

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

☒ Quarterly Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.
For the quarterly period ended September 30, 2020

☐ Transition Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.
For the transition period from _____ to _____
Commission file number 001-34657

TEXAS CAPITAL BANCSHARES, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

75-2679109
(I.R.S. Employer Identification Number)

2000 McKinney Avenue
Suite 700
Dallas TX USA
(Address of principal executive offices)

75201
(Zip Code)

(214) 932-6600
(Registrant's telephone number, including area code)
N/A
(Former name, former address and former fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	TCBI	Nasdaq Stock Market
6.5% Non-Cumulative Perpetual Preferred Stock Series A, par value \$0.01 per share	TCBIP	Nasdaq Stock Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (Section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer	☒	Accelerated Filer	☐
Non-Accelerated Filer	☐	Smaller Reporting Company	☐
Emerging Growth Company	☐		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

APPLICABLE ONLY TO CORPORATE ISSUERS:

On October 21, 2020, the number of shares set forth below was outstanding with respect to each of the issuer's classes of common stock:
Common Stock, par value \$0.01 per share 50,459,457

[Table of Contents](#)

Texas Capital Bancshares, Inc.
Form 10-Q
Quarter Ended September 30, 2020

Index

[Part I. Financial Information](#)

Item 1.	Financial Statements	3
	Consolidated Balance Sheets - Unaudited	4
	Consolidated Statements of Operations and Other Comprehensive Income/(Loss) - Unaudited	5
	Consolidated Statements of Stockholders' Equity - Unaudited	6
	Consolidated Statements of Cash Flows - Unaudited	8
	Notes to Consolidated Financial Statements - Unaudited	9
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	32
	Quarterly Financial Summaries - Unaudited	38
Item 3.	Quantitative and Qualitative Disclosures about Market Risk	49
Item 4.	Controls and Procedures	52

[Part II. Other Information](#)

Item 1.	Legal Proceedings	52
Item 1A.	Risk Factors	52
Item 6.	Exhibits	53

Signatures	54
----------------------------	--------------------

[Table of Contents](#)

PART I - FINANCIAL INFORMATION
ITEM 1. FINANCIAL STATEMENTS
TEXAS CAPITAL BANCSHARES, INC.
CONSOLIDATED BALANCE SHEETS

(in thousands except share data)

(in thousands except share data)	September 30, 2020		December 31, 2019	
	(Unaudited)			
Assets				
Cash and due from banks	\$	185,242	\$	161,817
Interest-bearing deposits in other banks		10,461,544		4,233,766
Federal funds sold and securities purchased under resale agreements		—		30,000
Investment securities		1,367,313		239,871
Loans held for sale (\$639.0 million at September 30, 2020 and \$2,571.3 million at December 31, 2019, at fair value)		648,009		2,577,134
Loans held for investment, mortgage finance		9,378,104		8,169,849
Loans held for investment (net of unearned income)		15,789,958		16,476,413
Less: Allowance for credit losses on loans		290,165		195,047
Loans held for investment, net		24,877,897		24,451,215
Mortgage servicing rights, net		95,323		64,904
Premises and equipment, net		26,653		31,212
Accrued interest receivable and other assets		753,123		740,051
Goodwill and intangible assets, net		17,768		18,099
Total assets	\$	38,432,872	\$	32,548,069
Liabilities and Stockholders' Equity				
Liabilities:				
Deposits:				
Non-interest-bearing	\$	12,339,212	\$	9,438,459
Interest-bearing		19,620,275		17,040,134
Total deposits		31,959,487		26,478,593
Accrued interest payable		14,674		12,760
Other liabilities		354,318		318,094
Federal funds purchased and repurchase agreements		208,183		141,766
Other borrowings		2,700,000		2,400,000
Subordinated notes, net		282,400		282,129
Trust preferred subordinated debentures		113,406		113,406
Total liabilities		35,632,468		29,746,748
Stockholders' equity:				
Preferred stock, \$.01 par value, \$1,000 liquidation value:				
Authorized shares—10,000,000				
Issued shares—6,000,000 shares issued at September 30, 2020 and December 31, 2019		150,000		150,000
Common stock, \$.01 par value:				
Authorized shares—100,000,000				
Issued shares— 50,455,969 and 50,338,158 at September 30, 2020 and December 31, 2019, respectively		504		503
Additional paid-in capital		987,754		978,205
Retained earnings		1,655,317		1,663,671
Treasury stock (shares at cost: 417 at September 30, 2020 and December 31, 2019)		(8)		(8)
Accumulated other comprehensive income, net of taxes		6,837		8,950
Total stockholders' equity		2,800,404		2,801,321
Total liabilities and stockholders' equity	\$	38,432,872	\$	32,548,069

See accompanying notes to consolidated financial statements.

