for sale or sold any securities in South Carolina. The shareholders of CertusHoldings acquired their stock through a private placement offering that took place outside of South Carolina. None of these shareholders are located in South Carolina. Most are institutional investors located in New York. Moreover, the shareholders acquired their stock pursuant to a stock purchase agreement. The agreement directs New York law shall govern. The parties to the agreement agreed to submit to the jurisdiction of the United States District Court for the Southern District of New York for all legal disputes relating to their investment.

Lastly, ICS objects to the subpoena on the grounds that it was not served pursuant to South Carolina's long arm statute. The long arm statute allows local South Carolina courts to have jurisdiction over an out of state resident in certain situations. Here, the issue is a national bank's sale of securities which had no relation to South Carolina. Furthermore, it is clear the Attorney General does not have the authority to investigate the business practices of CertusBank. For the Attorney General to then cite South Carolina's long arm statute as a basis for jurisdiction is inapposite and in direct conflict with the holding of the United States Supreme Court See Cuomo. Thus, the South Carolina long arm statute is not a proper basis for jurisdiction over ICS.

Based upon the foregoing, it is clear the Attorney General lacks jurisdiction over ICS, CertusBank, CertusHoldings, or any of the officers, directors, or members of these entities. ICS formally objects to the subpoena on these grounds.

With best regards, I am

Very truly yours,

James M. Griffin

JMG/jh

EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
ALAN WILSON, SECURITIES	)	Case No. 2014-CP-_____
COMMISSIONER OF SOUTH	)	
CAROLINA,	)	
Applicant,	)	
v.	)	
INTEGRATED CAPITAL	)	ORDER REQUIRING
STRATEGIES, LLC,	)	COMPLIANCE WITH A SUBPOENA
Respondent.	)	

The Applicant, Alan Wilson, Securities Commissioner of South Carolina (the Commissioner"), having filed an Application for an Order Requiring Compliance with a Subpoena accompanied by a Memorandum of Law, and exhibits, and the Court having considered the Application together with its supporting papers, having heard arguments from both parties, and good cause having been shown, it is hereby,

ORDERED that the Commissioner's Application for an Order Granting Compliance with a Subpoena is **GRANTED**, and Integrated Capital Strategies, LLC ("ICS") shall fully comply the Subpoena served on it by the Securities Division of the Office of the Attorney General (the "Securities Division") on April 9, 2014, by producing to the Securities Division any and all documents within its possession, custody, or control responsive to the Subpoena no later than _____, 2014; and

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this matter for all purposes necessary and appropriate to insure compliance with this Order.

IT IS SO ORDERED.

The Honorable
Circuit Court Judge

This _____ day of _____, 2014.
Columbia, South Carolina

2014CP400 3389

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

ALAN WILSON, SECURITIES)
COMMISSIONER OF SOUTH)
CAROLINA,)

Applicant,)

v.)

INTEGRATED CAPITAL)
STRATEGIES, LLC,)

Respondent.)

Case No. 2014-CP-_____

RULE TO SHOW CAUSE

RICHLAND COUNTY
FILED
2014 MAY 23 PM 12:15
JERAMETTE W. COBRIDGE
C.C.P. & C.S.

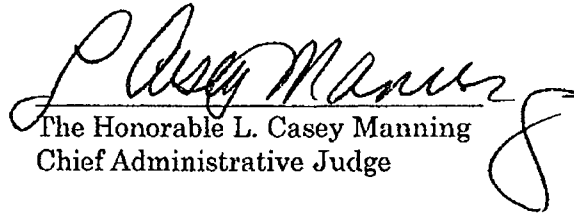
The Applicant, Alan Wilson, Securities Commissioner of South Carolina (the "Commissioner"), having filed an Application for an Order Requiring Compliance with a Subpoena accompanied by a Memorandum of Law, and the Court having considered the Application together with its supporting papers, and good cause having been shown, it is hereby,

ORDERED that Integrated Capital Strategies, LLC ("ICS") appear on June 10th, 2014, at 10:00 am before the Richland County Court of Common Pleas, to show cause, if any there be, why it should not be ordered by this Court to produce documents pursuant to the subpoena served upon in in connection with the Commissioner's investigation, File No. 14023; and

IT IS FURTHER ORDERED that service of any notices or other documents required or permitted by this order may be accomplished by any means, including, but not limited to, telefax, email, overnight courier, personal delivery, or U.S. mail; and

IT IS FURTHER ORDERED that, no later than June 3, 2014, the Respondent shall deliver to the Commissioner and file with the Court any statement or memorandum of law in opposition to the Application and any papers in support thereof.

