

FENTURA FINANCIAL INC
Form 8-K
March 18, 2004

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF
THE SECURITIES EXCHANGE ACT OF 1934

Date of Report: March 15, 2004

FENTURA FINANCIAL, INC.
(Exact name of Registrant as specified in its charter)

Michigan
(State or other Jurisdiction
of incorporation)

000-23550
(Commission File No.)

38-2806518
(IRS Employer
Identification No.)

175 North Leroy Street, P. O. Box 725, Fenton, MI 48430-0725
(Address of principal Executive Offices including Zip Code)

Registrant's telephone number, including area code: (810) 629-2263

Item 2. Acquisition or Disposition of Assets.

Pursuant to an Agreement and Plan of Merger dated as of October 14, 2003, as amended February 26, 2004 (the Merger Agreement), Fentura Financial, Inc. (Fentura) acquired West Michigan Financial Corporation, the bank holding company for West Michigan Community Bank. West Michigan Community Bank is a Michigan banking corporation headquartered in Hudsonville, Michigan. WMFC Acquisition Subsidiary, Inc., a newly formed subsidiary of Fentura, was merged into West Michigan Financial Corporation as of March 15, 2004 (the Merger). As a result of the Merger, all of the common stock of West Michigan Financial Corporation was converted into the right to receive cash. Following the Merger, West Michigan Financial Corporation will be merged into Fentura. As a result of the Merger, Fentura now owns West Michigan Community Bank and its subsidiaries.

The total consideration paid by Fentura to the shareholders and option holders of West Michigan Financial Corporation consisted of \$12,922,950 in cash. The source of these funds was cash and cash equivalents of Fentura, including the proceeds from the \$12 million private placement of floating rate trust preferred securities by Fentura Financial Capital Trust I which was completed in the fourth quarter of 2003.

Pursuant to the Merger Agreement, each share of West Michigan Financial Corporation common stock, \$1.00 par value per share that was outstanding immediately before the effective time of the Merger was converted into the right to receive \$336 per share in cash, without interest. Each outstanding stock option of West Michigan Financial Corporation was converted into the right to receive cash in an amount equal to the difference between \$336 and the exercise price per share under the option, multiplied by the total number of shares of West Michigan Financial Corporation that could be acquired upon exercise of such option. The consideration paid by Fentura was determined by the boards of directors of the parties through arms-length negotiations. Each share of Fentura common stock that was outstanding immediately before the effective time of the Merger remains outstanding after the Merger.

The transaction was accounted for as a purchase.

Item 7. Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired. At the time of this report, it is not practicable to provide the required financial statements for West Michigan Financial Corporation, the business acquired. Such statements will be filed as an amendment to this Form 8-K Report, as soon as practicable and not later than May 14, 2004.

(b) Pro Forma Financial Information. At the time of this report, it is not practicable to provide the required pro forma financial information for the transaction that is the subject of this Report. Such information will be filed as an amendment to this Form 8-K Report, as soon as practicable and not later than May 14, 2004.

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(c) Exhibits. The following exhibits are furnished with or incorporated by reference into this Current Report:

<u>Exhibit No.</u>	<u>Document</u>
2.1	Agreement and Plan of Merger between West Michigan Financial Corporation and Fentura Financial, Inc., dated as of October 14, 2003.
2.2	First Amendment to Agreement and Plan of Merger, dated February 26, 2004.
99.1	Fentura Financial, Inc. Press Release dated March 15, 2004.

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SIGNATURES

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

FENTURA FINANCIAL, INC.

By: /s/ Douglas Kelley

Douglas Kelley
Chief Financial Officer

Date: March 16, 2004

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EXHIBIT INDEX

- Exhibit 2.1 - Agreement and Plan of Merger between West Michigan Financial Corporation and Fentura Financial, Inc., dated as of October 14, 2003.
- Exhibit 2.2 - First Amendment to Agreement and Plan of Merger, dated February 26, 2004.
- Exhibit 99.3 Fentura Financial, Inc. Press Release dated March 15, 2004.

Exhibit 2.1

AGREEMENT AND PLAN OF MERGER

By and Among

Fentura Financial, Inc.

and

West Michigan Financial Corp.

and

West Michigan Community Bank

dated as of October 14, 2003

AGREEMENT AND PLAN OF MERGER

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AGREEMENT AND PLAN OF MERGER

WHEREAS, the Boards of Directors of Buyer, Seller and Seller Bank (all terms as defined in Article I hereof) have determined to consummate certain business combination transactions subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of such inducements and of the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS

The following terms shall have the meanings ascribed to them for all purposes of this Agreement.

Agreement shall mean this Agreement and Plan of Merger dated as of October 14, 2003 between Buyer, Seller and Seller Bank.

BIF shall mean the Bank Insurance Fund administered by the FDIC or any successor thereto.

Buyer shall mean Fentura Financial, Inc. a Michigan corporation.

Buyer Banks shall mean The State Bank, Fenton, Michigan, a Michigan banking corporation and wholly owned subsidiary of Buyer, and Davison State Bank, Davison, Michigan, a Michigan banking corporation and wholly owned subsidiary of Buyer.

Buyer Financial Statements shall mean (i) the audited consolidated statements of financial condition (including related notes and schedules, if any) of Buyer as of December 31, 2002 and 2001 and the consolidated statements of income, shareholders' equity and cash flows (including related notes and schedules, if any) of Buyer for the years ended December 31, 2002 and 2001, and (ii) the unaudited consolidated statements of financial condition and the consolidated statements of income, shareholders' equity and cash flows of Buyer with respect to the period ended June 30, 2003

Certificate shall mean any certificate which prior to the Effective Time represented shares of Seller Common Stock

Certificate of Merger shall mean the certificate of merger to be filed with the Michigan Department of Consumer & Industry Services with respect to the Corporate Merger.

Closing shall mean the closing of the Corporate Merger at a time and place reasonably selected by Buyer, as soon as reasonably practicable following the satisfaction or waiver of all conditions to the Corporate Merger.

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Closing Date shall mean the date on which the Closing occurs.

Code shall mean the Internal Revenue Code of 1986, as amended.