[Table of Contents](#)

TEXAS CAPITAL BANCSHARES, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND OTHER
COMPREHENSIVE INCOME/(LOSS) - UNAUDITED

(in thousands except per share data)	Three months ended September 30,		Nine months ended September 30,	
	2020	2019	2020	2019
Interest income				
Interest and fees on loans	\$ 237,179	\$ 329,344	\$ 768,399	\$ 971,889
Investment securities	3,674	2,316	7,881	6,036
Federal funds sold and securities purchased under resale agreements	1	554	692	1,090
Interest-bearing deposits in other banks	2,877	22,887	24,777	48,540
Total interest income	243,731	355,101	801,749	1,027,555
Interest expense				
Deposits	27,830	80,967	122,298	222,550
Federal funds purchased	128	1,835	973	10,553
Other borrowings	3,365	14,703	17,516	46,681
Subordinated notes	4,191	4,191	12,573	12,573
Trust preferred subordinated debentures	648	1,237	2,573	3,863
Total interest expense	36,162	102,933	155,933	296,220
Net interest income	207,569	252,168	645,816	731,335
Provision for credit losses	30,000	11,000	226,000	58,000
Net interest income after provision for credit losses	177,569	241,168	419,816	673,335
Non-interest income				
Service charges on deposit accounts	2,864	2,707	8,616	8,535
Wealth management and trust fee income	2,502	2,330	7,317	6,468
Brokered loan fees	15,034	8,691	33,813	21,093
Servicing income	7,329	3,549	18,195	9,409
Swap fees	484	1,196	4,709	2,828
Net gain/(loss) on sale of loans held for sale	25,242	(6,011)	51,265	(12,502)
Other	6,893	7,839	18,715	38,848
Total non-interest income	60,348	20,301	142,630	74,679
Non-interest expense				
Salaries and employee benefits	84,096	80,722	262,080	238,235
Net occupancy expense	8,736	8,125	26,582	23,914
Marketing	3,636	14,753	20,146	40,548
Legal and professional	11,207	11,394	40,003	31,428
Communications and technology	31,098	10,805	87,649	31,025
FDIC insurance assessment	6,374	5,220	19,363	14,480
Servicing-related expenses	12,287	8,165	48,758	19,613
Merger-related expenses	—	—	17,756	—
Other	8,307	10,245	31,173	33,420
Total non-interest expense	165,741	149,429	553,510	432,663
Income before income taxes	72,176	112,040	8,936	315,351
Income tax expense	15,060	23,958	2,823	67,756
Net income	57,116	88,082	6,113	247,595
Preferred stock dividends	2,438	2,438	7,313	7,313
Net income/(loss) available to common stockholders	\$ 54,678	\$ 85,644	\$ (1,200)	\$ 240,282
Other comprehensive income/(loss)				
Change in unrealized gain/(loss) on available-for-sale debt securities arising during period, before tax	\$ 8,053	\$ 884	\$ (2,674)	\$ 10,752
Income tax expense/(benefit) related to unrealized loss on available-for-sale debt securities	1,692	186	(561)	2,259
Other comprehensive income/(loss), net of tax	6,361	698	(2,113)	8,493
Comprehensive income	\$ 63,477	\$ 88,780	\$ 4,000	\$ 256,088
Basic earnings/(loss) per common share	\$ 1.08	\$ 1.70	\$ (0.02)	\$ 4.78
Diluted earnings/(loss) per common share	\$ 1.08	\$ 1.70	\$ (0.02)	\$ 4.77

See accompanying notes to consolidated financial statements.