IT IS SO ORDERED.


The Honorable L. Casey Manning
Chief Administrative Judge

This 23 day of May, 2014.
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Alan Wilson, Securities Commissioner of
South Carolina,

Civil Action No.: 2014-CP-40-3389

Applicant,

vs.

Integrated Capital Strategies, LLC,

Respondent.

**RESPONSE IN OPPOSITION TO
SECURITIES COMMISSIONER'S
APPLICATION FOR AN ORDER
REQUIRING COMPLIANCE WITH
A SUBPOENA**

RICHLAND COUNTY
FILED
2014 JUN -3 PM 4:05
JANETTE W. FOSBIE
C.C.P. 26 S.

NOW COMES Integrated Capital Strategies, LLC ("ICS"), by and through undersigned counsel, and submits its Response in Opposition to the Securities Commissioner's Application for an Order Requiring Compliance with a Subpoena.

I. PROCEDURAL HISTORY

On April 9, 2014, the Securities Division of the Office of the Attorney General of South Carolina ("Attorney General") issued a subpoena to ICS pursuant to the South Carolina Uniform Securities Act, S.C. Code Ann. § 35-1-101, *et seq.* The Attorney General purportedly wishes to investigate the offer and sale of securities by CertusHoldings, Inc. ("CertusHoldings") and CertusBank NA ("CertusBank") in and from South Carolina. While the Attorney General states in his April 25, 2014 letter to ICS that his "inquiry should not be construed as an indication that any violations of the law have occurred," the underlying premise of his investigation and issuance of subpoenas is blatantly unlawful. By letter dated May 5, 2015, ICS objected to the subpoena on several grounds.

On May 23, 2014, Alan Wilson, Securities Commissioner of South Carolina (hereinafter "Attorney General") filed an Application for an Order Requiring Compliance with the Subpoena.

The Attorney General's actions are erroneous and without jurisdiction and its Application should therefore be denied.

II. BACKGROUND

ICS is a corporation organized under the laws of Delaware with its principal place of business in Charlotte, North Carolina. ICS is neither organized under nor has its principal place of business in South Carolina.

ICS' Member-Managers ("Members") founded CertusHoldings, Inc. (formerly Blue Ridge Holdings, Inc.), a Delaware corporation with its principal place of business in Atlanta, Georgia. CertusHoldings is subject to the jurisdiction of the Federal Reserve pursuant to the Bank Holding Company Act. CertusBank is a nationally chartered bank with more than thirty (30) branches in North Carolina, South Carolina, Georgia, and Florida. It is a wholly-owned subsidiary of CertusHoldings.

CertusHoldings was founded with the understanding that a new national bank would emerge with a strategy to buy the remains of failed or failing financial institutions and make them profitable. In just three short years, CertusBank grew from four (4) to seven hundred (700) employees, launched banking operations in four southern states, and amassed control of over \$1.7 billion in assets. The founders of CertusHoldings and CertusBank, who all happen to be African American, built CertusBank into the largest African American-founded and operated financial institution in American history.

CertusBank became the first bank to receive a shelf charter after the passage of the Dodd-Frank legislation. CertusBank's business plan was endorsed by many members of the United States Congress and certain federal bank regulatory authorities. Today, CertusBank is one of only a few national banks in the United States which holds a shelf charter from the United States

Government, enabling it to purchase assets in any state in the country. In order to execute its strategy, CertusHoldings was initially capitalized by a commitment of \$500 million in private equity through a small group of investors—none of whom are residents of the State of South Carolina.

The founders of ICS did not initially come together for the purpose of founding a new bank. Instead, their initial vision was to form an asset management group to purchase distressed properties from the portfolios of struggling financial institutions, to return the properties to profitability, and to sell the properties for a gain. As the ICS founders approached equity investors for their new venture, what was impressive to the investors was the ability of ICS's founders to obtain something of immense value which was otherwise out of their reach—a shelf charter for a national bank.

