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13 **UNITED STATES BANKRUPTCY COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

14 In re)
15)
16 IMPERIAL CAPITAL BANCORP, INC.,)
Debtor.)

Case No. 09-19431-LA11
Chapter 11

17)
18)
19 Tax Identification Number:)
95-4596322)

**NOTICE OF SUBMISSION OF (1) AMENDED
CHAPTER 11 PLAN OF REORGANIZATION
PROPOSED BY HOLDCO ADVISORS L.P. AND
DEBTOR IMPERIAL CAPITAL BANCORP, INC.,
A DELAWARE CORPORATION DATED
JANUARY 5, 2012, AND REDLINED PAGES OF
THE PLAN; (2) REVISED SECOND AMENDED
DISCLOSURE STATEMENT RE CHAPTER 11
PLAN OF REORGANIZATION PROPOSED BY
HOLDCO ADVISORS L.P. AND DEBTOR
IMPERIAL CAPITAL BANCORP, INC., A
DELAWARE CORPORATION DATED
JANUARY 5, 2012, AND REDLINED
DISCLOSURE STATEMENT; AND (3) REVISED
BALLOTS**

Hearing

Date: January 17, 2012
Time: 2:00 p.m.
Place: Courtroom 2
Room 118
Jacob Weinberger U.S. Ct.
325 West "F" Street
San Diego, CA 92101-6991

1 Imperial Capital Bancorp, Inc. and Holdco Advisors, L.P., as joint proponents
2 (collectively, the "Plan Proponents") hereby advise the Court and parties in interest that since having
3 filed the "Second Amended Chapter 11 Plan of Reorganization Proposed by Holdco Advisors, L.P.
4 and Imperial Capital Bancorp, Inc., A Delaware Corporation dated January 5, 2012," (the "Plan")
5 and the "Revised Second Amended Disclosure Statement re Chapter 11 Plan of Reorganization
6 Proposed by Holdco Advisors, L.P. and Imperial Capital Bancorp, Inc., A Delaware Corporation
7 dated January 5, 2012" (the "Disclosure Statement") on January 5, 2012, the Plan Proponents have
8 had ongoing discussions with the Official Unsecured Creditors Committee (the "Committee") that
9 have resulted in revisions to both the proposed Plan and Disclosure Statement. The Plan Proponents
10 are advised that the Committee will be filing a pleading that sets forth the Committee's support of the
11 attached forms of Plan and Disclosure Statement, with a reservation of rights, including its right to
12 object to the Plan, with respect to (i) the information to be contained in the Plan Supplement,
13 including the identities of the members of the New Board and the Plan Committee, the identity of the
14 trustee for each of the D&O Litigation Trust and the Proceeds Distribution Election Trust, and the
15 trust agreement for each of the Proceeds Distribution Election Trust and the D&O Litigation Trust,
16 (ii) any amendments or modifications to the Plan or Disclosure Statement and (iii) any other material
17 change in circumstances.

18 Accordingly, the Plan Proponents hereby submit the following documents:

- 19 1. The revised proposed Plan is attached hereto as Exhibit "1;"
- 20 2. The revised proposed Disclosure Statement is attached hereto as Exhibit "2;"
- 21 3. Redlined pages of the proposed Plan that reflect changes made to the Plan
22 filed on January 5, 2012 are attached hereto as Exhibit "3;"
- 23 4. Redlined proposed Disclosure Statement that reflects the changes to the
24 Disclosure Statement filed on January 6, 2012 is attached hereto as Exhibit "4;" and
- 25 5. Revised Ballots for voting Classes 4, 5 and 6 are attached as Exhibit "5."

1 DATED: January 12, 2012

/s/ Eve H. Karasik

2 GARY E. KLAUSNER

EVE H. KARASIK

3 GREGORY K. JONES, Members of

STUTMAN, TREISTER & GLATT

PROFESSIONAL CORPORATION

4 Reorganization Counsel for Debtor and Debtor in
5 Possession

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EXHIBIT 1

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11 Counsel for
12 Holdco Advisors L.P., Plan Proponent

13 Holdco Advisors L.P.'s Mailing Address:
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16 New York, NY 10004

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

17 In re

18 IMPERIAL CAPITAL BANCORP, INC., a
19 Delaware corporation,

Debtor.

20 Tax Identification Number:

21 95-4596322

)
)
) Case No. 09-19431-LA11
)
) Chapter 11
)
) **SECOND AMENDED CHAPTER 11**
) **PLAN OF REORGANIZATION**
) **PROPOSED BY HOLDCO ADVISORS**
) **L.P. AND DEBTOR IMPERIAL CAPITAL**
) **BANCORP, INC., A DELAWARE**
) **CORPORATION DATED JANUARY 5,**
) **2012**

Plan Confirmation Hearing

) Date: March 13, 2012
) Time: 2:00 p.m.
) Place: Courtroom 2, Room 118
) Jason Weinberger U.S. Courthouse.
) 325 West "F" Street
) San Diego, CA 92101-6991
)
)
)

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1
2 **ARTICLE I.**
3 **INTRODUCTION**

4 This Second Amended Plan of Reorganization is the Plan that Holdco Advisors L.P. and
5 Debtor, Imperial Capital Bancorp Inc. seek to confirm pursuant to 11 U.S.C. § 1129.
6

7 **ARTICLE II.**
8 **DEFINITIONS AND RULES OF CONSTRUCTION**

9 **A. Specific Definitions.**

10 In addition to such other terms as are defined in other Sections hereof, the following terms
11 shall have the following meanings:

12 1. ***“Administrative Claim”*** means a Claim for payment of an administrative
13 expense of a kind specified in section 503(b) of the Code and entitled to priority pursuant to sections
14 507(a)(1) or 507(b) of the Code, including compensation of and reimbursement of costs to
15 Professionals, and all fees and charges assessed against the Debtor and the Estate under 28 U.S.C.
16 section 1930.

17 2. ***“Administrative Claim Objection Bar Date”*** means the deadline for the
18 Reorganized Debtor to object to Administrative Claims Filed in the Case which deadline shall be the
19 later of: (a) 120 days after the Effective Date, or (b) 120 days after the particular request for an
20 administrative expense payment has been filed, except as extended by an agreement between the
21 Creditor and the Reorganized Debtor, or by order of the Bankruptcy Court.

22 3. ***“Affiliate”*** means the term “affiliate” as defined in section 101(2) of the
23 Bankruptcy Code.

24 4. ***“Allowed Administrative Claim”*** means all or that portion of an Administrative
25 Claim which is an Allowed Claim.

26 5. ***“Allowed Claim”*** means that portion of a Claim which: (a) was scheduled by
27 the Debtor pursuant to section 521 of the Code, other than a Claim scheduled as disputed, contingent
28 or unliquidated; (b) is set forth in a proof of Claim which was timely filed with the Bankruptcy

1 Court, and as to which no objection has been filed within the time provided by the Plan; or (c) if a
2 proof of Claim was timely filed and an objection to the proof of Claim was filed, has been allowed
3 by a Final Order.

4 6. **“Allowed Convenience Claim”** means all or that portion of a Convenience
5 Claim which is an Allowed Claim.

6 7. **“Allowed Priority Claim”** means all or that portion of a Priority Claim which is
7 an Allowed Claim.

8 8. **“Allowed Priority Tax Claim”** means all or that portion of a Priority Tax Claim
9 which is an Allowed Claim.

10 9. **“Allowed Secured Claim”** means an Allowed Claim secured by a lien on any
11 property of the Estate, but only to the extent of the value of the interest of the holder of such
12 Allowed Claim in such property, the calculation of which shall not include any demand for default
13 interest, penalty interest or other similar demands.

14 10. **“Allowed Unsecured Claim”** means all or that portion of an Unsecured Claim
15 which is an Allowed Claim.

16 11. **“Avoidance Actions”** means any and all avoidance, recovery, subordination or
17 other actions or remedies that may be brought on behalf of the Debtor, the Reorganized Debtor or its
18 Estate under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation,
19 actions or remedies under sections 510(c), 542, 543, 544, 545, 547, 548, 549, 550, 551, 552 and 553
20 of the Bankruptcy Code.

21 12. **“Ballot”** means a ballot sent to Holders of Claims to be counted as a vote to
22 accept or reject the Plan.

23 13. **“Bankruptcy Code”** means title I of the Bankruptcy Reform Act of 1978, as
24 amended from time to time, as set forth in sections 101 *et seq.* of title 11 of the United States Code.

25 14. **“Bankruptcy Court”** means the United States Bankruptcy Court for the
26 Southern District of California, having jurisdiction over the Case and, to the extent of any reference
27 made pursuant to section 157 of title 28 of the United States Code, the unit of such District Court
28

1 pursuant to section 151 of title 28 of the United States Code; or, in the event such court ceases to
2 exercise jurisdiction over the Case, such court or unit thereof that exercises jurisdiction over the
3 Case in lieu thereof.

4 15. **"Bankruptcy Rules"** means the Federal Rules of Bankruptcy Procedure and the
5 Local Bankruptcy Rules for the Bankruptcy Court, to the extent applicable to the Case, including all
6 amendments thereto to the extent such amendments are applicable to the Case.

7 16. **"Bar Date Order"** means the Order (A) Setting Bar Dates for Filing Proofs of
8 Claim, and (B) Approving the Form and Manner of Notice Thereof, dated July 9, 2010 [Docket No.
9 70].

10 17. **"Business Day"** means any day except Saturday, Sunday, "legal holiday" (as
11 that term is defined in Bankruptcy Rule 9006(a)) or any day on which commercial banks in San
12 Diego, California are authorized by law to close.