[Table of Contents](#)

TEXAS CAPITAL BANCSHARES, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY - UNAUDITED

	Preferred Stock		Common Stock		Additional	Retained	Treasury Stock		Accumulated Other Comprehensive	Total
(in thousands except share data)	Shares	Amount	Shares	Amount	Paid-in Capital	Earnings	Shares	Amount	Income	
Balance at June 30, 2019	6,000,000	\$ 150,000	50,297,969	\$ 503	\$ 972,219	\$ 1,516,044	(417)	\$ (8)	\$ 8,313	\$ 2,647,071
Comprehensive income:										
Net income	—	—	—	—	—	88,082	—	—	—	88,082
Change in unrealized gain on available-for-sale securities, net of taxes	—	—	—	—	—	—	—	—	698	698
Total comprehensive income										88,780
Stock-based compensation expense recognized in earnings	—	—	—	—	3,023	—	—	—	—	3,023
Preferred stock dividend	—	—	—	—	—	(2,438)	—	—	—	(2,438)
Issuance of stock related to stock-based awards	—	—	20,102	—	(443)	—	—	—	—	(443)
Balance at September 30, 2019	6,000,000	\$ 150,000	50,318,071	\$ 503	\$ 974,799	\$ 1,601,688	(417)	\$ (8)	\$ 9,011	\$ 2,735,993
Balance at June 30, 2020	6,000,000	\$ 150,000	50,436,089	\$ 504	\$ 983,144	\$ 1,600,639	(417)	\$ (8)	\$ 476	\$ 2,734,755
Comprehensive income:										
Net income	—	—	—	—	—	57,116	—	—	—	57,116
Change in unrealized gain on available-for-sale securities, net of taxes	—	—	—	—	—	—	—	—	6,361	6,361
Total comprehensive income										63,477
Stock-based compensation expense recognized in earnings	—	—	—	—	4,799	—	—	—	—	4,799
Preferred stock dividend	—	—	—	—	—	(2,438)	—	—	—	(2,438)
Issuance of stock related to stock-based awards	—	—	19,880	—	(189)	—	—	—	—	(189)
Balance at September 30, 2020	6,000,000	\$ 150,000	50,455,969	\$ 504	\$ 987,754	\$ 1,655,317	(417)	\$ (8)	\$ 6,837	\$ 2,800,404

See accompanying notes to consolidated financial statements.

TEXAS CAPITAL BANCSHARES, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY - UNAUDITED - CONTINUED

(in thousands except share data)	Preferred Stock		Common Stock		Additional	Retained	Treasury Stock		Accumulated	Total
	Shares	Amount	Shares	Amount	Paid-in Capital	Earnings	Shares	Amount	Other Comprehensive Income	
Balance at December 31, 2018 (audited)	6,000,000	\$ 150,000	50,201,127	\$ 502	\$ 967,890	\$ 1,361,406	(417)	\$ (8)	\$ 518	\$ 2,480,308
Comprehensive income:										
Net income	—	—	—	—	—	247,595	—	—	—	247,595
Change in unrealized gain on available-for-sale securities, net of taxes	—	—	—	—	—	—	—	—	8,493	8,493
Total comprehensive income										256,088
Stock-based compensation expense recognized in earnings	—	—	—	—	8,565	—	—	—	—	8,565
Preferred stock dividend	—	—	—	—	—	(7,313)	—	—	—	(7,313)
Issuance of stock related to stock-based awards	—	—	108,176	1	(1,656)	—	—	—	—	(1,655)
Issuance of common stock related to warrants	—	—	8,768	—	—	—	—	—	—	—
Balance at September 30, 2019	6,000,000	\$ 150,000	50,318,071	\$ 503	\$ 974,799	\$ 1,601,688	(417)	\$ (8)	\$ 9,011	\$ 2,735,993
Balance at December 31, 2019 (audited)	6,000,000	\$ 150,000	50,338,158	\$ 503	\$ 978,205	\$ 1,663,671	(417)	\$ (8)	\$ 8,950	\$ 2,801,321
Impact of adoption of new accounting standards, net of taxes(1)	—	—	—	—	—	(7,154)	—	—	—	(7,154)
Comprehensive income:										
Net income	—	—	—	—	—	6,113	—	—	—	6,113
Change in unrealized gain on available-for-sale securities, net of taxes	—	—	—	—	—	—	—	—	(2,113)	(2,113)
Total comprehensive income										4,000
Stock-based compensation expense recognized in earnings	—	—	—	—	11,348	—	—	—	—	11,348
Preferred stock dividend	—	—	—	—	—	(7,313)	—	—	—	(7,313)
Issuance of stock related to stock-based awards	—	—	117,811	1	(1,799)	—	—	—	—	(1,798)
Balance at September 30, 2020	6,000,000	\$ 150,000	50,455,969	\$ 504	\$ 987,754	\$ 1,655,317	(417)	\$ (8)	\$ 6,837	\$ 2,800,404

(1) Represents the impact of adopting Accounting Standard Update ("ASU") 2016-13. See Note 1 to the consolidated financial statements for more information.