Company Merger shall mean the contemplated Merger of the Surviving Corporation into Buyer, with Buyer surviving.

Corporate Merger shall mean the merger of Merger Sub into Seller, with Seller surviving.

CRA shall mean the Community Reinvestment Act.

Commissioner shall mean the Commissioner of the Michigan Office of Financial and Insurance Services.

DOJ shall mean the United States Department of Justice.

Effective Time shall mean the time of the filing of the Certificate of Merger, or such later time as may be specified in the Certificate of Merger.

Environmental Claim shall mean any written notice from any Governmental Entity or third party alleging potential liability (including potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries or penalties) arising out of, based on, or resulting from the presence, or release into the environment, of any Materials of Environmental Concern.

Environmental Laws shall mean any federal, state or local law, statute, ordinance, rule, regulation, code, license, permit, authorization, approval, consent, order, judgment, decree, injunction or agreement with any Governmental Entity relating to (i) the protection, preservation or restoration of the environment (including air, water vapor, surface water, groundwater, drinking water supply, surface soil, subsurface soil, plant and animal life or any other natural resource), and/or (ii) the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Materials of Environmental Concern. The term Environmental Law includes (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601, et seq; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq; the Clean Air Act, as amended, 42 U.S.C. §7401, et seq; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, et seq; the Toxic Substances Control Act, as amended, 15 U.S.C. §9601, et seq; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §1101, et seq; the Safe Drinking Water Act, 42 U.S.C. §300f, et seq; and all comparable state and local laws, and (ii) any common law (including common law that may impose strict liability) that may impose liability or obligations for injuries or damages due to, or threatened as a result of, the presence of or exposure to any Materials of Environmental Concern.

ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended.

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Exchange Act shall mean the Securities Exchange Act of 1934, as amended.

Exchange Agent shall mean an exchange agent designated by Buyer, who shall be reasonably acceptable to Seller.

FDIA shall mean the Federal Deposit Insurance Act, as amended.

FDIC shall mean the Federal Deposit Insurance Corporation or any successor thereto.

FHLB shall mean the Federal Home Loan Bank of Chicago.

FRS shall mean the Board of Governors of the Federal Reserve System.

GAAP shall mean generally accepted accounting principles.

Governmental Entity shall mean any federal or state court, administrative agency or commission or other governmental authority or instrumentality.

include shall mean include without limitation.

IRS shall mean the Internal Revenue Service or any successor thereto.

Material Adverse Effect shall mean, with respect to any Party, any effect that is material and adverse to the financial condition, results of operations or business of that Party and its Subsidiaries taken as whole, or that materially impairs the ability of any Party to consummate the Merger, provided, however, that Material Adverse Effect shall not be deemed to include the impact of (a) changes in GAAP that are generally applicable to the banking or savings industries, (b) expenses up to \$300,000 incurred in connection with the transactions contemplated hereby, (c) actions or omissions of a party (or any of its Subsidiaries) taken with the prior informed written consent of the other party or parties in contemplation of the transactions contemplated hereby, or (d) changes attributable to or resulting from changes in general economic conditions, including changes in the prevailing level of interest rates.

Materials of Environmental Concern shall mean pollutants, contaminants, wastes, toxic substances, petroleum and petroleum products and any other materials regulated under Environmental Laws.

Merger shall mean the Corporate Merger and the Company Merger.

Merger Sub shall mean a Michigan corporation to be organized as a subsidiary of Buyer.

Merger Sub Common Stock shall mean the common stock of Merger Sub.

NASD shall mean the National Association of Securities Dealers, Inc.

PBGC shall mean the Pension Benefit Guaranty Corporation, or any successor thereto.

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Parties shall mean Buyer, Seller, and Seller Bank.

Per Share Merger Consideration shall mean: (i) \$340.55 per share in cash, without interest, plus (ii) the quotient resulting from dividing (A) Seller Interim Operating Earnings, by (B) the outstanding shares of Seller Common Stock as the Closing Date plus the number of Seller Options as of the Closing Date.

Plan of Corporate Merger shall mean the form of Plan of Merger by and between Seller and Merger Sub attached as Exhibit A to this Agreement.

Previously Disclosed shall mean disclosed in a disclosure schedule delivered on or prior to the date hereof by the disclosing Party to the other Party specifically referring to the appropriate section of this Agreement and describing in reasonable detail the matters contained therein.

Proxy Statement shall mean the proxy statement to be delivered to shareholders of Seller in connection with the solicitation of their approval of this Agreement and the transactions contemplated hereby.

Rights shall mean warrants, options, rights, convertible securities and other arrangements or commitments which obligate an entity to issue or dispose of any of its capital stock or other ownership interests.

SEC shall mean the Securities and Exchange Commission.

Securities Act shall mean the Securities Act of 1933, as amended.

Securities Documents shall mean all reports, offering circulars, proxy statements, registration statements and all similar documents filed, or required to be filed, pursuant to the Securities Laws.

Securities Laws shall mean the Securities Act, the Exchange Act, and the rules and regulations of the SEC promulgated thereunder.

Seller shall mean West Michigan Financial Corp., a Michigan corporation.

Seller Bank shall mean West Michigan Community Bank, a Michigan banking corporation and wholly owned subsidiary of Seller.

Seller Interim Operating Earnings shall mean Seller's GAAP net income, (excluding (a) any market value adjustment for any net unrealized gain or loss on securities available for sale, (b) all realized gains or losses on the sale of securities, (c) all gains on the sale of real or personal property, (d) transaction related expenses, including legal, accounting and investment banking and (e) the effect of any conforming entries directed by Buyer pursuant to Section 5.15 hereof), for the period February 1, 2004, through the Closing Date. If Buyer and Seller disagree on the amount of Seller Interim Operating Earnings, such dispute will be resolved by Seller's independent public accountants.

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Seller Common Stock shall mean the common stock of Seller.

Seller Employee Plans shall mean all stock option, employee stock purchase and stock bonus plans, qualified pension or profit-sharing plans, any deferred compensation, consultant, bonus or group insurance contract or any other incentive, health and welfare or employee benefit plan or agreement maintained for the benefit of employees or former employees of Seller, or any Seller Subsidiary, whether written or oral.