In the post-financial crisis world, the investors knew that the likelihood of equity hedge fund managers being permitted to participate in the establishment of a new federally chartered bank under the existing political administration was somewhere between remote and impossible. Thus, it was actually a potential equity investor who first suggested to the ICS founders that they should instead seek financial backing to start their own bank. This suggestion was echoed by many members of the United States Congress and several banking officials with the Federal Deposit Insurance Corporation ("FDIC").

In December 2009, application was first made with the United States Office of the Comptroller of the Currency ("OCC") by CertusHoldings for a shelf charter to operate a new bank. At the same time, the ICS founders were also invited to speak to equity investment groups about the opportunity to invest in their new bank. None of the investment groups were located in the State of South Carolina.

While they met with entry-level investors or small portfolio investors, the ICS founders focused primarily on the largest and most sophisticated equity investors in the country, all of whom were and are located outside the State of South Carolina. The ICS founders were invited to meet with hedge fund investors, including Paulson Management II ("Paulson") (founded by billionaire John Paulson), Tricadia Capital Management ("Tricadia"), BlueMountain Capital Management ("BlueMountain"), King Street Capital Management ("KingStreet"), and other groups that managed and invested billions of dollars.

Within six months of seeking application for its shelf charter with the OCC, CertusHoldings had received commitments for up to \$500 million of equity investment from a small group of investors including Paulson, Tricadia, BlueMountain and KingStreet, and had also received conditional approval of its application for a shelf charter. Again, none of the aforementioned investors are residents of the State of South Carolina.

As a part of CertusBank's shelf charter application process, the OCC and the FDIC explored the wisdom of permitting a new shelf-chartered bank to be backed by private equity funding. The OCC and FDIC were concerned in part that the independence of the bank may be compromised if outside investors were allowed to exert control over the institution by virtue of its investment. As a result, the federal government placed restrictions on the investors permitted to provide the equity capital backing of CertusBank. Significantly, the investors were each restricted in the level of their investment with no single investor being permitted to contribute more than 9.9% of the voting shares. The investors were further restricted in that they were expressly prohibited from "acting in concert" with one another to influence the operation of the bank.

Full shelf charter status was to be granted to CertusBank upon its first acquisition of a financial institution at which time CertusBank would be born. On January 21, 2011, CertusBank acquired CommunitySouth Bank & Trust, a failed South Carolina bank, through an FDIC auction. In May 2011, CertusBank purchased two more failing banks in Georgia, bringing its total assets under management to approximately \$1.8 billion and its total branches to 30 while only utilizing \$218 million of its available \$500 million in equity investment. Within eighteen months after the acquisition of its small business administration ("SBA") business, CertusBank became the 17th largest of 2,500 SBA lenders in the country and the number one SBA lender in the State of South Carolina.

The decision was made to relocate CertusBank's headquarters from Charlotte, North Carolina to Greenville, South Carolina for a host of reasons, including its central location along the I-85 corridor and the vibrant Greenville economy. Additionally, the relocation to Greenville was encouraged by the State of South Carolina, which committed tax credits of \$20 million. The Greenville location also allowed CertusBank to grow without being forced to compete with larger national banks and other financial institutions located in Charlotte, North Carolina.

Given the nature of the distressed assets being acquired by CertusBank, it was anticipated that its early years would be tumultuous and that it likely would experience several years of losses resulting from liquidating non-performing assets that were acquired; the impact of building a technology, risk and compliance infrastructure suitable for a \$5 billion bank that was directed by its regulators; and from accounting and tax impact of loss-share accounting.

As previously stated, neither CertusHoldings nor CertusBank are regulated by state law. Moreover, the relationship among CertusHoldings, CertusBank and ICS is governed by the laws of the United States of America and the laws of the State of New York. The Operating

Agreement executed between CertusBank and the OCC clearly provides that CertusBank was authorized to engage ICS to perform contractual services. At the time the Operating Agreement was executed, the founders of CertusBank were Members of ICS and principal negotiators of the underlying transactions that led to the founding of CertusBank. ICS's Members did in fact found and serve as executives of CertusBank. The Stock Purchase Agreement ("SPA") between CertusHoldings and the company's investors similarly provides that CertusBank could engage ICS to perform services. The SPA is governed by the laws of the State of New York.