See accompanying notes to consolidated financial statements.

[Table of Contents](#)

TEXAS CAPITAL BANCSHARES, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS - UNAUDITED

(in thousands)	Nine months ended September 30,	
	2020	2019
Operating activities		
Net income	\$ 6,113	\$ 247,595
Adjustments to reconcile net income to net cash provided by operating activities:		
Provision for credit losses	226,000	58,000
Depreciation and amortization	51,716	26,085
Net (gain)/loss on sale of loans held for sale	(51,265)	12,502
Increase in valuation allowance on mortgage servicing rights	20,933	8,360
Stock-based compensation expense	12,064	12,973
Purchases and originations of loans held for sale	(8,963,499)	(7,288,823)
Proceeds from sales and repayments of loans held for sale	10,859,458	6,534,879
Changes in operating assets and liabilities:		
Accrued interest receivable and other assets	(16,912)	(156,803)
Accrued interest payable and other liabilities	25,222	115,636
Net cash provided by/(used in) operating activities	2,169,830	(429,596)
Investing activities		
Purchases of investment securities	(1,140,935)	(111,131)
Principal payments received on investment securities	12,042	5,534
Originations of mortgage finance loans	(157,016,926)	(99,799,613)
Proceeds from pay-offs of mortgage finance loans	155,808,671	97,725,705
Net decrease/(increase) in loans held for investment, excluding mortgage finance loans	553,026	(143,741)
Purchase of premises and equipment, net	(2,705)	(15,047)
Proceeds from sale of other real estate owned, net	—	79
Net cash used in investing activities	(1,786,827)	(2,338,214)
Financing activities		
Net increase in deposits	5,480,894	6,807,190
Costs from issuance of stock related to stock-based awards and warrants	(1,798)	(1,655)
Preferred dividends paid	(7,313)	(7,313)
Net increase/(decrease) in other borrowings	300,000	(1,400,000)
Net increase/(decrease) in federal funds purchased and repurchase agreements	66,417	(501,207)
Net cash provided by financing activities	5,838,200	4,897,015
Net increase in cash and cash equivalents	6,221,203	2,129,205
Cash and cash equivalents at beginning of period	4,425,583	3,080,065
Cash and cash equivalents at end of period	\$ 10,646,786	\$ 5,209,270
Supplemental disclosures of cash flow information:		
Cash paid during the period for interest	\$ 154,019	\$ 282,559
Cash paid during the period for income taxes	21,747	85,314

See accompanying notes to consolidated financial statements.

(1) Operations and Summary of Significant Accounting Policies

Organization and Nature of Business

Texas Capital Bancshares, Inc. (the "Company" or "TCBI"), a Delaware corporation, was incorporated in November 1996 and commenced banking operations in December 1998. The consolidated financial statements of the Company include the accounts of Texas Capital Bancshares, Inc. and its wholly owned subsidiary, Texas Capital Bank, National Association (the "Bank"). We serve the needs of commercial businesses and successful professionals and entrepreneurs located in Texas as well as operate several lines of business serving a regional or national clientele of commercial borrowers. We are primarily a secured lender, with the majority of our loans held for investment, excluding mortgage finance loans and other national lines of business, being made to businesses headquartered or with operations in Texas. Our national lines of business provide specialized lending products to businesses throughout the United States.

On December 9, 2019, the Company and Independent Bank Group, Inc. ("IBTX") entered into an Agreement and Plan of Merger (the "Merger Agreement"), pursuant to which, on the terms and subject to the conditions therein, the Company would be merged with and into IBTX. On May 22, 2020, the Company and IBTX entered into an agreement pursuant to which the parties mutually agreed to terminate the Merger Agreement. Neither party paid a termination fee in connection with the termination of the Merger Agreement.

Basis of Presentation

Our accounting and reporting policies conform to accounting principles generally accepted in the United States ("GAAP") and to generally accepted practices within the banking industry. Certain prior period balances have been reclassified to conform to the current period presentation.