13 18. **"Case"** means the chapter 11 case number 09-19431-LA11 under the Code,
14 commenced by the Debtor on the Petition Date.

15 19. **"Cash"** means legal tender of the United States of America or the equivalent
16 thereof, and with respect to the Disputed Reserve, including bank deposits, checks and readily
17 marketable securities or instruments issued by an Entity, including, without limitation, readily
18 marketable direct obligations of, or obligations guaranteed by, the United States of America,
19 commercial paper of domestic corporations carrying a Moody's rating of "A" or better, or equivalent
20 rating of any other nationally-recognized rating service, or interest-bearing certificates of deposit or
21 other similar obligations of domestic banks or other financial institutions having a shareholders'
22 equity or capital of not less than one hundred million dollars (\$100,000,000) having maturities of not
23 more than one (1) year, at the then best generally available rates of interest for like amounts and like
24 periods.

25 20. **"Causes of Action"** means all claims, actions, causes of action, including the
26 FDIC Causes of Action, the Committee Adversary Complaint, and the Former Officers and
27 Directors Causes of Action, choses in action, suits, debts, dues, sums of money, accounts,
28

1 reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises,
2 variances, trespasses, damages, judgments, remedies, rights of set off, third-party claims,
3 subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims and
4 cross claims (including, without limitation, all claims and any avoidance, recovery, subordination or
5 other actions against insiders and/or any other Entities under the Bankruptcy Code, including
6 Avoidance Actions) of the Debtor, the Debtor in Possession, the Reorganized Debtor and/or the
7 Estate (including, without limitation, those actions set forth in the Plan Supplement) that are or may
8 be pending on, or may be instituted by the Reorganized Debtor after, the Effective Date against any
9 Entity, based in law or equity, including, without limitation, under the Bankruptcy Code, whether
10 direct, indirect, derivative or otherwise and whether asserted or unasserted as of the Effective Date.

11 21. **"Certificate"** means any instrument, including, without limitation, any note,
12 bond, indenture or other document evidencing or creating any indebtedness or obligation of the
13 Debtor, evidencing a Claim against the Debtor.

14 22. **"Claim"** means the term as defined in section 101(5) of the Code.

15 23. **"Claims Objection Bar Date"** means the deadline for the Reorganized Debtor
16 to object to Claims Filed in the Case (except for Administrative Claims), which deadline shall be the
17 later of (a) 90 days after the Effective Date; or (b) 90 days after the relevant proof of Claim has been
18 filed, except as extended by an agreement between the Creditor and the Reorganized Debtor or by
19 order of the Bankruptcy Court.

20 24. **"Claims Register"** means the official register of proofs of Claim filed in the
21 Case and maintained by the clerk of the Court.

22 25. **"Class"** means a group of Claims or Interests classified together in a class
23 designated in Article III.

24 26. **"Code"** means the Bankruptcy Code.

25 27. **"Committee"** means the Official Committee of Unsecured Creditors appointed
26 by the Office of the United States Trustee in the Case pursuant to section 1102(a), as it may be
27 constituted from time to time, and its current and former members.

1 28. **“Committee Adversary Complaint”** means the *Complaint for Breach of*
2 *Fiduciary Duty*, filed in adversary proceeding number 11-90354 (Bankr. S.D. Cal.) on July 15, 2011,
3 as further amended from time to time.

4 29. **“Confirmation Date”** means the date of Entry of the Confirmation Order.

5 30. **“Confirmation Hearing”** means the hearing before the Bankruptcy Court to be
6 held in accordance with section 1128(a) of the Code.

7 31. **“Confirmation Order”** means the order of the Bankruptcy Court confirming
8 the Plan pursuant to section 1129 of the Code.

9 32. **“Convenience Claim”** means any General Unsecured Claim, other than a
10 TOPrS Unsecured Claim, that is (i) an Allowed Claim for an amount of \$7,500 or less or (ii) is an
11 Allowed Claim in an amount greater than \$7,500, but which is reduced to \$7,500 by election of the
12 holder thereof pursuant to such holder’s ballot. In no event shall any Convenience Claim exceed
13 \$7,500 for the purposes of allowance, treatment or Distribution under this Plan.

14 33. **“Creditor”** means any Person that is the holder of a Claim.

15 34. **“Cure”** means the payment of Cash by the Debtor or Reorganized Debtor, as
16 applicable, or the distribution of other property (as the Debtor or the Reorganized Debtor, as
17 applicable, and the counterparty to the executory contract or unexpired lease may agree or the
18 Bankruptcy Court may order), as necessary to (a) cure a monetary default by the Debtor in
19 accordance with the terms of an executory contract or unexpired lease of the Debtor and (b) permit
20 the Debtor to assume such executory contract or unexpired lease under sections 365 and 1123 of the
21 Bankruptcy Code.

22 35. **“Cure Bar Date”** means the date that is thirty days after the Effective Date.

23 36. **“D&O Litigation Trust”** means the litigation trust described in Section V.Q.
24 below.

25 37. **“D&O Litigation Trustee”** means the Person selected by Holdco in its sole
26 discretion to serve as trustee of the D&O Litigation Trust, and who will be identified in the Plan
27 Supplement.
28

1 38. ***“D&O Litigation Trust Agreement”*** means the agreement, substantially in the
2 form set forth in the Plan Supplement, between the Debtor and the D&O Litigation Trustee,
3 governing the D&O Litigation Trust, which agreement shall be in form and substance acceptable to
4 the Plan Proponents.

5 39. ***“D&O Litigation Trust Assets”*** means the Former Officer and Director Causes
6 of Action, and all proceeds and products of the Former Officer and Director Causes of Action.

7 40. ***“D&O Litigation Trust Interests”*** means the beneficial interests in the D&O
8 Litigation Trust issued to holders of Allowed General Unsecured Claims under the Plan.

9 41. ***“Debtor”*** means Imperial Capital Bancorp, Inc., a Delaware corporation,
10 whether as a debtor or as a debtor in possession.

11 42. ***“Disclosure Statement”*** means the **REVISED SECOND AMENDED**
12 **DISCLOSURE STATEMENT RE SECOND AMENDED CHAPTER 11 PLAN OF**
13 **REORGANIZATION PROPOSED BY HOLDCO ADVISORS L.P. FOR DEBTOR**
14 **IMPERIAL CAPITAL BANCORP, INC., A DELAWARE CORPORATION DATED**
15 **JANUARY 5, 2012** (and all annexes attached thereto or referenced therein) that relates to this Plan
16 and is approved pursuant to section 1125 of the Code in an order Entered by the Bankruptcy Court,
17 as such Disclosure Statement may be amended, modified or supplemented.

18 43. ***“Disputed Claim”*** means any Claim which is not an Allowed Claim.

19 44. ***“Disputed Reserve”*** means the reserve for Disputed Claims as forth in Article
20 VI.B. of the Plan.

21 45. ***“Distribution”*** means any distribution of Cash or otherwise made under the
22 Plan by the Debtor or the Reorganized Debtor, the D&O Litigation Trustee, or the Proceeds
23 Distribution Election Trustee, as applicable.

24 46. ***“Distribution Date”*** means (i) the Initial Distribution Date, and (ii) any
25 subsequent date on which a Distribution is made by the Reorganized Debtor.

1 47. **“Distribution Record Date”** means the record date for determining the
2 entitlement of Holders of Claims to receive Distributions under the Plan on account of Allowed
3 Claims. The Distribution Record Date shall be two business days after the Confirmation Date.

4 48. **“Effective Date”** means the first Business Day on which all the conditions
5 precedent to the effectiveness of the Plan are satisfied or waived as provided in this Plan, provided,
6 however, that if a stay, injunction or similar provision of the Confirmation Order is in effect, the
7 Effective Date shall be the first Business Day after such stay, injunction or similar proceeding is no
8 longer in effect.

9 49. **“Effective Date Deferral Election”** means the right of Holdco to elect, in its
10 sole and absolute discretion, to defer the occurrence of the Effective Date pursuant to Article IX C.
11 below.

12 50. **“Election Pro Rata”** means the ratio of the amount of an Allowed General
13 Unsecured Claim held by a Holder that makes the Proceeds Distribution Election to the aggregate
14 amount of all General Unsecured Claims that have not yet been disallowed who elect and are entitled
15 to receive the Proceeds Distribution Election pursuant to this Plan.

16 51. **“Entered”** or **“Entry”** means the recording on the Bankruptcy Court docket for
17 the Case by the clerk of the Bankruptcy Court.

18 52. **“Estate”** means the estate of the Debtor created on the Petition Date by
19 section 541 of the Bankruptcy Code.

20 53. **“Fair Market Value Price”** means a price equal to fair market value as
21 determined by the Board of Directors in good faith as of a date not more than 30 days prior to the
22 closing date of the applicable transaction.

23 54. **“FDIC”** means the Federal Deposit Insurance Corporation, either in its
24 corporate capacity or in its capacity as receiver for Imperial Capital Bank.