Seller Financial Statements shall mean (i) the audited consolidated statements of financial condition (including related notes and schedules, if any) of Seller as of December 31, 2002 and 2001 and the consolidated statements of income, shareholders' equity and cash flows (including related notes and schedules, if any) of Seller for the years ended December 31, 2002 and 2001, and (ii) the unaudited consolidated statements of financial condition and the consolidated statements of income, shareholders' equity and cash flows of Seller with respect to the period- ended June 30, 2003.

Seller Options shall mean the options to purchase 879 shares of Seller Common Stock.

MBCA shall mean the Michigan Business Corporation Act, as amended.

Subsidiary and Significant Subsidiary shall have the meanings set forth in Rule 1-02 of Regulation S-X of the SEC.

Surviving Corporation shall mean Seller after the Corporate Merger.

Surviving Corporation Common Stock shall mean the shares of common stock of the Surviving Corporation.

ARTICLE II

THE MERGER

2.1 The Corporate Merger and Subsequent Events

(a) Subject to the terms and conditions of this Agreement, at the Effective Time, Merger Sub shall be merged into Seller in accordance with the provisions of Section 701 of the MBCA and the Plan of Corporate Merger, attached hereto as Exhibit A, and the separate corporate existence of Merger Sub shall cease. Seller shall be the Surviving Corporation of the Corporate Merger, and shall continue its corporate existence under the laws of the State of Michigan. The name of the Surviving Corporation shall be as stated in the Articles of Incorporation of Seller immediately prior to the Effective Time. Immediately following the Corporate Merger, Buyer shall cause the Company Merger to be completed.

(b) The Articles of Incorporation and Bylaws of Seller as in effect immediately prior to the Effective Time shall be the Articles of Incorporation and Bylaws of the Surviving Corporation.

(c) The directors and officers of Merger Sub immediately prior to the Effective Time shall be the directors and officers of the Surviving Corporation.

2.2 Effective Time: Closing

The Corporate Merger shall become effective at the Effective Time. The Certificate of Merger shall be filed as soon after the Closing as is practicable.

2.3 Treatment of Capital Stock

Subject to the provisions of this Agreement, at the Effective Time, automatically by virtue of the Corporate Merger and without any action on the part of any shareholder:

- (a) each outstanding share of Merger Sub Common Stock shall automatically convert into a share of Surviving Corporation Common Stock;
- (b) each share of Buyer's capital stock shall continue unchanged as the same share of Buyer's capital stock; and
- (c) each share of Seller Common Stock issued and outstanding immediately prior to the Effective Time shall, by virtue of the Corporate Merger and without any action of any kind by any person or entity, be converted into the right to receive the Per Share Merger Consideration; provided, however, that each share of Seller Common Stock which is owned beneficially or of record by Seller (including treasury shares) or Buyer or any of their respective Subsidiaries (other than shares held in a fiduciary capacity for the benefit of third parties or as a result of debts previously contracted) shall be canceled and retired without consideration or conversion.
- (d) Each Seller Option shall be converted into the right to receive cash in an amount equal to the difference between the Per Share Merger Consideration and the exercise price per share under the Seller Option, multiplied by the total number of shares of Seller Common Stock that may be acquired upon exercise such Seller Option.

2.4 Shareholder Rights: Stock Transfers

At the Effective Time, holders of Seller Common Stock shall cease to be and shall have no rights as shareholders of Seller, other than to receive the Per Share Merger Consideration for each share of Seller Common Stock held. After the Effective Time, there shall be no transfers on the stock transfer books of Seller or the Surviving Corporation of shares of Seller Common Stock and if Certificates are presented for transfer after the Effective Time, they shall be delivered to Buyer or the Exchange Agent for cancellation against delivery of the Per Share Merger Consideration. No interest shall be paid on the Per Share Merger Consideration.

2.5 Exchange Procedures

- (a) No later than five business days in advance of the anticipated date of the Effective Time, Buyer shall cause the Exchange Agent to mail or make available to each holder of record of any Certificate or Seller Option a notice and letter of transmittal disclosing the effectiveness of the Corporate Merger and the procedure for exchanging Certificates for the Per Share Merger Consideration and the Seller Options for the cash payment provided for herein. Such letter of transmittal shall specify that delivery shall be effected and risk of loss and title shall pass only upon proper delivery of Certificates to the Exchange Agent.

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(b) At the Effective Time, Buyer shall make available to the Exchange Agent an amount of cash sufficient to make payments of the Per Share Merger Consideration for each outstanding share of Seller Common Stock and the Seller Options.

(c) Each holder of any outstanding Certificate who surrenders such Certificate to the Exchange Agent will, upon acceptance thereof by the Exchange Agent, be entitled to the Per Share Merger Consideration for each share represented by such Certificate. The Exchange Agent shall accept Certificates upon compliance with such reasonable terms and conditions as the Exchange Agent may impose to effect an orderly exchange in accordance with normal exchange practices. Each outstanding Certificate which is not surrendered to the Exchange Agent shall, except as otherwise herein provided, evidence ownership of only the right to receive the Per Share Merger Consideration for each share represented by such Certificate.

(d) The Exchange Agent shall not be obligated to deliver the Per Share Merger Consideration until the holder surrenders a Certificate or, in default thereof, an appropriate affidavit of loss and indemnity agreement and/or a bond as may be required in each case by the Exchange Agent. If any check is to be issued in a name other than that in which the Certificate is registered, it shall be a condition of the issuance thereof that the Certificate so surrendered shall be properly endorsed or accompanied by an executed form of assignment separate from the Certificate and otherwise in proper form for transfer and that the person requesting such exchange pay to the Exchange Agent any transfer or other tax required by reason of the issuance of a check in any name other than that of the registered holder of the certificate surrendered or otherwise establish to the satisfaction of the Exchange Agent that such tax has been paid or is not payable.