Some of CertusHoldings' investors have questioned certain business decisions of former executives of CertusBank and CertusHoldings as it relates to ICS. To properly investigate this matter, one would need to investigate CertusBank and CertusHoldings. Instead, the State of South Carolina through the Office of the Attorney General, issued subpoenas to ICS and others. The Attorney General does not have authority to investigate CertusBank or CertusHoldings, *infra*. National banks are regulated by federal law pursuant to the National Bank Act. Likewise, CertusHoldings is regulated by federal law pursuant to the Bank Holding Company Act.

By issuing subpoenas to ICS, the Attorney General attempts to do indirectly what it cannot do directly—that is to investigate CertusHoldings and CertusBank. The Attorney General's actions are misplaced and erroneous.

CertusBank is a depository institution subject to regular examination by the OCC. The Bank Service Company Act ("Act") provides that whenever a depository institution regularly examined by an appropriate federal banking agency causes services authorized under the Act to be performed for itself, by contract or otherwise, the performance of those services shall be "*subject to regulation and examination by such agency to the same extent as if such services were performed by the depository institution itself on its own premises . . .*" 12 U.S.C

§ 1867(c)(1). Because CertusBank and its service providers are subject to regulation and regular examination by the OCC, any additional effort by the Attorney General in this instance is unlawful, duplicative, and unduly burdensome.

II. ARGUMENT

A. No offer or sale of securities took place in South Carolina.

The Attorney General has no basis or authority to conduct the investigation at issue. The Securities Division of the Office of the Attorney General is charged with enforcing the South Carolina Uniform Securities Act.

S.C. Code § 35-1-201(3)(B) exempts from the requirements of S.C. Code §§ 35-1-301, 0206 and 35-1-104:

a security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by: a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation

S.C. Code § 35-1-201(3)(B).

First, as section 35-1-201(3)(B) exempts CertusBank's securities from the Uniform Securities Act, and as CertusBank is a national bank with its deposits fully insured by the FDIC, the Attorney General simply does not have jurisdiction over CertusBank's securities. Moreover, the subpoena was purportedly issued to ICS pursuant to S.C. Code 35-1-101, *et seq.* As will be discussed, neither CertusHoldings, CertusBank, nor ICS offered or sold any securities in South Carolina. Assuming *arguendo* CertusHoldings or CertusBank offered and sold securities in the State of South Carolina, such transactions would be exempted from the purview of the South Carolina Uniform Securities Act pursuant to S.C. Code § 35-1-201(3)(B).

As a basis for authority, the Attorney General loosely states in its Memorandum of Law that Certus (referring to both CertusBank and CertusHoldings) “offered and sold securities to at least twenty-nine South Carolina residents.” It further states, “[A]s Certus is headquartered in Greenville, South Carolina, numerous statements in connection with the offer and sale of securities were made from South Carolina.”

It is not clear to what the Attorney General is referring. In any event, the contention is incorrect. First, neither CertusHoldings, CertusBank, nor ICS have ever offered or sold any securities in South Carolina. Second, no factual basis is provided nor does one exist for the contention that “numerous statements in connection with the offer and sale of securities were made from South Carolina.”

The Attorney General’s authority is limited under the South Carolina Uniform Securities Act to conduct relating to the offer or sale of securities in South Carolina. See S.C. Code § 35-1-301 (sale of securities in this State); S.C. Code §§ 35-1-401(a), 403(a) (broker dealers and investment advisers who transact business in the State); S.C. Code § 35-1-501 (anti-fraud provisions relating to the offer, sale, or purchase of a security within the State). “An ‘offer’ or ‘offer to sell’ includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. A ‘sale’ includes every contract of sale of or disposition of a security or interest in a security for value.” Biales v. Young, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) (citing S.C. Code Ann. § 35-1-20(10)(a)-(b)). Moreover, if no value is given in a transaction and no affirmative investment decision is made, there can be no offer or sale of securities. See Register v. Cameron & Bakley Co., 467 F. Supp. 2d 519, 533 (D.S.C. 2006) (“Instead of giving up some tangible and definable consideration, participants earned stock through labor for the employer. The notion that the exchange of labor suffices to constitute the

type of investment which the Securities Acts were intended to regulate was rejected by the Supreme Court . . . ”).