25 55. **“FDIC Causes of Action”** means the causes of action filed by the Debtor
26 against the FDIC, as may be amended or supplemented from time to time, including and styled: (i)
27 *Complaint (I) To Avoid and Recover Transfers Pursuant to Sections 547, 548, and 550 of the*
28

1 *Bankruptcy Code; (II) For a Declaratory Judgment That Certain Insurance Policies are Property of*
2 *the Estate; (III) For Indemnification, Contribution, and Reimbursement; (IV) For Damages for*
3 *Breach of Expense Sharing Agreement; (V) For Reimbursement of Amounts Paid to Employees*
4 *Under Benefit Plans; (VI) For a Judgment For All Amounts Due; and (VII) For a Declaratory*
5 *Judgment For Claims Against the Receivership and Deeming Void the FDIC-R's Disallowance of*
6 *the Receivership Claims* filed by the Debtor against the FDIC on October 5, 2010 in the District
7 Court for the Southern District of California, Case No. 10-cv-2067-LAB(LDA); (ii) the FDIC Tax
8 Refund Cause of Action; (iii) *Objection to Capital Maintenance Claims' Portion of Federal Deposit*
9 *Insurance Corporation's Proof of Claim* filed by the Debtor in the Bankruptcy Court for the Central
10 District of California on July 29, 2010 [Docket No. 228]; and (iv) *Objection to Relief Requested in*
11 *Claims Contained in Paragraphs 21 and 23 to 46 in the Proof of Claim filed by the Federal Deposit*
12 *Insurance Corporation, as Receiver for Imperial Capital Bank* filed by the Debtor in the Bankruptcy
13 Court for the Central District of California on June 16, 2011 [Docket No. 495].

14 56. ***"FDIC Non-Priority Claims"*** means unsecured Claims, if any, and if and to
15 the extent Allowed, held by the Federal Deposit Insurance Corporation, either in its corporate
16 capacity or as receiver for Imperial Capital Bank, that are not FDIC Priority Claims.

17 57. ***"FDIC Priority Claims"*** means unsecured Claims, if any, and if and to the
18 extent Allowed, held by the Federal Deposit Insurance Corporation as receiver for Imperial Capital
19 Bank, N.A. entitled to priority under sections 507(a)(9) or 365(o) of the Bankruptcy Code.

20 58. ***"FDIC Priority Claims Determination"*** means the entry of a Final Order
21 determining the allowance or disallowance of all FDIC Priority Claims.

22 59. ***"FDIC Tax Refund Cause of Action"*** means the *Complaint (I) Seeking a*
23 *Declaratory Judgment Regarding the Ownership of Tax Refunds; and (II) for Actual and Punitive*
24 *Damages and for an Injunction for Violation of the Automatic Stay* filed by the Debtor against the
25 FDIC and pending in the District Court for the Southern District of California, Case No. 10-cv-1991-
26 LAB(WMC).

1 60. ***“File” or “Filed”*** means, with respect to any pleading, entered on the docket of
2 the Chapter 11 Case and properly served in accordance with the Bankruptcy Rules or with respect to
3 a Claim, a Claim for which a proof of Claim has been properly and timely filed in accordance with
4 the Bar Date Order.

5 61. ***“Final Order”*** means an order or judgment Entered by the Bankruptcy Court
6 or any other court exercising jurisdiction over the subject matter of the Case and the parties: (i) that
7 has not been reversed, stayed, modified or amended; (ii) as to which no appeal, certiorari
8 proceeding, reargument, or other review or rehearing has been requested or is still pending; and (iii)
9 as to which the time for filing a notice of appeal or petition for certiorari shall have expired.

10 Notwithstanding, and in lieu of the foregoing, with respect to the Confirmation Order, Final Order
11 means an order or judgment of the Bankruptcy Court confirming the Plan and with respect to which
12 no stay pending appeal is in effect; provided that for the FDIC Priority Claim Determination only (i)
13 and (iii) of this definition applies.

14 62. ***“Former Officer and Director Causes of Action”*** means any and all Causes of
15 Action, including the Committee Adversary Complaint that the Bankruptcy Court authorized the
16 Committee to bring and prosecute against the officers and/or directors of the Debtor pursuant to the
17 Bankruptcy Court's October 7, 2011 order.

18 63. ***“Free Cash”*** means (a) Cash owned by the Debtor immediately prior to the
19 Effective Date plus (b) Cash proceeds from (i) any loan participation, loan, investment financial
20 instrument, or anything similar to any of the foregoing, that is owned by the Debtor immediately
21 prior to the Effective Date; (ii) any Causes of Action (including the FDIC Causes of Action and the
22 Former Officer and Director Causes of Action); and (iii) any other tangible or intellectual property
23 assets that are owned by the Debtor immediately prior to the Effective Date plus (c) amounts, if any,
24 refunded under the Debtor's insurance policies, plus (d) proceeds or products of Proceeds
25 Distribution Election Trust Assets realized at any time, even after they have been conveyed to the
26 Proceeds Distribution Election Trust.

1 64. **“General Unsecured Claims”** means Claims against the Debtor that are not
2 Secured Claims, Administrative Claims, Priority Tax Claims, Non-FDIC Priority Claims, FDIC
3 Priority Claims or Equity Interests, including the FDIC Non-Priority Claims, TOPrS Unsecured
4 Claims and Other Unsecured Claims.

5 65. **“Governmental Entity”** means any legislature, agency, bureau, department,
6 commission, court, political subdivision, tribunal or other instrumentality of government whether
7 local, state, federal or foreign, and such other entities as defined and described in section 101(27) of
8 the Code.

9 66. **“Holdco”** means Holdco Advisors L.P.

10 67. **“Holdco Fees”** means the reasonable, documented third party fees and
11 expenses (including, without limitation, professional fees and expenses for legal services and for
12 financial advisory services) of Holdco incurred through the Effective Date related to the Plan
13 (including with respect to potential modifications thereof), the Disclosure Statement and all other
14 Plan documents and matters related thereto.

15 68. **“Holder or Holders”** mean any Entity or Entities holding a Claim against or an
16 Interest in the Debtor.

17 69. **“Impaired”** means, with respect to a Claim, Equity Interest, or Class of Claims
18 or Equity Interests, “impaired” within the meaning of sections 1123(a)(4) and 1124 of the
19 Bankruptcy Code.

20 70. **“Initial Distribution Date”** means the Effective Date, or as soon as reasonably
21 practicable after the Effective Date.

22 71. **“Insider”** means the term as defined in section 101(31) of the Code.

23 72. **“Interests”** means any equity interests, ownership rights, or shares in the
24 Debtor (including, without limitation, all capital stock, stock certificates, common stock, preferred
25 stock, partnership interests, membership and other interests in a limited liability company, rights,
26 options, warrants, contingent warrants, convertible or exchangeable securities, investment securities,
27 subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share
28

1 in the Debtor, partnership interests in the Debtor's stock appreciation rights, conversion rights,
2 repurchase rights, redemption rights, dividend rights, preemptive rights and liquidation preferences,
3 puts, calls or commitments of any character whatsoever relating to any such equity, ownership
4 interests or shares of capital stock of the Debtor or obligating the Debtor to issue, transfer or sell any
5 shares of capital stock) whether or not certificated, transferable, voting or denominated "stock" or a
6 similar security, and any Claim relating to or arising from any of the foregoing.

7 73. "**Internal Revenue Code**" means the Internal Revenue Code of 1986, as
8 amended.

9 74. "**Investment Company Act**" means the Investment Company Act of 1940, 15
10 U.S.C. § 80a-1 et seq., as now in effect or hereafter amended.

11 75. "**ITLA Capital Statutory Trusts**" means, collectively, ITLA Capital Statutory
12 Trust I, ITLA Capital Statutory Trust II, ITLA Capital Statutory Trust III, ITLA Capital Statutory
13 Trust IV, and ITLA Capital Statutory Trust V.

14 76. "**Lien**" shall have the meaning set forth in section 101(37) of the Bankruptcy
15 Code.

16 77. "**Material Causes of Action**" means any Causes of Action (i) seeking a
17 recovery of more than \$20,000 (including, without limitation, the FDIC Causes of Action), (ii) any
18 Former Officer and Director Causes of Action, and (iii) litigation that may be instituted by the FDIC
19 seeking to subordinate the TOPrS Unsecured Claims.

20 78. "**Net Free Cash**" means the amount of the Free Cash available after funding of
21 the Net Free Cash Reserves and full payment or satisfaction of all Allowed Secured Claims, Allowed
22 Administrative Claims, Allowed FDIC Priority Claims, and Allowed Non-FDIC Priority Claims;
23 and costs of administering and implementing the Plan; but not including any costs and expenses
24 solely attributable to the business operations of the Reorganized Debtor.

25 79. "**Net Free Cash Reserves**" means, for purposes of calculating Net Free Cash,
26 reserves or holdbacks related to future payments of: all Allowed Secured Claims, Allowed
27 Administrative Claims, Allowed FDIC Priority Claims, and Allowed Non-FDIC Priority Claims;
28

1 and costs of administering and implementing the Plan; including prosecution of Causes of Action,
2 but not including any costs and expenses solely attributable to the business operations of the
3 Reorganized Debtor

4 80. ***“New Board”*** means the board of directors of the Reorganized Debtor.

5 81. ***“New Common Stock”*** means New Series A Common Stock and New Series B
6 Common Stock.

7 82. ***“New Series A Common Stock”*** means newly-issued shares of series A
8 common stock of the Reorganized Debtor, if any, which shall be entitled to ten votes per share and
9 have a par value of \$0.01 per share.

10 83. ***“New Series B Common Stock”*** means the newly-issued shares of series B
11 common stock of the Reorganized Debtor, if any, which shall be entitled to one vote per share and
12 have a par value of \$0.01 per share., if issued at all, all as described in Article V.D. of this Plan.

13 84. ***“Non-FDIC Priority Claims”*** means all Claims entitled to priority under
14 sections 507(a)(3) through (a)(7) of the Bankruptcy Code.

15 85. ***“Other Unsecured Claim”*** means any Claim of a Creditor against the Debtor,
16 however arising, which is not an Administrative, Tax, Priority or Secured Claim, an FDIC Non-
17 Priority Claim, or a TOPrS Unsecured Claim.