(e) Any portion of the cash delivered to the Exchange Agent by Buyer that remains unclaimed by the shareholders of Seller for one year after the Closing Date shall be delivered by the Exchange Agent to Buyer. Any shareholders of Seller who have not theretofore surrendered their Certificates shall thereafter look only to Buyer for the Per Share Merger Consideration. If outstanding Certificates are not surrendered or the payment for them is not claimed prior to the date on which such payment would otherwise escheat to or become the property of any Governmental Entity, the unclaimed items shall, to the extent permitted by abandoned property and any other applicable law, become the property of Buyer (and to the extent not in its possession shall be delivered to it), free and clear of all claims or interest of any person previously entitled to such property. Neither the Exchange Agent nor any party to this Agreement shall be liable to any holder of Seller Common Stock represented by any Certificate for any consideration paid to a public official pursuant to applicable abandoned property, escheat or similar laws. Buyer and the Exchange Agent shall be entitled to rely upon the stock transfer books of Seller to establish the identity of those persons entitled to receive the Per Share Merger Consideration, which books shall be conclusive with respect thereto. In the event of a dispute with respect to ownership of Seller Common Stock represented by any Certificate, Buyer and the Exchange Agent shall be entitled to deposit any Per Share Merger Consideration represented thereby in escrow with an independent third party and thereafter be relieved with respect to any claims thereto.

(f) Buyer shall be entitled to deduct and withhold from consideration otherwise payable pursuant to this Agreement to any holder of Certificates or Seller Options, such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign tax law. To the extent that amounts are so withheld by Buyer, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the Certificates or Seller Options in respect of which such deduction and withholding was made.

2.6 Additional Actions

If, at any time after the Effective Time, Buyer or Buyer Banks shall consider that any further assignments or assurances in law or any other acts are necessary or desirable to (i) vest, perfect or confirm, of record or otherwise, in Buyer or Buyer Banks their respective right, title or interest in, to or under any of the rights, properties or assets of Seller or Seller Bank acquired or to be acquired by Buyer or Buyer Banks as a result of, or in connection with, the Merger, or (ii) otherwise carry out the purposes of this Agreement, Seller or Seller Bank and their respective proper officers and directors shall be deemed to have granted to Buyer or Buyer Banks an irrevocable power of attorney to execute and deliver all such proper deeds, assignments and assurances in law and to do all acts necessary or proper to vest, perfect or confirm title to and possession of such rights, properties or assets in Buyer or Buyer Banks and otherwise to carry out the purposes of this Agreement; and the proper officers and directors of Buyer and Buyer Banks are fully authorized in the name of Seller or Seller Bank or otherwise to take any and all such action.

**ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER AND SELLER BANK**

Seller, and Seller Bank represent and warrant to Buyer as follows, except as Previously Disclosed:

3.1 Capital Structure

The authorized capital stock of Seller consists of 50,000 shares of Seller Common Stock. There are no other shares of stock of Seller authorized or outstanding. As of the date hereof, 38,029 shares of Seller Common Stock are outstanding and 500 shares of Seller Common Stock are held in treasury. All outstanding shares of Seller Common Stock have been duly authorized and validly issued and are fully paid and nonassessable, and none of the outstanding shares of Seller Common Stock has been issued in violation of the preemptive rights of any person, firm or entity. Except for the Seller Options, there are no Rights authorized, issued or outstanding with respect to the capital stock of Seller as of the date hereof.

3.2 Organization, Standing and Authority of Seller

Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan, with full corporate power and authority to own or lease all of its properties and assets and to carry on its business as now conducted, and Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which its ownership or leasing of property or the conduct of its business requires such licensing or qualification. Seller is a bank holding company, duly registered under the Bank Holding Company Act of 1956, as amended, and subject to the regulation and supervision by the FRS and the Commissioner. Seller has heretofore delivered to Buyer true and complete copies of the Articles of Incorporation and Bylaws of Seller as in effect as of the date hereof.

3.3 Ownership of Seller Subsidiaries

Seller has Previously Disclosed the name, jurisdiction of incorporation and percentage ownership of each direct or indirect Seller Subsidiary, and Seller Bank is its only Significant Subsidiary. Except for (x) capital stock of Seller Subsidiaries, (y) securities and other interests held in a fiduciary capacity and beneficially owned by third parties or taken in consideration of debts previously contracted and (z) securities and other interests which are Previously Disclosed, Seller does not own or have the right to acquire, directly or indirectly, any outstanding capital stock or other voting securities or ownership interests of any corporation, bank, savings association, partnership, joint venture or other organization, other than investment securities representing not more than 5% of any entity. Except as Previously Disclosed, the outstanding shares of capital stock or other ownership interests of each Seller Subsidiary have been duly authorized and validly issued, are fully paid and nonassessable, and are owned by Seller free and clear of all liens, claims, encumbrances, charges, pledges, restrictions or rights of third parties of any kind whatsoever. No rights are authorized, issued or outstanding with respect to the capital stock or other ownership interests of Seller Subsidiaries and there are no agreements, understandings or commitments relating to the right of Seller to vote or to dispose of such capital stock or other ownership interests.

3.4 Organization, Standing and Authority of Seller Bank

Seller Bank is a Michigan state chartered commercial bank duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized with full power and authority to own or lease all of its properties and assets and to carry on its business as now conducted, and is duly licensed or qualified to do business and is in good standing in each jurisdiction in which its ownership or leasing of property or the conduct of its business requires such licensing or qualification, except to the extent that failure to be licensed or qualified would not have a Material Adverse Effect. The deposit accounts of Seller Bank are insured by the BIF to the maximum extent permitted by the FDIA and Seller Bank has paid all deposit insurance premiums and assessments required by the FDIA and the regulations thereunder. Seller has heretofore delivered to Buyer true and complete copies of the Articles of Incorporation, as amended and restated, and Bylaws of Seller Bank as in effect as of the date hereof.

3.5 Authorized and Effective Agreement

(a) Seller has all requisite power and authority to enter into this Agreement and (subject to receipt of all necessary governmental approvals and the approval of Seller's shareholders of this Agreement) to perform all of its respective obligations hereunder. The execution and delivery of this Agreement and the completion of the transactions contemplated hereby have been approved by the Boards of Directors of Seller and Seller Bank and duly authorized and approved by all necessary corporate action in respect thereof on the part of Seller and Seller Bank, except for the approval of this Agreement by Seller's shareholders and Seller as the sole shareholder of Seller Bank. This Agreement has been duly and validly executed and delivered by Seller and Seller Bank and, assuming due authorization, execution and delivery by Buyer and Buyer Banks, constitutes a legal, valid and binding obligation of Seller and Seller Bank, enforceable against Seller and Seller Bank in accordance with its terms, subject, as to enforceability, to bankruptcy, insolvency and other laws of general applicability relating to or affecting creditors' rights and to general equity principles, and except to the extent such enforceability may be limited by laws relating to safety and soundness of insured depository institutions as set forth in 12 U.S.C. §1818(b) or by the appointment of a conservator by the FDIC.