The consolidated interim financial statements are unaudited and certain information and footnote disclosures presented in accordance with GAAP have been condensed or omitted. In the opinion of management, the interim financial statements include all normal and recurring adjustments and the disclosures made are adequate to make the interim financial information not misleading. The consolidated financial statements have been prepared in accordance with GAAP for interim financial information and the instructions to Form 10-Q adopted by the Securities and Exchange Commission ("SEC"). Accordingly, the financial statements do not include all of the information and footnotes required by GAAP for complete financial statements and should be read in conjunction with our consolidated financial statements, and notes thereto, for the year ended December 31, 2019, included in our Annual Report on Form 10-K for the year ended December 31, 2019 (the "2019 Form 10-K"). Operating results for the interim periods disclosed herein are not necessarily indicative of the results that may be expected for a full year or any future period.

Revision of Prior Period Financial Statements

During the second quarter of 2020, the Company identified an error in our historical financial statements related to the accounting for certain share-based liabilities of a consolidated entity that contained put features, whereby the liabilities were not remeasured to their puttable value at each period end. The aggregate amount of the errors at each period end represented 1% or less of our stockholders' equity in all prior periods. In accordance with the guidance set forth in SEC Staff Bulletin 99, *Materiality*, and SEC Staff Accounting Bulletin 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financials*, the Company concluded that the error was not material, individually or in the aggregate with other previously identified immaterial errors, to any prior periods, the current period or the trend in earnings from a quantitative and qualitative perspective. However, correcting the cumulative effect of the errors in the current period would have resulted in a material misstatement in the current period and, as such, we have revised our previously reported financial information contained in our Quarterly Report on Form 10-Q for the three and nine months ended September 30, 2019 to correct the immaterial error, as well as other previously identified immaterial errors. We will also revise previously reported financial information for these immaterial errors in our future filings, as applicable.

A summary of revisions to certain previously reported financial information is presented below:

Revised Consolidated Balance Sheet as of December 31, 2019

<i>(in thousands)</i>	As Reported		Adjustment		As Revised
Other liabilities	\$	287,157	\$	30,937	\$ 318,094
Total liabilities		29,715,811		30,937	29,746,748
Retained Earnings		1,694,608		(30,937)	1,663,671
Total Equity		2,832,258		(30,937)	2,801,321

[Table of Contents](#)

Revised Consolidated Statement of Operations and Other Comprehensive Income/(Loss)

(in thousands)	Three Months Ended September 30, 2019			Nine Months Ended September 30, 2019		
	As Reported	Adjustment	As Revised	As Reported	Adjustment	As Revised
Salaries and employee benefits expense	\$ 80,106	\$ 616	\$ 80,722	\$ 234,818	\$ 3,417	\$ 238,235
Other non-interest expense	10,802	(557)	10,245	35,483	(2,063)	33,420
Total non-interest expense	149,370	59	149,429	431,309	1,354	432,663
Income before tax	112,099	(59)	112,040	316,705	(1,354)	315,351
Net income	88,141	(59)	88,082	248,949	(1,354)	247,595
Net income available to common stockholders	85,703	(59)	85,644	241,636	(1,354)	240,282
Comprehensive income	88,839	(59)	88,780	257,442	(1,354)	256,088

Revised Consolidated Statement of Stockholders' Equity

(in thousands)	Three Months Ended September 30, 2019			Nine Months Ended September 30, 2019		
	As Reported	Adjustment	As Revised	As Reported	Adjustment	As Revised
Beginning balance retained earnings	\$ 1,537,425	\$ (21,381)	\$ 1,516,044	\$ 1,381,492	\$ (20,086)	\$ 1,361,406
Beginning balance total equity	2,668,452	(21,381)	2,647,071	2,500,394	(20,086)	2,480,308
Ending balance retained earnings	1,623,128	(21,440)	1,601,688	1,623,128	(21,440)	1,601,688
Ending balance total equity	2,757,433	(21,440)	2,735,993	2,757,433	(21,440)	2,735,993

The share-based liabilities relate to agreements with certain employees of a subsidiary of the Company that was acquired in 2005. The terms of the agreements include a put feature that, when exercised, requires mandatory settlement by the Company of the share-based liability at a formulaic price. The put feature causes the liability to be remeasured to current puttable value at each period end. The impact of adjusting the liability to puttable value at each period end is recorded in salaries and employee benefits expense. During the second quarter of 2020, put features were exercised on a portion of the outstanding liability. As of September 30, 2020, the carrying value of these share-based liabilities totaled \$7.2 million and is recorded in other liabilities on the consolidated balance sheets.