18 86. ***“Person”*** means an individual, partnership, limited liability company,
19 corporation, association, joint stock company, trust, entity, joint venture, labor organization,
20 unincorporated organization, Governmental Entity, and such other entities as defined and described
21 in section 101(41) of the Code.

22 87. ***“Petition Date”*** means December 18, 2009.

23 88. ***“Plan”*** means this **SECOND AMENDED CHAPTER 11 PLAN OF**
24 **REORGANIZATION PROPOSED BY HOLDCO ADVISORS L.P. AND DEBTOR**
25 **IMPERIAL CAPITAL BANCORP, INC., A DELAWARE CORPORATION DATED**
26 **JANUARY 5, 2012** (including all exhibits hereto), as modified or amended from time to time.
27

1 89. ***“Plan Committee”*** means a committee of the New Board established pursuant
2 to Article V.B.2 of this Plan.

3 90. ***“Plan Proponents”*** means Holdco and the Debtor.

4 91. ***“Plan Supplement”*** means the compilation of documents and exhibits relevant
5 to the implementation of the Plan that will be filed no later than ten (10) days prior to the Voting
6 Deadline, and which may be amended, supplemented or modified through and including the date of
7 the Confirmation Hearing.

8 92. ***“Priority Tax Claim”*** means a Claim entitled to priority under sections 502(i)
9 and 507(a)(8) of the Code.

10 93. ***“Pro Rata”*** means the ratio of the amount of an Allowed Claim in Classes 4, 5
11 or 6 to the aggregate amount of all Claims in those Classes that have not yet been disallowed.

12 94. ***“Proceeds Distribution Election”*** means the right of each Holder who so elects
13 on the Ballot to receive a Pro Rata Distribution of Net Free Cash rather than New Series A Common
14 Stock, which may be evidenced in part, at the Debtor’s option (if necessary to cause Section
15 382(1)(5) of the Internal Revenue Code to apply to the Plan) by a separate series or class of securities
16 on the terms set forth in Article V.D.

17 95. ***“Proceeds Distribution Election Trust”*** means the disbursement trust
18 described in Section V.R. below.

19 96. ***“Proceeds Distribution Election Trust Agreement”*** means the agreement,
20 substantially in the form set forth in the Plan Supplement, between the Debtor and the Proceeds
21 Distribution Election Trustee, governing the Proceeds Distribution Election Trust, which agreement
22 shall be in form and substance acceptable to the Plan Proponents and the Committee.

23 97. ***“Proceeds Distribution Election Trust Assets”*** means the Pro Rata Election
24 Holders portion of the following assets that are to be Distributed under this Plan to Holders of
25 Allowed General Unsecured Claims that elect the Proceeds Distribution Election: (a) Net Free Cash
26 and Net Free Cash Reserves, (b) all loan participations, loans, investment financial instruments, or
27 anything similar to any of the foregoing, that is owned by the Debtor as of the Effective Date; (c) all
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1 Causes of Action (excluding the FDIC Causes of Action, except for the *Complaint (I) To Avoid and*
2 *Recover Transfers Pursuant to Sections 547, 548, and 550 of the Bankruptcy Code; (II) For a*
3 *Declaratory Judgment That Certain Insurance Policies are Property of the Estate; (III) For*
4 *Indemnification, Contribution, and Reimbursement; (IV) For Damages for Breach of Expense*
5 *Sharing Agreement; (V) For Reimbursement of Amounts Paid to Employees Under Benefit Plans;*
6 *(VI) For a Judgment For All Amounts Due; and (VII) For a Declaratory Judgment For Claims*
7 *Against the Receivership and Deeming Void the FDIC-R's Disallowance of the Receivership Claims*
8 and the Former Officer and Director Causes of Action); (d) all other tangible or intellectual property
9 assets that are owned by the Debtor as of the Effective Date, (e) all of the Debtor's right, title and
10 interest in and to any refunds under the Debtor's insurance policies existing as of the Effective Date,
11 and (f) Debtor's interest in and to the Tax Refund Account and the distributions therefrom to be
12 conveyed to the Proceeds Distribution Election Trustee pursuant to section V.R.5 of this Plan.

13 98. ***"Proceeds Distribution Election Trustee"*** means the Person who will serve as
14 trustee of the Proceeds Distribution Election Trust, and who will be identified in the Plan
15 Supplement.

16 99. ***"Proceeds Distribution Election Trust Interests"*** means the beneficial interests
17 in the Proceeds Distribution Election Trust issued to holders of Allowed General Unsecured Claims
18 under the Plan.

19 100. ***"Professionals"*** means those Persons (a) employed in the Case under sections
20 327 or 1103 of the Code, and (b) entitled, under sections 330, 503(b), 506(b), or 507(a)(1) of the
21 Code, to seek compensation for legal, accounting or other professional services and the costs and
22 expenses related to such services from the Debtor or the Estate.

23 101. ***"Quarterly Distribution Date"*** means the first Business Day after the end of
24 each quarterly calendar period (i.e., March 31, June 30, September 30 and December 31 of each
25 calendar year).

26 102. ***"Releasees"*** means, in their individual and representative capacities as such,
27 the Debtor, the Committee and the individual members thereof (strictly in each member's capacity as
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1 a member of the Committee and not in its individual capacity as a creditor of the Debtor), the TOPrS
2 Indenture Trustees, Holdco, all Entities controlled by or under common control with all of the
3 foregoing, all Affiliates of all of the foregoing, and all of their and the Debtor's respective current
4 and former directors, officers, members, partners, employees, attorneys, accountants, investment
5 bankers, financial advisors and consultants (including their respective officers, directors, employees,
6 members, attorneys (including attorneys for the Debtor's board of directors), and professional
7 advisors).

8 103. "**Releasing Parties**" means, collectively, Holders of Claims in Classes entitled
9 to vote on the Plan who: (i) vote to accept the Plan and opt-in to the Third Party Releases; (ii) vote to
10 reject the Plan, and opt-in to the Third Party Releases; or (iii) abstain from voting on the Plan, but
11 opt-in to the Third Party Releases.

12 104. "**Reorganized Debtor**" means the Debtor or any successor thereto, by merger,
13 consolidation or otherwise, on or after the Effective Date.

14 105. "**Schedules**" means the Schedule of Assets and Liabilities and Statement of
15 Financial Affairs, as may have been amended, and as Filed by the Debtor in the Case.

16 106. "**Secured Claim**" means a Claim against the Debtor secured by a lien on any
17 property of the Estate.

18 107. "**Stock Pro Rata**" means the ratio of the amount of an Allowed Claim in
19 Classes 4, 5 or 6 held by a Holder that receives New Series A Common Stock to the aggregate
20 amount of all Claims in those Classes that have not yet been disallowed who receive New Series A
21 Common Stock pursuant to this Plan.

22 108. "**Tax Refund Escrow Account**" means the escrow account established by the
23 "Stipulation Between Imperial Capital Bancorp, Inc. and the Federal Deposit Insurance Corporation,
24 as Receiver of Imperial Capital Bank to Establish Reserve Account" [Docket No. 278] and the
25 "Order On Stipulation Between Imperial Capital Bancorp and the Federal Deposit Insurance
26 Corporation, as Receiver of Imperial Capital Bank, to Establish Reserve Account" [Docket No. 279].
27
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1 109. ***“Term Sheet”*** means the Term Sheet between Holdco and the Debtor attached
2 to the Disclosure Statement.

3 110. ***“Third Party Release”*** means the release granted by the Releasing Parties to
4 the Releasees pursuant to Article VIII.D.

5 111. ***“TOPrS”*** means the trust originated preferred securities issued by the TOPrS
6 Trusts.

7 112. ***“TOPrS Debentures”*** means the debentures or notes issued by the Debtor
8 pursuant to the TOPrS Debenture Indentures.

9 113. ***“TOPrS Debenture Indenture”*** means the indenture agreements between the
10 Debtor and each TOPrS Debenture Indenture Trustee as described in Schedule A attached.

11 114. ***“TOPrS Debenture Indenture Trustee”*** means The Bank of New York Mellon
12 and/or U.S. Bank National Association, in their capacities as indenture trustees of each of the TOPrS
13 Debenture Indentures.

14 115. ***“TOPrS Documents”*** means, with respect to each TOPrS Trust, the TOPrS
15 Indenture, the TOPrS Trust Guarantee and all instruments and agreements executed in connection
16 therewith

17 116. ***“TOPrS Indenture”*** means the TOPrS Debenture Indenture and the TOPrS
18 Trust Indenture.

19 117. ***“TOPrS Indenture Trustees”*** means the TOPrS Debenture Indenture Trustee
20 and the TOPrS Trust Indenture Trustee.

21 118. ***“TOPrS Indenture Trustee Fees”*** means reasonable, documented fees,
22 disbursements, advances and expenses (including, without limitation, professional fees and
23 expenses, and payments made or to be made in connection with indemnity Claims) of each TOPrS
24 Indenture Trustee (including, without limitation, in connection with service on the Committee, and
25 in connection with Distributions under the Plan) the payment of which is secured pursuant to the
26 TOPrS Indenture by a charging lien in favor of the TOPrS Indenture Trustees.

27 119. ***“TOPrS Trusts”*** means the ITLA Capital Statutory Trusts.
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1 120. *“TOPrS Trust Guarantee”* means the guarantee agreement of the Debtor with
2 respect to each of the TOPrS.

3 121. *“TOPrS Trust Guarantee Trustee”* means the guarantee trustees of each of the
4 TOPrS Trust Guarantees as described in Schedule A attached.