(b) Neither the execution and delivery of this Agreement nor completion of the transactions contemplated hereby, nor compliance by Seller with any of the provisions hereof (i) does or will conflict with or result in a breach of any provisions of the Articles of Incorporation or Bylaws of Seller or the equivalent documents of any Seller Subsidiary, (ii) violate, conflict with or result in a breach of any term, condition or provision of, or constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, or give rise to any right of termination, cancellation or acceleration with respect to, or result in the creation of any lien, charge or encumbrance upon any property or asset of Seller or any Seller Subsidiary pursuant to, any material note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which Seller or any Seller Subsidiary is a party, or by which any of their respective properties or assets may be bound or affected, or (iii) subject to receipt of all required governmental and shareholder approvals, violates any order, writ, injunction, decree, statute, rule or regulation applicable to Seller or any Seller Subsidiary.

(c) Except for (i) the filing of applications and notices with and the approvals of the FRS and, if necessary, the Commissioner, (ii) the adoption of this Agreement and the approval of the Merger by the requisite vote of the shareholders of Seller and Seller Bank, (iii) the filing of the Certificate of Merger with the Michigan Department of Consumer & Industry Services in connection with the Corporate Merger, (iv) the filing of a certificate of merger with the Michigan Department of Consumer & Industry Services in connection with Company Merger; and (v) review of the Merger by the DOJ under federal antitrust laws, no consents or approvals of or filings or registrations with any Governmental Entity or with any third party are necessary on the part of Seller or Seller Bank in connection with (x) the execution and delivery by Seller of this Agreement, or (y) the completion of the Merger.

(d) Except as Previously Disclosed, as of the date hereof, neither Seller nor Seller Bank is aware of any reasons relating to Seller or Seller Bank (including CRA compliance) why all consents and approvals shall not be procured from all Governmental Entities having jurisdiction over the Merger as shall be necessary for the completion of the Merger and the continuation by Buyer after the Effective Time of the business of each of Seller and Seller Bank, respectively, as such business is carried on immediately prior to the Effective Time, free of any conditions or requirements which could materially impair the value of Seller or Seller Bank to Buyer.

3.6 Regulatory Reports

Each of Seller and Seller Bank has duly filed with the FRS, FDIC, Commissioner and any other applicable federal or state banking authority, as the case may be, the reports required to be filed under applicable laws and regulations and such reports were in all material respects complete and accurate and in compliance with the requirements of applicable laws and regulations. In connection with the most recent examinations of Seller and Seller Bank by the FRS, the FDIC and the Commissioner, neither Seller nor Seller Bank was required to correct or change any action, procedure or proceeding which Seller or Seller Bank believes has not been corrected or changed as required.

3.7 Financial Statements

(a) Seller has previously delivered or made available to Buyer accurate and complete copies of the Seller Financial Statements, the audited portions of which are accompanied by the audit reports of Plante & Moran, PLLC, independent certified public accountants with respect to Seller. The Seller Financial Statements, as well as the Seller Financial Statements to be delivered pursuant to the requirements of this Agreement, fairly present or will fairly present, as the case may be, the consolidated financial condition of Seller as of the respective dates set forth therein, and the consolidated income, changes in shareholders' equity and cash flows of Seller for the respective periods or as of the respective dates set forth therein.

(b) Each of the Seller Financial Statements has been or will be, as the case may be, prepared in accordance with GAAP consistently applied during the periods involved, except as stated therein. The audits of Seller have been conducted in all material respects in accordance with generally accepted auditing standards. The books and records of Seller and the Seller Subsidiaries are being maintained in compliance with applicable legal and accounting requirements, and such books and records accurately reflect all dealings and transactions in respect of the business, assets, liabilities and affairs of Seller and its Subsidiaries.

(c) Except and to the extent (i) reflected, disclosed or provided for in the Seller Financial Statements, (ii) of liabilities since incurred in the ordinary course of business and (iii) of liabilities incurred in connection with completion of the transactions contemplated by this Agreement, neither Seller nor any Seller Subsidiary has any liabilities, whether absolute, accrued, contingent or otherwise.

3.8 Material Adverse Change

Since December 31, 2002 or except as Previously Disclosed, (i) Seller and its Subsidiaries have conducted their respective businesses in the ordinary and usual course (excluding the incurrence of expenses in connection with this Agreement and the transactions contemplated hereby) and (ii) no event has occurred or circumstance arisen that, in the aggregate, has had or is reasonably likely to have a Material Adverse Effect on Seller. Neither Seller nor Seller Bank has notice that any customer of Seller or Seller Bank intends to discontinue, diminish or adversely change their relationship with Seller or Seller Bank, on account of the Corporate Merger or otherwise, the effect of which would have a Material Adverse Effect on Seller. Neither Seller nor any of its subsidiaries has been advised as of the date of this Agreement that any executive officer of Seller or any of its subsidiaries intends to terminate his or her employment on account of the Corporate Merger or otherwise.

3.9 Environmental Matters

(a) Seller and its Subsidiaries are in compliance with all Environmental Laws with respect to real estate owned (or occupied based on long term ground leases) by Seller or Seller Subsidiaries. Neither Seller nor any Seller Subsidiary has received any communication alleging that Seller or any Seller Subsidiary is not in such compliance and, to the best knowledge of Seller, there are no present circumstances that would prevent or interfere with the continuation of such compliance.

(b) Except as Previously Disclosed, none of the properties owned, leased or operated by Seller or a Seller Subsidiary has been or is in material violation of or liable for a material amount under any Environmental Law.