Here, none of these actions took place. Except with respect to certain employees of CertusBank, the stockholders of CertusHoldings acquired their stock through a private placement offering that took place outside of South Carolina pursuant to the SPA. Moreover, the SPA directs that New York law shall govern disputes arising from the issuance of CertusHoldings' securities. The parties to the SPA further agreed to submit to the jurisdiction of the United States District Court for the Southern District of New York for all legal disputes relating to their investment.

The only possible connection between CertusHoldings and South Carolina is that CertusHoldings granted restricted shares to certain employees of CertusBank who may reside in South Carolina. ICS did not sell these shares to the CertusHoldings shareholders nor did these shareholders pay for the shares. The referenced shares were given to certain CertusBank employees as incentive compensation. Further, the rights under the shares are restricted. Thus, there was no offer or sale of securities as defined by the South Carolina Uniform Securities Act. See S.C. Code Ann. § 35-1-20(10)(a)-(b) (requiring value to be given or offered to be given for an action to constitute an offer or sale of securities); see also Register, 467 F. Supp. 2d at 533.

There has been *no* offer or sale of securities in South Carolina. There is correspondingly no basis for the Attorney General's investigation of ICS by subpoena or otherwise. Absent any information to support its contention that there was an offer and sale of securities in South Carolina, which does not exist, there is no compelling reason for the Attorney General to attempt to submit ICS to the courts of South Carolina through a subpoena or any other measure.

B. The South Carolina Securities Division does not have the same investigative authority as the United States Securities and Exchange Commission.

The fact that ICS, CertusHoldings, and CertusBank¹ have never offered nor sold securities in South Carolina moots much of the Attorney General's argument in its Memorandum of Law. As for the remainder, the Attorney General argues the federal courts' interpretation of the Securities Act provisions can guide this Court in its interpretation of the South Carolina Securities Act. In making this argument, the Attorney General improperly conflates the Federal powers of the Securities and Exchange Commission ("SEC") with the state powers of the South Carolina Securities Division.

Case law supports the notion that if there are federal law securities provisions similar to state law provisions, interpretation of the federal laws can be used to interpret the state laws. Case law does *not* support the notion, however, that a state securities division or state Attorney General has the same authority and powers as the Federal SEC. The Attorney General's arguments essentially suggest this. ("The Court may take guidance from federal courts' interpretation of [provisions related to the enforcement of administrative subpoenas in South Carolina]. Accordingly, [] the Attorney General's authority to issue subpoenas is broad."). ICS does not contest that the Attorney General's powers are broad. However, the powers are not so broad as to include actions that are in no way involved with South Carolina.

¹ The Securities Commissioner argues in its Memorandum of Law that "ICS, while closely related to Certus, cannot assert any claims on Certus' behalf" and vice versa. ICS is not attempting to assert claims on the behalf of CertusBank and CertusHoldings but instead to elucidate the factual relationship between and concerning the parties so that the Court may better understand the issue.

As a catch-all argument to its other meritless arguments, the Attorney General contends the Court should not even consider subject matter jurisdiction when it decides this subpoena enforcement action. In support of its claim, the Attorney General cites to cases where the issue was whether certain actions were subject to SEC regulation at all. See SEC v. Brigadoon Scotch Distributing Co., 480 F.2d 1047, 1053–54 (2nd Cir. 1973) (“[T]he appellants contend that the SEC has no regulatory power over them” . . . “Appellants raise serious questions about whether their activities are subject to regulation by the SEC.”). Here, the issue is different. ICS finds it improper that the South Carolina Attorney General is investigating its actions when the actions at issue did not take place in the state of South Carolina or even involve matters over which the Attorney General has authority. It is important for the Court to determine, as a threshold matter, whether the South Carolina Attorney General has the power to investigate CertusBank and CertusHoldings through ICS as it purports to do. This question would have to be answered in the affirmative—which ICS submits would be erroneous—before the Court should reach the issues of relevance and definiteness of the subpoena.²

In Cuomo v. Clearing House Association, 557 U.S. 2710 (2009), the attorney general for the state of New York requested certain national banks to informally provide non-public information about their practices. This action was challenged by the OCC and a banking trade group. The United States Supreme Court held the attorney general had jurisdiction to initiate litigation to enforce state consumer protection laws against national banks. It further held, however, that the attorney general did *not* have jurisdiction to informally request documents via letter or subpoena from national banks. Therefore, the Court enjoined the attorney general from