5 122. *“TOPrS Trust Indenture”* means the amended and restated declarations of
6 trust or amended and restated trust agreements governing each of the TOPrS Trusts as described in
7 Schedule A attached.

8 123. *“TOPrS Trust Indenture Trustee”* means The Bank of New York Mellon
9 and/or Bank National Association, in their capacities as indenture trustees of each of the TOPrS
10 Trust Indentures.

11 124. *“TOPrS Unsecured Claims”* means Claims on account of the \$92,817,146.96
12 in TOPrS Debentures issued to the TOPrS Trusts and any guarantees related thereto.

13 125. *“Treasury Regulations”* means the United States Department of Treasury
14 regulations promulgated under the Internal Revenue Code.

15 126. *“Unimpaired”* means not Impaired.

16 127. *“Voting Classes”* means Classes entitled to vote to accept or reject this Plan.

17 128. *“Voting Deadline”* means that date and time set forth in the Disclosure
18 Statement Order by which the Solicitation Agent must receive Ballots fro Holders of Allowed
19 Claims in Voting Classes.

20 **B. Interpretation, Rules of Construction and Computation of Time**

21 1. Any term used in this Plan that is not defined herein or in the Disclosure
22 Statement, whether in this Article II or elsewhere, or other exhibits hereto, but that is used in the
23 Code or the Bankruptcy Rules has the meaning ascribed to that term in (and shall be construed in
24 accordance with the rules of construction under) the Code or the Bankruptcy Rules.

25 2. The words “herein,” “hereof,” “hereto,” “hereunder” and others of similar
26 import refer to this Plan as a whole and not to any particular Article, Section, subsection or clause
27 contained in this Plan.

1 3. Unless specified otherwise in a particular reference, a reference in this Plan to
2 an "Article" or a "Section" is a reference to that Article or Section of this Plan.

3 4. Any reference in this Plan to a document being in a particular form or on
4 particular terms and conditions means that the document shall be substantially in such form or
5 substantially on such terms and conditions.

6 5. Any reference in this Plan to an existing document means such document, as it
7 may have been amended, modified or supplemented from time to time as of the Effective Date.

8 6. Whenever from the context it is appropriate, each term stated in either the
9 singular or the plural shall include both the singular and the plural.

10 7. Except as otherwise provided herein, the rules of construction set forth in
11 section 102 of the Code shall apply to this Plan.

12 8. In computing any period of time prescribed or allowed by this Plan, the
13 provisions of Bankruptcy Rule 9006(a) shall apply.

14 9. All exhibits to this Plan are incorporated into this Plan, and shall be deemed to
15 be included in this Plan, regardless of when filed with the Bankruptcy Court.

16 10. The provisions of the Plan shall control over the contents of the Disclosure
17 Statement. The provisions of the Confirmation Order shall control over the contents of the Plan.

18 11. Whenever the time for occurrence or happening of an event as set forth in the
19 Plan falls on a day that is not a Business Day, then the time for the occurrence or happening of said
20 event shall be extended to the next Business Day.

21 12. Subject to the provisions of any contract, certificate of incorporation, bylaw,
22 instrument, release or other agreement or document entered into in connection with the Plan, the
23 rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced
24 in accordance with applicable federal law, including the Code and Bankruptcy Rules.

25 13. All references to statutes, regulations, orders, rules of court, and the like shall
26 mean as amended from time to time, as applicable to the Case, unless otherwise stated.

1 request for compensation by any Person for making a substantial contribution in the Case, and all
2 other requests for payment of an Administrative Claim incurred before the Effective Date under
3 sections 503(b), 507(a)(1) or 507(b) of the Code (except only for Claims under 28 U.S.C. section
4 1930) shall be filed no later than sixty (60) days after the Effective Date.

5
6 As to other administrative expenses, Creditors shall file such requests for an administrative
7 expense payment with the Bankruptcy Court and serve on the Reorganized Debtor and United States
8 Trustee no later than sixty (60) days after the Effective Date or by such other bar date as the
9 Bankruptcy Court may set. Holders of claims for the provision of ordinary-course goods and
10 services post-petition to the Debtor need not file requests for payment of administrative expenses.

11 Any Administrative Claim not filed or submitted as explained above within the deadlines set
12 forth herein shall be forever barred, and any Creditor that is required to file a request for payment of
13 an administrative expense and that does not file such request by the applicable bar date shall be
14 forever barred from asserting such Claim or request against the Debtor, the Estate or the
15 Reorganized Debtor.
16

17 2. Priority Tax Claims.

18 Each holder of an Allowed Priority Tax Claim shall receive Cash equal to the amount of such
19 Allowed Priority Tax Claim on the later of (x) the Effective Date, and (y) the date an order of the
20 Bankruptcy Court allowing such Priority Tax Claim becomes a Final Order, unless otherwise agreed
21 to by the holder and the Debtor or the Reorganized Debtor, as applicable. Holders of Allowed
22 Priority Tax Claims shall not be entitled to receive any payment on account of interest that accrued
23 after the Petition Date on, or penalties with respect to or arising in connection with, such Allowed
24 Priority Tax Claims, except as specifically allowed by Final Order of the Bankruptcy Court.
25

26 B. Classified Claims And Interests.

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1 A Claim or Interest shall be deemed classified in a particular Class only to the extent the
 2 Claim or Interest qualifies within the description of the Class and shall be deemed classified in a
 3 different Class to the extent that any remainder of such Claim or Interest qualifies within the
 4 description of such different Class. A Claim or Interest is classified in a particular Class regardless
 5 of whether the Claim or Interest is an Allowed Claim or Interest in that Class, or only asserted as
 6 such, but only to the extent that it has not been paid, released, disallowed or otherwise satisfied. The
 7 treatment with respect to each Class of Claims and Interests provided for in this Article III shall be in
 8 full and complete satisfaction and release of such Claims and Interests. The following Classes
 9 appear in this Plan:
 10

CLASS	CLAIMS	IMPAIRMENT/VOTING
1	SECURED	UNIMPAIRED - NOT ENTITLED TO VOTE
2	NON-FDIC PRIORITY CLAIMS	UNIMPAIRED - NOT ENTITLED TO VOTE
3	FDIC PRIORITY CLAIM	UNIMPAIRED - NOT ENTITLED TO VOTE
4	TOPrS UNSECURED CLAIMS	IMPAIRED - ENTITLED TO VOTE
5	FDIC NON-PRIORITY CLAIMS	IMPAIRED - ENTITLED TO VOTE
6	OTHER UNSECURED CLAIMS	IMPAIRED - ENTITLED TO VOTE
7	CONVENIENCE	UNIMPAIRED - NOT ENTITLED TO VOTE
8	INTERESTS	IMPAIRED - NOT ENTITLED TO VOTE

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 18 **1. Class 1 (Secured Claims).**

- 19 a. **Classification.** Class 1 consists of all Secured Claims.
- 20 b. **Impairment and Voting.** Class 1 is unimpaired under the Plan and the
 21 holders of Class 1 Allowed Secured Claims, if any, are deemed to accept the Plan.
- 22 c. **Treatment.** The legal, equitable and contractual rights of the holders
 23 of Allowed Secured Claims are unaltered by the Plan. Unless otherwise agreed to by the holder of
 24 an Allowed Secured Claim and the Debtor, each holder of an Allowed Secured Claim shall receive
 25 on the later of (x) the Effective Date, and (y) the date an order of the Bankruptcy Court allowing the
 26 Secured Claim becomes a Final Order, on account of and in full satisfaction of its Allowed Secured
 27
 28

1 Claim, either of the following treatments at the election of (A) the Debtor or (B) if after the
 2 Effective Date, the Reorganized Debtor: (i) Cash equal to the amount of the Allowed Secured Claim
 3 or (ii) possession of the property in which the holder of the Allowed Secured Claim has a perfected,
 4 unavoidable and enforceable lien, security interest or other charge and relief from the automatic stay
 5 provided by section 362 of the Code to foreclose, collect upon or set-off the property in accordance
 6 with applicable non-bankruptcy law; *provided, however*, that any time after the Confirmation Date
 7 but before the Effective Date, the Plan Proponents can elect to give to the holder of an Allowed
 8 Secured Claim the treatment provided in subparagraph (ii) above.
 9

10 **2. Class 2—Non-FDIC Priority Claims**

11 a. **Classification:** Class 2 consists of all Non-FDIC Priority Claims.

12 b. **Impairment and Voting:** Class 2 is Unimpaired by the Plan. Each
 13 Holder of a Non-FDIC Priority Claim is presumed to accept and therefore is not entitled to vote to
 14 accept or reject the Plan.
 15

16 c. **Treatment:** On or as soon as practicable after the Effective Date, the
 17 Reorganized Debtor shall pay each Holder of an Allowed Non-FDIC Priority Claim, in full and final
 18 satisfaction of such Allowed Non-FDIC Priority Claim, Cash equal to the full amount of its Claim,
 19 unless the Holder otherwise agrees to less favorable treatment, on or as soon as practicable after the
 20 latest of: (i) the Effective Date; (ii) the date such Allowed Non-FDIC Priority Claim becomes
 21 Allowed; and (iii) the date such Allowed Non-FDIC Priority Claim is payable under applicable non-
 22 bankruptcy law.
 23

24 **3. Class 3—FDIC Priority Claims**

25 a. **Classification:** Class 3 consists of all FDIC Priority Claims.