(c) There are no past or present actions, activities, circumstances, conditions, events or incidents that could reasonably form the basis of any Environmental Claim or other claim or action or governmental investigation that could result in the imposition of any liability arising under any Environmental Law against Seller or a Seller Subsidiary or against any person or entity whose liability for any Environmental Claim Seller or a Seller Subsidiary has or may have retained or assumed either contractually or by operation of law.

(d) Except in the ordinary course of its loan underwriting activities, and except as Previously Disclosed, Seller has not conducted any environmental studies during the past five years with respect to any properties owned by it or a Seller Subsidiary as of the date hereof.

3.10 Tax Matters

(a) Seller and its Subsidiaries have timely filed all federal, state and local (and, if applicable, foreign) income, franchise, bank, excise, real property, personal property and other tax returns, including the Michigan Single Business Tax returns required by applicable law to be filed by them (including estimated tax returns, income tax returns, information returns and withholding and employment tax returns) and have paid, or where payment is not required to have been made, have set up an adequate reserve or accrual for the payment of, all taxes required to be paid in respect of the periods covered by such returns and, as of the Effective Time, will have paid, or where payment is not required to have been made, will have set up an adequate reserve or accrual for the payment of, all material taxes for any subsequent periods ending on or prior to the Effective Time. Neither Seller nor any Seller Subsidiary will have any material liability for any such taxes in excess of the amounts so paid or reserves or accruals so established.

(b) All federal, state and local (and, if applicable, foreign) income, franchise, bank, excise, real property, personal property and other tax returns filed by Seller and its Subsidiaries are complete and accurate in all material respects. Neither Seller nor any Seller Subsidiary is delinquent in the payment of any tax, assessment or governmental charge or has requested any extension of time within which to file any tax returns in respect of any fiscal year or portion thereof. There are currently no agreements in effect with respect to Seller or any Seller Subsidiary to extend the period of limitations for the assessment or collection of any tax. As of the date hereof, no audit, examination or deficiency or refund litigation with respect to any such return is pending or, to the best of Seller's knowledge, threatened.

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(c) Neither Seller nor any Seller Subsidiary (i) is a party to any agreement providing for the allocation or sharing of taxes other than the agreement between Seller and Seller Bank Previously Disclosed, (ii) is required to include in income any adjustment pursuant to Section 481(a) of the Code by reason of a voluntary change in accounting method initiated by Seller or any Seller Subsidiary (nor does Seller have any knowledge that the IRS has proposed any such adjustment or change of accounting method) or (iii) has filed a consent pursuant to Section 341(f) of the Code or agreed to have Section 341(f)(2) of the Code apply.

3.11 Legal Proceedings

Except as Previously Disclosed, there are no actions, suits, claims, governmental investigations or proceedings instituted, pending or, to the best knowledge of Seller, that are threatened (or unasserted but considered probable of assertion and which, if asserted, would have at least a reasonable probability of an unfavorable outcome) against Seller or any of its Subsidiaries or against any asset, interest or right of Seller or any of its Subsidiaries, or, to the knowledge of Seller against any officer, director or employee of any of them. Neither Seller nor any Seller Subsidiary is a party to any order, judgment or decree that would have a Material Adverse Effect.

3.12 Compliance with Laws

(a) Each of Seller and the Seller Subsidiaries has all permits, licenses, certificates of authority, orders and approvals of, and has made all filings, applications and registrations with, all Governmental Entities that are required in order to permit it to carry on its business as it is presently being conducted; all such permits, licenses, certificates of authority, orders and approvals are in full force and effect and will not be adversely affected by virtue of the completion of the Merger; and to the best knowledge of Seller, no suspension or cancellation of any of the same is threatened.

(b) Except as Previously Disclosed, neither Seller nor any Seller Subsidiary is in violation of its respective Articles of Incorporation, Charter, or Bylaws, or of any applicable federal, state or local law or ordinance or any order, rule or regulation of any Governmental Entity (including all regulatory capital requirements), truth-in-lending, usury, fair credit reporting, equal credit opportunity, community reinvestment, redlining, loan insurance and guarantee programs, consumer protection, securities, safety, health, anti-discrimination, antitrust, and wage and hour laws, ordinances, orders, rules and regulations), or in default with respect to any order, writ, injunction or decree of any court, or in default under any order, license, regulation or demand of any Governmental Entity; and neither Seller nor any Seller Subsidiary has received any notice or communication from any Governmental Entity asserting that Seller or any Seller Subsidiary is in violation of any of the foregoing. Neither Seller nor any Seller Subsidiary is subject to any regulatory or supervisory cease and desist order, agreement, written directive, memorandum of understanding or written commitment (other than those of general applicability issued by Governmental Entities), and neither of them has received any written communication requesting that it enter into any of the foregoing.

3.13 Certain Information

None of the information relating to Seller and its Subsidiaries in the Proxy Statement, as of the date such Proxy Statement is mailed to shareholders of Seller and up to and including the date of the meeting of shareholders to which such Proxy Statement relates, will contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, provided that information as of a later date shall be deemed to modify information as of an earlier date. Neither this Agreement nor any schedule, statement, list, certificate or other written information furnished or to be furnished by Seller in connection with this Agreement contains or will contain any untrue statement of a material fact or omit or will omit to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances in which they are made, not misleading.

3.14 Employee Benefit Plans

(a) Seller has Previously Disclosed all Seller Employee Plans and has heretofore delivered to Buyer accurate and complete copies of each (including amendments and agreements relating thereto) together with, in the case of tax-qualified plans, (i) the most recent financial reports prepared with respect thereto, (ii) the most recent annual reports filed with any Governmental Entity with respect thereto, and (iii) all rulings and determination letters and any open requests for rulings or letters that pertain thereto.

(b) Neither Seller nor any Seller Subsidiary has maintained a defined benefit pension plan, as defined in ERISA §3(35), since 1990, and any such defined pension plans maintained before that date have been terminated and liquidated in compliance with procedures imposed by the Code and ERISA. Seller has furnished Buyer with applicable letters from the IRS and the PBGC.

(c) Neither Seller nor any Seller Subsidiary participates in or has incurred any liability under Section 4201 of ERISA for a complete or partial withdrawal from a multi-employer plan (as such term is defined in ERISA).