² The Attorney General also argues in its brief that the subpoena was served in compliance with the long-arm statute. ICS’s argument is not that the subpoena was served improperly but that the long-arm statute does not give the Attorney General full and proper authority to serve the subpoena in the first instance.

moving forward with his informal request. Here, the South Carolina Attorney General seeks to investigate a national bank's practices through a subpoena issued to ICS. This action has been expressly prohibited by the United States Supreme Court. See Cuomo, 557 U.S. at 536. These facts are analogous to the facts of this case.

C. ICS was not properly served with the subpoena and the Attorney General therefore does not have jurisdiction over ICS.

ICS objects to the subpoena on the grounds that it was not served pursuant to South Carolina's long arm statute. The long arm statute allows local South Carolina courts to have jurisdiction over an out of state resident in certain situations. Here, the issue is a national bank's sale of securities which had no relation to South Carolina. It is clear the Attorney General does not have the authority to investigate this issue. For the Attorney General to then cite South Carolina's long arm statute as a basis for jurisdiction is inapposite and circumvents the holdings of the United States Supreme Court. See Cuomo, 557 U.S. at 536. Thus, the South Carolina long arm statute is not a proper basis for jurisdiction over ICS.

The Attorney General contends the subpoena was validly served pursuant to § 35-1-611(a) (Supp. 2013). S.C. Code Ann. § 35-1-611 specifies the service of process requirements pertaining to securities proceedings. When a person registers to sell or offer securities in South Carolina, that person may "consent [to] appointing the Securities Commissioner the person's agent for service of process in a non criminal action or proceeding against the person" S.C. Code Ann. § 35-1-611(a). If a person, including a nonresident of South Carolina "engages in an act, practice or course of business prohibited . . ." under Chapter 1 of Title 35 and the person has not filed a consent to service of process under subsection (a), then the "act, practice or course of business constitutes the appointment of the Securities Commissioner as the person's agent for service of process" S.C. Code Ann. § 35-1-611(b). For service under subsections (a) and (b)

to be effective, the plaintiff must promptly send notice of the service and a copy of the process, return receipt requested, to the defendant at the address filed in the consent form under subsection (a) or to the last known address of the defendant if no such consent form has been filed. S.C. Code Ann. § 35-1-611(c) (Supp. 2013). Further, plaintiff must file “an affidavit of compliance with subsection (c) in the action or proceeding on or before the return day of the process” Id. Under this statute, it is acceptable for a party to be both the plaintiff and the Securities Commissioner. Id.

ICS was incorporated in Delaware and has its principal place of business in Charlotte, North Carolina. While the Attorney General claims that it has twenty-nine shareholders in South Carolina, ICS maintains that it has never offered for sale or sold any securities in South Carolina and that it has never registered to do so. The Attorney General’s actions are further preempted by S.C. Code Ann. § 35-1-201(3)(B). This being the case, service on ICS has not been properly effectuated pursuant to S.C. Code Ann. § 35-1-611, as there is no evidence that ICS has “engage[d] in an act, practice or course of business prohibited or made actionable . . .” by Chapter 1 of Title 35.

Assuming *arguendo* the Attorney General had evidence that would tend to bring ICS under the purview of § 35-1-611, the Attorney General failed to comply with the requirements of subsection (c). First, the plaintiff must send a notice of the service and a copy of the process to the defendant. S.C. Code Ann. § 35-1-611(c)(1). Next, the plaintiff must file an affidavit of compliance with § 35-1-611(c). The Attorney General did not comply with § 35-1-611(c)(1). Because ICS never applied to sell or offer for sale any securities in South Carolina, and thus did not file a consent to service form, the process should have been served on the office of the Securities Commissioner. This process would only become effective after the Securities

Commissioner sent notice of service and a copy of the service to the Defendant. Here, the Security Commissioner issued the subpoena directly to ICS at its headquarters in Charlotte, North Carolina. The Attorney General has failed to comply with the service provisions contained in § 35-1-611(c).