26 b. **Impairment and Voting:** Class 3 is Unimpaired by the Plan. Each
 27 Holder of a Claim that, if Allowed, would constitute an FDIC Priority Claim, is conclusively
 28

1 presumed to accept the Plan pursuant to section 1126(f) of the Code, and is not entitled to vote to
2 accept or reject the Plan.

3 c. **Treatment:** The legal, equitable and contractual rights of the holders of
4 Allowed Class 3 Claims are unaltered by the Plan.

5
6 4. **Class 4—TOPrS Unsecured Claims**

7 a. **Classification:** Class 4 consists of all TOPrS Unsecured Claims.

8 b. **Impairment and Voting:** Class 4 is Impaired by the Plan. Each
9 Holder of a TOPrS Unsecured Claim is entitled to vote to accept or reject the Plan.

10 c. **Treatment:** In full satisfaction, settlement, release, and compromise of
11 and in exchange for each TOPrS Unsecured Claim, each Holder of a TOPrS Unsecured Claim shall
12 receive on the Initial Distribution Date (i) its Stock Pro Rata Distribution of the New Series A
13 Common Stock, and (ii) such Holder's Pro Rata share of the D&O Litigation Trust Interests, which
14 *inter alia*, shall entitle such Holder to receive its Pro Rata Share of distributions of D&O Litigation
15 Trust Assets from the D&O Litigation Trust in accordance with this Plan and the D&O Litigation
16 Trust Agreement. Alternatively, if such Holder so elects, instead of any of the foregoing, such
17 Holder shall receive the Proceeds Distribution Election consisting of; (x) such Holder's Pro Rata
18 share of the D&O Litigation Trust Interests, which *inter alia*, shall entitle such Holder to receive its
19 Pro Rata Share of distributions of D&O Litigation Trust Assets from the D&O Litigation Trust in
20 accordance with this Plan and the D&O Litigation Trust Agreement; and (y) such Holder's Election
21 Pro Rata share of the Proceeds Distribution Election Trust Interests, which, *inter alia*, shall entitle
22 such Holder to receive its Election Pro Rata share of distributions of Proceeds Distribution Election
23 Trust Assets from the Proceeds Distribution Election Trust in accordance with this Plan and the
24 Proceeds Distribution Election Trust Agreement. Subject to Article V.D(3), the Reorganized Debtor
25 reserves the right to issue, in addition to or in lieu of the Proceeds Distribution Election Trust
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1 Interests, New Series B Common Stock to Holders of Allowed Class 4 Claims making the Proceeds
2 Distribution Election as is necessary to preserve certain tax attributes of the Debtor. Notwithstanding
3 anything to the contrary in this Plan, at Holdco's election in its sole and absolute discretion, any
4 holder of an Allowed Class 4 Claim who may not be a holder of New Class A Common Stock
5 consistently with an exemption under the Investment Company Act that Holdco elects to use below
6 may be deemed to have elected the Proceeds Distribution Election.
7

8 **5. Class 5—FDIC Non-Priority Claims**

9 a. **Classification:** Class 5 consists of all FDIC Non-Priority Claims.

10 b. **Impairment and Voting:** Class 5 is Impaired by the Plan. Each
11 Holder of a Claim that, if Allowed, would constitute an FDIC Non-Priority Claim in Class 5 is
12 entitled to vote to accept or reject the Plan.

13 c. **Treatment:** In full satisfaction, settlement, release, and compromise of
14 and in exchange for each FDIC Non-Priority Claim, each Holder of an FDIC Non-Priority Claim
15 shall receive on the Initial Distribution Date (i) its Stock Pro Rata Distribution of the New Series A
16 Common Stock and (ii) such Holder's Pro Rata share of the D&O Litigation Trust Interests, which
17 *inter alia*, shall entitle such Holder to receive its Pro Rata Share of distributions of D&O Litigation
18 Trust Assets from the D&O Litigation Trust in accordance with this Plan and the D&O Litigation
19 Trust Agreement. Alternatively, if such Holder so elects, instead of any of the foregoing, such
20 Holder shall instead receive the Proceeds Distribution Election consisting of; (x) such Holder's Pro
21 Rata share of the D&O Litigation Trust Interests, which *inter alia*, shall entitle such Holder to
22 receive its Pro Rata Share of distributions of D&O Litigation Trust Assets from the D&O Litigation
23 Trust in accordance with this Plan and the D&O Litigation Trust Agreement; and (y) such Holder's
24 Election Pro Rata share of the Proceeds Distribution Election Trust Interests, which, *inter alia*, shall
25 entitle such Holder to receive its Election Pro Rata share of distributions of Proceeds Distribution
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1 Election Trust Assets from the Proceeds Distribution Election Trust in accordance with this Plan and
2 the Proceeds Distribution Election Trust Agreement. Notwithstanding anything to the contrary in
3 this Plan, at Holdco's election in its sole and absolute discretion, any holder of an Allowed Class 5
4 Claim who may not be a holder of New Class A Common Stock consistently with an exemption
5 under the Investment Company Act that Holdco elects to use may be deemed to have elected the
6 Proceeds Distribution Election.
7

8 **6. Class 6—Other Unsecured Claims**

9 a. **Classification:** Class 6 consists of all Other Unsecured Claims.

10 b. **Impairment and Voting:** Class 6 is Impaired by the Plan. Each Holder
11 of an Other Unsecured Claim in Class 6 is entitled to vote to accept or reject the Plan.

12 c. **Treatment:** In full satisfaction, settlement, release, and compromise of
13 and in exchange for each Other Unsecured Claim, each Holder of an Allowed Other Unsecured
14 Claim shall receive on the Initial Distribution Date (i) its Stock Pro Rata Distribution of the New
15 Series A Common Stock and (ii) such Holder's Pro Rata share of the D&O Litigation Trust Interests,
16 which *inter alia*, shall entitle such Holder to receive its Pro Rata Share of distributions of D&O
17 Litigation Trust Assets from the D&O Litigation Trust in accordance with this Plan and the D&O
18 Litigation Trust Agreement. Alternatively, if such Holder so elects, instead of any of the foregoing,
19 such Holder shall instead receive the Proceeds Distribution Election consisting of; (x) such Holder's
20 Pro Rata share of the D&O Litigation Trust Interests, which *inter alia*, shall entitle such Holder to
21 receive its Pro Rata Share of distributions of D&O Litigation Trust Assets from the D&O Litigation
22 Trust in accordance with this Plan and the D&O Litigation Trust Agreement; and (y) such Holder's
23 Election Pro Rata share of the Proceeds Distribution Election Trust Interests, which, *inter alia*, shall
24 entitle such Holder to receive its Election Pro Rata share of distributions of Proceeds Distribution
25 Election Trust Assets from the Proceeds Distribution Election Trust in accordance with this Plan and
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1 the Proceeds Distribution Election Trust Agreement. Subject to Article V.D(3), the Reorganized
2 Debtor reserves the right to issue, in addition to or in lieu of the Proceeds Distribution Election Trust
3 Interests, shares of New Series B Common Stock to Holders of Allowed Class 6 Claims making the
4 Proceeds Distribution Election as is necessary to preserve certain tax attributes of the Debtor.
5 Notwithstanding anything to the contrary in this Plan, at Holdco's election in its sole and absolute
6 discretion, any holder of an Allowed Class 6 Claim who may not be a holder of New Class A
7 Common Stock consistently with an exemption under the Investment Company Act that Holdco
8 elects to use below may be deemed to have elected the Proceeds Distribution Election.
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10 **7. Class 7 (Convenience Claims).**

11 Class 7 consists of Convenience Claims. Each holder of an Allowed Convenience Claim
12 shall receive, on account of and in full satisfaction of its Allowed Convenience Claim, Cash equal to
13 100% of the amount of the Allowed Convenience Claim on the later of (x) the Effective Date, and
14 (y) the date an order of the Bankruptcy Court allowing the Convenience Claim becomes a Final
15 Order. Class 7 is unimpaired under the Plan and the holders of Class 7 Allowed Convenience
16 Claims are deemed to accept the Plan pursuant to section 1126(f) of the Code.
17

18 **8. Class 8 (Holders Of Interests).**

19 Class 8 is comprised of holders of Interests. Holders of Class 8 Interests shall neither receive
20 nor retain any property under the Plan and all Interests of the Debtor shall be cancelled as of the
21 Effective Date. Class 8 is impaired under the Plan and the holders of Class 8 Interests are deemed to
22 reject the Plan.
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ARTICLE IV.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Default Rejection of Executory Contracts and Unexpired Leases. All executory contracts or unexpired leases of the Debtor, except (a) those previously assumed and assigned by Final Order and (b) those which are assumed under the Plan, are rejected. The Debtor shall file a schedule of executory contracts to be assumed, if any, in the Plan Supplement.

B. Procedural Issues. The Plan shall constitute a motion to reject any executory contracts and unexpired leases not identified in the Plan Supplement as executory contracts or unexpired leases to be assumed, and the Debtor and Reorganized Debtor shall have no further liability thereunder. The entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of any such rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code and that the rejection thereof is in the best interest of the Debtor, its Estate and all parties in interest in the Case.