(d) A favorable determination letter has been issued by the IRS with respect to each Seller Defined Benefit Plan or Seller Employee Plans, which is intended to qualify under Section 401 of the Code to the effect that such Seller Defined Benefit Plan and Seller Employee Plans, included all applicable provisions required by ERISA and the Code to be included in the plan and trust documents and that the trust associated with such Seller Employee Plans, is tax exempt under Section 501 of the Code. No such letter has been revoked or, to the best of Seller's knowledge, is threatened to be revoked, and Seller does not know of any ground on which such revocation would likely occur. Neither Seller nor any Seller Subsidiary has any liability under any such Seller Employee Plans, that is not reflected in the Seller Financial Statements, other than liabilities incurred in the ordinary course of business in connection therewith subsequent to the date thereof.

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(e) No transaction prohibited by Section 406 of ERISA (and not exempt under Section 408 of ERISA or Section 4975 of the Code) has occurred with respect to any Seller Employee Plan which would result in the imposition, directly or indirectly, of an excise tax under Section 4975 of the Code or otherwise have a Material Adverse Effect on Seller.

(f) Full payment has been made (or proper accruals have been established) of all contributions which are required for periods prior to the date hereof, and full payment will be so made (or proper accruals will be so established) of all contributions which are required for periods after the date hereof and prior to the Effective Time, under the terms of each Seller Employee Plan or ERISA.

(g) The Seller Employee Plans have been operated in compliance in all material respects with the applicable provisions of ERISA, the Code, all regulations, rulings and announcements promulgated or issued thereunder and all other applicable governmental laws and regulations. All contributions required to be made to Seller Employee Plans at the date hereof have been made, and all contributions required to be made to Seller Employee Plans as of the Effective Time will have been made as of such date.

(h) There are no pending or, to the best knowledge of Seller, threatened claims (other than routine claims for benefits) by, on behalf of or against any of Seller Employee Plans or any trust related thereto or any fiduciary thereof.

(i) Neither Seller nor any Seller Subsidiary has any obligation to provide medical or health care coverage or benefits to anyone other than current employees and their dependents, except continuation coverage as required under Code § 4980B and ERISA § 601, et seq., and commonly known as COBRA coverage. Neither Seller nor any Seller Subsidiary has any other obligations to provide health care benefits to former employees or their dependents.

3.15 Certain Contracts

(a) Except as Previously Disclosed, neither Seller nor any Seller Subsidiary is a party to, is bound or affected by, receives, or is obligated to pay, benefits under (i) any agreement, arrangement or commitment, including any agreement, indenture or other instrument, relating to the borrowing of money by Seller or a Seller Subsidiary (other than in the case of Seller Bank deposits, FHLB advances, federal funds purchased and securities sold under agreements to repurchase in the ordinary course of business) or the guarantee by Seller or a Seller Subsidiary of any obligation, other than by Seller Bank in the ordinary course of its banking business, (ii) any agreement, arrangement or commitment relating to the employment of a consultant or the employment, election or retention in office of any present or former director, officer or employee of Seller or a Seller Subsidiary, (iii) any agreement, arrangement or understanding (other than as set forth in this Agreement) pursuant to which any payment (whether of severance pay or otherwise) became or may become due to any director, officer or employee of Seller or a Seller Subsidiary upon execution of this Agreement or upon or following completion of the transactions contemplated by this Agreement (either alone or in connection with the occurrence of any additional acts or events); (iv) any agreement, arrangement or understanding pursuant to which Seller or a Seller Subsidiary is obligated to indemnify any director, officer, employee or agent of Seller or a Seller Subsidiary, other than as set forth in Seller Employee Plans and in the Articles of Incorporation, Bylaws or other governing documents of Seller and its Subsidiaries; (v) any agreement, arrangement or understanding to which Seller or a Seller Subsidiary is a party or by which any of the same is bound which limits the freedom of Seller or a Seller Subsidiary to compete in any line of business or with any person; (vi) any assistance agreement, supervisory agreement, memorandum of understanding, consent order, cease and desist order or condition of any regulatory order or decree with or by the FRS, the FDIC, the Commissioner, or any other regulatory agency (other than those of general applicability issued by Governmental Entities), (vii) any bonus, pension, profit sharing, retirement, stock option, stock purchase, hospitalization, insurance or other similar plan providing for benefits for its employees or officers, (viii) lease, installment purchase agreement or other contract with respect to any property (real, personal, or mixed) used or proposed to be used from Seller's or Subsidiary's operations, (ix) contract or agreement for the purchase or disposition of material, supplies, equipment or services, (x) contract or agreement that by its terms requires the consent of any party thereto to the consummation of the transactions contemplated by this Agreement, or (xi) any contract, except ordinary and customary banking relationships, with any executive officer, director or holder of more than 5 percent of the outstanding common stock of Seller.

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(b) Neither Seller nor any Seller Subsidiary is in default or in non-compliance under any contract, agreement, commitment, arrangement, lease, insurance policy or other instrument to which it is a party or by which its assets, business or operations may be bound or affected, whether entered into in the ordinary course of business or otherwise and whether written or oral, and there has not occurred any event that with the lapse of time or the giving of notice, or both, would constitute such a default or non-compliance.

(c) Each of Seller and Seller Subsidiaries has all licenses and approvals required by contracts with third parties that required in order to permit each to carry on its business as it is presently being conducted.

3.16 Brokers and Finders

Except for payments due to Austin Associates, LLC for services rendered in connection with the transaction contemplated by this Agreement, neither Seller nor any Seller Subsidiary nor any of their respective directors, officers or employees, has employed any broker or finder or incurred any liability for any broker or finder fees or commissions in connection with the transactions contemplated hereby.

3.17 Insurance

Each of Seller and its Subsidiaries is insured for reasonable amounts with financially sound and reputable insurance companies against such risks as companies engaged in a similar business would, in accordance with good business practice, customarily be insured and has maintained all insurance required by applicable laws and regulations.