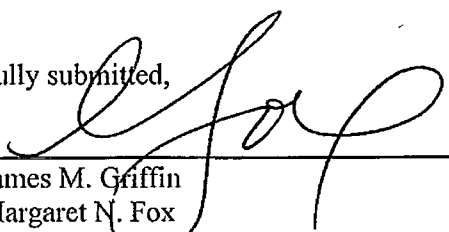
Because service over ICS was not properly effectuated pursuant to the South Carolina long-arm statute or the South Carolina Uniform Securities Act, the Attorney General does not have jurisdiction over ICS.

III. CONCLUSION

In conclusion, ICS has not offered or sold any securities in South Carolina. There is no other proper basis pursuant to which the Securities Division of the Office of the Attorney General may investigate the actions of CertusBank and CertusHoldings through ICS. As a result, ICS respectfully requests the Court deny the Attorney General's Application for an Order Requiring Compliance with a Subpoena.

Respectfully submitted,

By:


James M. Griffin
Margaret N. Fox
LEWIS, BABCOCK & GRIFFIN, L.L.P.
1513 Hampton Street
Columbia, South Carolina
T: (803) 771.8000
F: (803) 733.3541
jmg@lbglegal.com
mnf@lbglegal.com

Attorneys for ICS

June 3, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Alan Wilson, Securities Commissioner of
South Carolina,

Applicant,

vs.

Integrated Capital Strategies, LLC,

Respondent.

Civil Action No.: 2014-CP-40-3389

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2014 JUN -3 PM 4:55
JEANETTE W. MORRIS
C.C. & C.S.

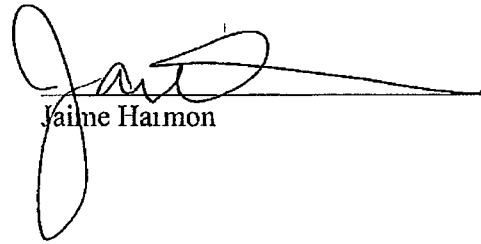
I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin L.L.P, attorneys for the Respondent do hereby certify that I have served a copy of the foregoing **Respondent's Response in Opposition to Securities Commissioner's Application for an Order Requiring Compliance with a Subpoena** in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Alan Wilson
Attorney General
Securities Commissioner
1000 Assembly Street, Room 519
Columbia, SC 29201

Ian P. Weschler
Assistant Attorney General
Securities Division
1000 Assembly Street, Room 519
Columbia, SC 29201

The Honorable L. Casey Manning
1701 ~~Richland Street~~ *Mann St.*
Columbia, SC 29201

Columbia, South Carolina
June 3, 2014



Jaime Harmon

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-CP-40-3389
Appellate Case No. 2014-001652

Alan Wilson, Securities Commissioner
of South Carolina,

Respondent,

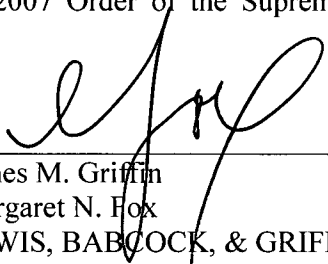
v.

Integrated Capital Strategies, LLC,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material, and that Appellant has complied with the August 13, 2007 Order of the Supreme Court on Personal Data Identifiers.



James M. Griffin
Margaret N. Fox
LEWIS, BABCOCK, & GRIFFIN, L.L.P.
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000
(803) 733-3534 (facsimile)

Columbia, South Carolina
March 25, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
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G Thomas Cooper, Jr., Circuit Court Judge

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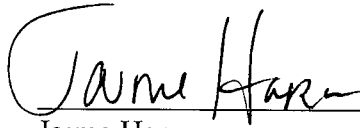
Appellant.

PROOF OF SERVICE

I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin L.L.P, attorney for Appellant Integrated Capital Strategies, LLC, do hereby certify that I have served a copy of the foregoing Record on Appeal, by mailing a copy of the same by U.S. Mail to the following address on March 25, 2015:

RECEIVED
MAR 25 2015
SC Court of Appeals

Alan Wilson, Securities Commissioner
Tracy Meyers, Deputy Securities Commissioner
Ian P. Weschler, Assistant Attorney General
Securities Division
1000 Assembly Street, Room 519
Columbia, SC 29201



Jaime Harmon

Columbia, South Carolina
March 25, 2015