1 **C. Claims Based on Rejection of Executory Contracts or Unexpired Leases** Claims
2 created by the rejection of executory contracts and unexpired leases pursuant to Article IV. A. of the
3 Plan, or the expiration or termination of any executory contract or unexpired lease prior to the
4 Effective Date, must be filed with the Bankruptcy Court and served on the Reorganized Debtor no
5 later than thirty (30) days after the Effective Date. Any Claims arising from the rejection of an
6 executory contract or unexpired lease pursuant to Article IV.A. for which proofs of Claim are not
7 timely filed within that time period will be forever barred from assertion against the Debtor, the
8 Reorganized Debtor, the Estate, its successors and assigns, and its assets and properties, unless
9 otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall,
10 as of the Effective Date, be subject to the permanent injunction set forth in this Plan. Unless
11 otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein
12 shall be treated as General Unsecured Claims under the Plan.
13

14 **D. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases**

15 1. **Cure of Defaults.** Any provisions or terms of the Debtor's executory contracts
16 or unexpired leases to be assumed pursuant to the Plan that are, or may be, alleged to be in default,
17 shall be satisfied solely by Cure or by an waiver of Cure agreed upon between the Debtor and
18 applicable counterparty. Except with respect to executory contracts or unexpired leases in which the
19 Debtor and the applicable counterparties have stipulated in writing to payment of Cure, all requests
20 for payment of Cure must be Filed on or before the Cure Bar Date. Any request for payment of Cure
21 that is not timely Filed shall be disallowed automatically and forever barred from assertion and shall
22 not be enforceable against the Reorganized Debtor, without the need for any objection by the
23 Reorganized Debtor or further notice to or action, order, or approval of the Bankruptcy Court, and
24 any such Claim for Cure shall be deemed fully satisfied, released, and discharged, notwithstanding
25 anything included in the Schedules or in any proof of Claim to the contrary; provided, however, that
26 nothing shall prevent the Reorganized Debtor from paying any Cure despite the failure of the
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1 relevant counterparty to File such request for payment of such Cure. The Reorganized Debtor also
2 may settle any Cure without further notice to or action, order, or approval of the Bankruptcy Court.

3 **2. Objections to Cure.** If the Debtor or Reorganized Debtor, as applicable,
4 objects to any request for Cure or any other matter related to assumption, the Bankruptcy Court shall
5 determine the Allowed amount of such Cure and any related issues. If there is a dispute regarding
6 such Cure, the ability of the Reorganized Debtor or any assignee to provide "adequate assurance of
7 future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter
8 pertaining to assumption, then such Cure shall occur as soon as reasonably practicable after entry of
9 a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or
10 as may be agreed upon by the Debtor or Reorganized Debtor and the counterparty to the executory
11 contract or unexpired lease. Any counterparty to an executory contract or unexpired lease that fails
12 to object timely to the proposed assumption of any executory contract or unexpired lease will be
13 deemed to have consented to such assumption. The Debtor or Reorganized Debtor, as applicable,
14 reserve the right, either to reject or nullify the assumption of any executory contract or unexpired
15 lease no later than thirty (30) days after a Final Order determining the Cure or any request for
16 adequate assurance of future performance required to assume such executory contract or unexpired
17 lease.

18 **3. Release and Satisfaction of Debtor upon Assumption.** Assumption of any
19 executory contract or unexpired lease pursuant to the Plan or otherwise and after satisfaction of any
20 Cure, shall result in the full release and satisfaction of any Claims or defaults, whether monetary or
21 nonmonetary, including defaults of provisions restricting the change in control or ownership interest
22 composition or other bankruptcy-related defaults, arising under any assumed executory contract or
23 unexpired lease at any time prior to the effective date of assumption.
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1 to and arising from the Debtor or the Case. Nothing contained in this Article V.B shall release the
2 Debtor's officers and directors from claims for actions taken before the Effective Date other than as
3 provided in the Plan.

4 2. **Plan Committee.** As of the Effective Date, the Plan Committee shall be
5 created and shall consist of two members of the New Board and one member who is not a member
6 of the New Board identified in the Plan Supplement. Holdco, upon consultation with the Debtor,
7 shall determine the identity of the initial members of the Plan Committee, and the New Board will
8 appoint replacement members if needed thereafter. The Plan Committee shall oversee and have
9 decision-making authority regarding any litigation and/or settlement of Causes of Action, including
10 the FDIC Causes of Action and any litigation related to the subordination of the TOPrS Unsecured
11 Claims, and the administration of Distributions. The fiduciary duties of the members of the Plan
12 Committee (in their capacity as Plan Committee members) shall run to all parties entitled to
13 Distributions under the Plan, whether or not such beneficiaries have elected the Proceeds
14 Distribution Election. The Reorganized Debtor shall seek approval of any settlement of a Material
15 Cause of Action from the Bankruptcy Court by the filing of an appropriate motion, and such
16 approval shall be governed by Fed.R.Bankr.P. 9019, shall only come after a hearing, upon notice to
17 all parties requesting service pursuant to Bankruptcy Rule 2002 or to such Entities as the Court may
18 order.
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22 **C. Cancellation of TOPrS Debentures, TOPrS, and Equity Interests**

23 1. **Cancellation of TOPrS Debentures.** On the Effective Date, except to the extent
24 otherwise provided herein, all notes, stock, instruments, certificates and other documents evidencing
25 the TOPrS Unsecured Claims and Equity Interests, including the TOPrS Documents and the TOPrS
26 shall be deemed automatically canceled, shall be of no further force, whether surrendered for
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1 cancellation or otherwise, and the obligations of the Debtor thereunder or in any way related thereto
2 shall be discharged.

3 **2. Limited Survival of TOPrS Documents.** Notwithstanding anything to the contrary
4 contained in this Plan, (a) the TOPrS Documents will continue in effect solely for purposes of (i)
5 allowing the applicable TOPrS Indenture Trustee to receive and make the Distributions to be made
6 pursuant to this Plan on account of TOPrS Unsecured Claims, from Distributions received from the
7 Reorganized Debtor in accordance with this Plan, and (ii) permitting such TOPrS Indenture Trustee
8 to maintain any rights or Liens it may have under the applicable TOPrS Documents to receive
9 TOPrS Indenture Trustee Fees and indemnification, provided that the Debtor or Reorganized Debtor,
10 as applicable, will not have any obligation to any TOPrS Indenture Trustee for payment of any such
11 TOPrS Indenture Trustee Fees or indemnifications except as otherwise provided in this Plan, and (b)
12 the TOPrS Debentures issued under such agreements will continue in effect solely for the purposes
13 of permitting Holders thereof to receive Distributions from the applicable TOPrS Indenture Trustee
14 in accordance with the Plan.

15 **3. Limited Preservation of TOPrS Indenture Trustee Rights to Charging**
16 **Liens.** To the extent that, under the TOPrS Documents, the TOPrS Indenture Trustees are entitled to
17 charging liens on account of unpaid TOPrS Indenture Trustee Fees, recoveries under the Plan will be
18 adjusted so that sufficient Cash Distributions are available to allow the TOPrS Indenture Trustees to
19 exercise such charging liens against Cash distributed under the Plan. Payment of fees, if any, to the
20 TOPrS Indenture Trustees will reduce recoveries to all creditors regardless of whether they make the
21 Proceeds Distribution Election or receive the New Series A Common Stock.

22 **4. Payment of Holdco Fees.** The Reorganized Debtor shall pay the Holdco Fees,
23 after submission of invoices therefor. If and only if Holdco elects in its sole discretion, payment of
24 the Holdco Fees shall not reduce the recovery, if any, of the FDIC in connection with any Allowed
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1 FDIC Non-Priority Claims, and the FDIC will be entitled to receive the same Distributions it would
2 otherwise be entitled to receive absent payment of the Holdco Fees.

3 **5. Payment of TOPrS Indenture Trustee Fees.** On or as soon as practicable
4 after the Effective Date, the Reorganized Debtor shall pay the TOPrS Indenture Trustee Fees, after
5 submission of invoices therefor. Subsequent submissions by a TOPrS Indenture Trustee of TOPrS
6 Indenture Trustee Fees incurred after the Effective Date may be made from time to time, but no
7 more frequently than monthly, by delivery of invoices to the Reorganized Debtor for payment, but
8 only for fees incurred by the TOPrS Indenture Trustee that are reasonably necessary for the
9 implementation of this Plan. If and only if Holdco elects in its sole discretion, payment of the
10 TOPrS Indenture Trustee Fees shall not reduce the recovery, if any, of the FDIC in connection with
11 any Allowed FDIC Non-Priority Claims, and the FDIC will be entitled to receive the same
12 Distributions it would otherwise be entitled to receive absent payment of the TOPrS Indenture
13 Trustee Fees.
14
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16 **D. Reorganized Debtor Securities**

17 **1. New Series A Common Stock.** The Reorganized Debtor's equity interests shall consist
18 of New Series A Common Stock, and, if the Debtor elects (if necessary to cause Section 382(l)(5) of
19 the Internal Revenue Code to apply to the Plan), the New Series B Common Stock, as provided for
20 in Section V.D.2. below. On the Effective Date, or as soon as reasonably practicable thereafter, the
21 Reorganized Debtor shall issue or reserve for issuance all securities to be issued pursuant to the
22 terms of the Plan, without need for any further corporate or shareholder action.
23

24 **2. Optional Issuance of New Series B Common Stock (Separate Series or Classes of**
25 **Common Stock).** To the extent the Reorganized Debtor chooses (if necessary to cause Section
26 382(l)(5) of the Internal Revenue Code to apply to the Plan or to preserve certain other tax attributes)
27 to issue the New Series B Common Stock as one or more separate series or classes of common stock
28