3.18 Properties

All real property used in the conduct of Seller's business and that of its Subsidiaries whether owned or leased by Seller or any of Seller's Subsidiaries, has been Previously Disclosed. All real and personal property owned by Seller or its Subsidiaries or presently used by any of them in its respective business is in good condition (ordinary wear and tear excepted) and is sufficient to carry on the business of Seller and its Subsidiaries in the ordinary course of business consistent with their past practices. Seller and its Subsidiaries have good and marketable title free and clear of all liens, encumbrances, charges, defaults or equities (other than equities of redemption under applicable foreclosure laws) to all of its properties and assets, real and personal, except (i) liens for current taxes not yet due or payable, (ii) pledges to secure deposits and other liens incurred in the ordinary course of its banking business, (iii) such imperfections of title, easements and encumbrances, if any, as are de minimis in character, amount or extent and (iv) as reflected in the Seller Financial Statements. All real and personal property which is material to Seller's business and the business of its Subsidiaries on a consolidated basis and leased or licensed by Seller or a Subsidiary of Seller is held pursuant to leases or licenses which are valid and enforceable in accordance with their respective terms. Except as Previously Disclosed, all rents and other amounts due under such leases have been paid; Seller and its Subsidiaries are not in default in any of their covenants or obligations under such leases, the leases are unmodified and in full force and effect, and will not terminate or lapse prior to the Effective Time. All improved real property owned or leased by Seller or its Subsidiaries is in compliance with all applicable zoning laws.

Seller is currently insured under owner's title insurance policies showing title in Seller or Seller's Subsidiary for all real estate owned or leased by Seller or Seller's Subsidiary, as owner or lessee, as the case may be, in amounts not less than the purchase price or fair market value of the leasehold estate as of the time such property and leasehold interests were acquired.

3.19 Labor

No work stoppage involving Seller or a Seller Subsidiary is pending or, to the best knowledge of Seller, threatened. Neither Seller nor a Seller Subsidiary is involved in or, to the best knowledge of Seller, threatened with or affected by, any labor dispute, arbitration, lawsuit or administrative proceeding involving the employees of Seller or a Subsidiary. Employees of Seller and Seller Subsidiaries are not represented by any labor union nor are any collective bargaining agreements otherwise in effect with respect to such employees, and to the best of Seller's knowledge, there have been no efforts to unionize or organize any employees of Seller or any Seller Subsidiaries during the past five years.

3.20 Allowance for Loan Losses

The allowance for loan losses reflected on Seller's consolidated statement of financial condition included in the Seller Financial Statements, in the reasonable opinion of Seller's management, has been calculated in all material respects as of their respective dates in a manner consistent with the requirements of GAAP to provide for reasonably anticipated losses on outstanding loans, net of recoveries. The real estate owned reflected in the Seller Financial Statements is, and will be in the case of subsequently delivered Seller Financial Statements, carried at the lower of cost or fair value, less estimated costs to sell, as required by GAAP. All material guarantees of indebtedness owed to Seller or its Subsidiaries, including, but not limited to, those of the Federal Housing Administration, the Small Business Administration, the Farmers Home Administration, or other federal agencies, are valid and enforceable in accordance with their respective terms.

3.21 Material Interests of Certain Persons

Except as Previously Disclosed, no officer or director of Seller, any Seller Subsidiary or any associate (as such term is defined in Rule 14a-1 under the Exchange Act) or related interest of any such person has any material interest in any material contract or property (real or personal, tangible or intangible), used in, or pertaining to, the business of Seller or any Subsidiary of Seller.

3.22 Fairness Opinion

Seller has received an oral opinion of Austin Associates, LLC, and expects to receive a written opinion from such firm on or before the meeting of Seller's shareholders call to consider this Agreement, both to the effect that, as of the date hereof, the Per Share Merger Consideration to be received by shareholders of Seller pursuant to this Agreement is fair, from a financial point of view, to such shareholders.

3.23 No Undisclosed Liabilities

Seller and its Subsidiaries do not have any material liability, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, including any material liability for taxes (and there is no past or present fact, situation, circumstance, condition or other basis for any present or future action, suit or proceeding, hearing, charge, complaint, claim or demand against Seller or its Subsidiaries giving rise to any such liability) required in accordance with generally accepted accounting principles to be reflected in an audited consolidated balance sheet of Seller, except and to the extent (i) reflected, disclosed or provided for in the Seller Financial Statements, (ii) of liabilities since incurred in the ordinary course of business and (iii) of attorney, accountant and investment bank fee liabilities incurred in connection with completion of the transactions contemplated by this Agreement.

3.24 Loan Portfolio

(i) All loans and discounts shown on the Seller Financial Statements or which were entered into after the date of the most recent balance sheet included in the Seller Financial Statements were and shall be made for good, valuable and adequate consideration in the ordinary course of the business of Seller and its Subsidiaries, in accordance with sound banking practices, and are not subject to any known defenses, set-offs or counter-claims, including any such as are afforded by usury or truth in lending laws, except as may be provided by bankruptcy, solvency or similar laws or by general principles of equity, (ii) the notes or other evidence of indebtedness evidencing such loans and all forms of pledges, mortgages and other collateral documents and security agreements are valid, true and genuine and what they purport to be, and (iii) except as Previously Disclosed, Seller and its Subsidiaries have complied and shall prior to the Effective Time comply with all material laws and regulations relating to such loans.

3.25 Investment Portfolio

All investment securities held by Seller or its Subsidiaries, as reflected in the consolidated balance sheets of Seller included in the Seller Financial Statements, are carried in accordance with GAAP, specifically including but not limited to, Financial Accounting Standard 115.

3.26 Interest Rate Risk Management Instruments

Seller has Previously Disclosed all interest rate swaps, caps, floors, option agreements or other interest rate risk management arrangements or agreements. All such arrangements and agreements were entered into in the ordinary course of business and in accordance with prudent banking practice and applicable rules, regulations and policies and with counter parties believed to be financially responsible at the time and are legal, valid and binding obligations of Seller or one of its Subsidiaries in force in accordance with their terms (subject to the provisions of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws effecting the enforceability of creditors rights generally from time to time and effect, and equitable principles relating to the granting of specific performance and other equitable remedies as a matter of judicial discretion), and are in full force and effect. Seller and its Subsidiaries have duly performed all of their obligations thereun