1 on account of the Proceeds Distribution Election, on the Effective Date each Holder that has made a
2 Proceeds Distribution Election with respect to which the Reorganized Debtor chooses to issue New
3 Series B Common Stock shall be issued, in lieu of or in exchange for Proceeds Distribution Election
4 Trust Interests, New Series B Common Stock (which shall be in addition to such Holder's Pro Rata
5 share of the D&O Litigation Trust Interests). In such case, the Proceeds Distribution Election Trust
6 Interests that would have been issued to such Holders will be issued to a wholly owned, special
7 purpose bankruptcy remote vehicle of Reorganized Debtor and the Proceeds Distribution Election
8 Trust Agreement and the Reorganized Debtor's certificate of incorporation shall provide that (i) any
9 Distributions on account of such Proceeds Distribution Election Trust Interests held by such special
10 purpose vehicle shall be used exclusively for funding dividend, distribution, or redemption payments
11 on the New Series B Common Stock and (ii) each holder of New Series B Common Stock shall be
12 entitled to its Pro Rata share of Net Free Cash as if such Holder had received Proceeds Distribution
13 Election Trust Interests in accordance with this Plan and the Proceeds Distribution Election Trust
14 Agreement. If New Series B Common Stock is issued to the Holders making a Proceeds
15 Distribution Election as provided above, then (x) the certificate of incorporation, charter and bylaws
16 of the special purpose vehicle referred to above shall be subject to the approval of Holdco and the
17 Committee, (y) the rights, preferences and privileges of the New Series B Common Stock contained
18 in the certificate of incorporation, charter and bylaws of. Reorganized Debtor shall be subject to the
19 approval of Holdco and the Committee; and (z) the certificate of incorporation of Reorganized
20 Debtor shall provide that (I) the holder of each share of New Series B Common Stock, if any, shall
21 be entitled to receive a dividend, distribution, redemption, or similar payment corresponding to and
22 from Distributions that are made from the Proceeds Distribution Election Trust representing such
23 Holder's pro rata share of the amount of such Proceeds Distribution Election Trust Assets in
24 accordance with this Plan and the Proceeds Distribution Election Trust Agreement, (II) the holder of
25 each share of New Series B Common Stock shall be entitled to a liquidation preference in an
26 aggregate amount equal to the their respective pro rata share of the fair market value of the Proceeds
27 Distribution Election Trust Assets, as of the date of the liquidation or dissolution of the Reorganized
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1 Debtor, which may be satisfied by the distribution of the Proceeds Distribution Election Trust
2 Interests held by the special purpose vehicle created pursuant to this Plan to the holders of the New
3 Series B Common Stock pursuant to such liquidation or dissolution and (III) Reorganized Debtor
4 may not be merged or consolidated with any other Entity or liquidated or dissolved at any time that
5 the New Series B Common Stock is outstanding unless adequate provision is made to secure the
6 right of the holders of the New Series B Common Stock to received Distributions of Net Free Cash
7 as provided for in the Plan. Alternatively, the Proceeds Distribution Election Trust Agreement, the
8 Reorganized Debtor's certificate of incorporation, and certificate of incorporation, charter and
9 bylaws of the special purpose vehicle referred to above shall provide that at any time on or after the
10 Effective Date, the New Board shall in its discretion distribute the Proceeds Distribution Election
11 Trust Interests held by such special purpose vehicle to holders of New Series B Common Stock in
12 the form a dividend, distribution, redemption, or any other type of payment, after which the
13 Reorganized Debtor shall have no further obligations to make distributions to holders of New Series
14 B Common Stock. Moreover, prior to the Effective Date and at the election of Holdco, in lieu of the
15 creating a special purpose vehicle, the Debtor may distribute Proceeds Distributions Election Trust
16 Interests directly to holders of New Series B Common Stock on the Effective Date, which such
17 distribution shall be in addition to, and not in lieu of the shares of New Series B Common Stock to
18 be distributed on such date.

19 Alternatively, to the extent the Reorganized Debtor chooses (if necessary to cause
20 Section 382(1)(5) of the Internal Revenue Code to apply to the Plan or to preserve certain other tax
21 attributes) to issue a the New Series B Common Stock as one or more separate series or classes of
22 common stock on account of part of the Proceeds Distribution Election, which shall be in addition
23 to, and not in lieu of, the other Distributions to which a Holder making the Proceeds Distribution
24 Election is entitled to receive under the Plan), each Holder who elects to receive the Proceeds
25 Distribution Election:
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1 (a) shall be entitled on account of such New Series B Common Stock to a pro rata
2 share (such share to be calculated based on such Holder's number of shares of such New Series B
3 Common Stock divided by the total outstanding shares as of the Effective Date of New Series B
4 Common Stock issued to Holders who elect to receive the Proceeds Distribution Election) of any
5 Net Free Cash that constitutes net proceeds of the Causes of Action, pursuant to redemption upon the
6 terms set forth in the Reorganized Debtor's charter upon entry of a Final Order resolving the Causes
7 of Action; and

8
9 (b) shall also be entitled to a right of payment equal to such holder's Pro Rata
10 share of Net Free Cash that does not constitute the proceeds of the Causes of Action.

11 **Each share of New Series B Common Stock shall entitle the Holder of such share**
12 **to exercise voting rights equal to 1/20 of the voting rights exercisable by each of Holder of New**
13 **Series A Common Stock.**

14
15 **3. Limitation on Management and Control over the Reorganized Debtor.** If
16 the Effective Date occurs prior to the FDIC Priority Claim Determination, the holders of the New
17 Series A Common Stock shall exercise no management or control over the affairs of the
18 Reorganized Debtor until there is a Final Order resolving the FDIC Priority Claim Determination
19 and holding that the FDIC Priority Claim is disallowed.

20
21 **4. Dividends, Other Attributes.**

22 a. **Dividends.** Except as otherwise provided by applicable law or in the
23 corporate documents that will be included in the Plan Supplement, the holders of New Series A
24 Common Stock and the New Series B Common Stock, if any, shall share ratably in all dividends and
25 other Distributions made to their respective class, whether in respect of liquidation or dissolution
26 (voluntary or involuntary) or otherwise. Without limiting the generality of the immediately
27 preceding sentence, Holders of Allowed Claims who properly and timely make the Proceeds
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1 Distribution Election shall not receive an amount greater than the Pro Rata portion of Net Free Cash
2 that such Holders would have received if all Net Free Cash was Distributed Pro Rata to all Holders
3 of Allowed General Unsecured Claims, and all Cash received by such Holders, whether on account
4 of D&O Litigation Trust Interests, Proceeds Distribution Election Trust Interests or New Series B
5 Common Stock, shall be applied in reduction of such amount.
6

7 **b. Other Attributes of New Series A and B Common Stock** Shares of
8 New Series A Common Stock and the New Series B Common Stock, if any, shall have conversion
9 rights, redemption rights, preemptive rights, transfer restrictions and other rights, responsibilities and
10 restrictions typically associated with common stock, all as set forth in the Plan Supplement, in order
11 to preserve and maximize the value of all tax attributes that are or will be held by the Reorganized
12 Debtor from and after the Effective Date.

13 **c. Redemption of Common Stock.** The New Board may elect to
14 redeem all shares of New Common Stock held by a particular stockholder at any time, so long as the
15 New Common Stock is redeemed for Fair Market Value Price. For purposes of the redemption of
16 the New Common Stock, (i) to determine whether the New Series A Common Stock is redeemed for
17 Fair Market Value, the New Board may rely on a nationally recognized accounting or valuation firm
18 to determine the Fair Market Value Price for the New Common Stock and (ii) to determine whether
19 New Series B Common Stock is redeemed for Fair Market Value, the New Series B Common Stock
20 shall be based on the fair market value of the Proceeds Distribution Election Trust Assets. Prior to
21 making a final determination to exercise the Reorganized Debtor's redemption right under this
22 paragraph, the Reorganized Debtor shall send a written notice to such stockholder (at the notice
23 address appearing in the Reorganized Debtor's records) advising the stockholder of the Reorganized
24 Debtor's intention to exercise its redemption right. In the event that the stockholder notifies the
25 Reorganized Debtor in writing (within 60 days after the date of the Reorganized Debtor's notice)
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1 that such stockholder objects to the redemption of its shares, then the Reorganized Debtor shall not
2 exercise the redemption right. In the event that the stockholder does not respond to the Reorganized
3 Debtor's notice within 60 days the stockholder is deemed to have consented to the proposed
4 redemption. In the event that the stockholder does not respond to the Reorganized Debtor's notice
5 within 60 days after the date of the Reorganized Debtor's notice (or the stockholder notifies the
6 Reorganized Debtor that it approves or does not object to such redemption), then the New Board
7 shall be entitled to make a final determination to exercise the redemption right. In the event that the
8 New Board makes such a final determination, then the redemption shall take place on a date
9 determined by the New Board (but such redemption date shall be no later than 30 days after the New
10 Board's final determination) and shall be at a price equal to the Fair Market Value Price. The
11 purchase price payable in any such redemption shall be paid in cash or by check on the closing date.
12 Such redemption shall be effective on the closing date of the redemption regardless of whether or not
13 the stockholder participates in the closing or delivers his or its stock certificate to the Reorganized
14 Debtor for cancellation.

17 **E. Exemption from the Registration Requirements of the Securities Act; Investment**
18 **Company Act**

19 1. **Exemption from Securities Act.** The offering, issuance, and distribution of
20 securities pursuant to the Plan shall be exempt from the registration requirements of section 5 of the
21 Securities Act as one or more private placements pursuant to any and all applicable exemptions,
22 including, as applicable, exemptions provided by Section 1145 of the Bankruptcy Code, Section 4(2)
23 of the Securities Act and/or Rule 506 of Regulation D under the Securities Act, based on the number
24 of creditors receiving securities under the Plan, the Reorganized Debtor's belief as to their status as
25 accredited investors, and other factors. As a result, the securities issued under the Plan likely will be
26 "restricted securities" for purposes of the federal securities laws. The Reorganized Debtor also
27