Accounting Changes

On January 1, 2020, we adopted ASU 2016-13 *"Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments"* ("ASU 2016-13"), which replaces the incurred loss methodology for determining our provision for credit losses and allowance for credit losses with an expected loss methodology that is referred to as the Current Expected Credit Loss ("CECL") model. The measurement of expected credit losses under the CECL methodology is applicable to financial assets measured at amortized cost, including loan receivables and held-to-maturity debt securities. It also applies to off-balance sheet credit exposures not accounted for as insurance (loan commitments, standby letters of credit, financial guarantees, and other similar instruments) and net investments in leases recognized by a lessor in accordance with ASU 2016-02 *"Leases (Topic 842)"*. In addition, ASU 2016-13 made changes to the accounting for available-for-sale debt securities. One such change is to require credit-related impairments to be recognized in the allowance for credit losses rather than as a write-down of the securities' amortized cost basis when management does not intend to sell or believes that it is not more likely than not that they will be required to sell the securities prior to recovery of the securities amortized cost basis.

We adopted ASU 2016-13 using the modified retrospective method for all financial assets measured at amortized cost, off-balance sheet credit exposures and net investments in leases. Results for reporting periods beginning after January 1, 2020 are presented under ASU 2016-13 while prior period amounts continue to be reported in accordance with previously applicable GAAP.

We adopted ASU 2016-13 using the prospective transition approach for debt securities for which other-than-temporary impairment had been recognized prior to January 1, 2020. As a result, the amortized cost basis remains the same before and after the effective date of ASU 2016-13.

[Table of Contents](#)

The following table illustrates the impact of adopting ASU 2016-13 and details how outstanding loan balances have been reclassified as a result of changes made to our primary portfolio segments under CECL:

(in thousands)	January 1, 2020		
	As Reported Under ASU 2016-13	Pre-ASU 2016-13	Impact of ASU 2016-13 Adoption
Assets:			
Loans held for investment (outstanding balance)			
Commercial	\$ 9,133,444	\$ 10,230,828	\$ (1,097,384)
Energy	1,425,309		1,425,309
Mortgage finance	8,169,849	8,169,849	—
Construction		2,563,339	(2,563,339)
Real estate	6,008,040	3,444,701	2,563,339
Consumer		71,463	(71,463)
Equipment leases		256,462	(256,462)
Allowance for credit losses on loans	(203,632)	(195,047)	(8,585)
Total loans held for investment, net	24,442,630	24,451,215	(8,585)
Net deferred tax asset	23,058	21,064	1,994
Liabilities:			
Allowance for credit losses on off-balance sheet exposures	9,203	8,640	563
Equity:			
Retained earnings	1,656,517	1,663,671	(7,154)

In connection with our adoption of ASU 2016-13, changes were made to our primary portfolio segments to align with the methodology applied in determining the allowance under CECL. These changes included segregating energy loans into a stand-alone portfolio segment and reclassifying consumer and equipment leases into the commercial loan portfolio segment. Additionally, construction and real estate loans were combined into a single portfolio segment, referred to as real estate. The real estate loan portfolio segment includes loans further categorized as commercial real estate, residential homebuilder finance, secured by 1-4 family and an "other" category. See *Allowance for Credit Losses - Loans* below for further discussion of these portfolio segments.

Loans

Loans Held for Investment

Loans held for investment (including financing leases) are stated at the amount of unpaid principal reduced by deferred income (net of costs). Interest on loans is recognized using the simple interest method on the daily balances of the principal amounts outstanding. Loan origination fees, net of direct loan origination costs, and commitment fees are deferred and amortized as an adjustment to yield over the life of the loan, or over the commitment period, as applicable.

Restructured loans are loans on which, due to the borrower's financial difficulties, we have granted a concession that we would not otherwise consider for borrowers of similar credit quality. This may include a transfer of real estate or other assets from the borrower, a modification of loan terms, or a combination of the two. Modifications of terms that could potentially qualify as a restructuring include reduction of contractual interest rate, extension of the maturity date at a contractual interest rate lower than the current rate for new debt with similar risk, a reduction of the face amount of debt or forgiveness of either principal or accrued interest. A loan continues to qualify as restructured until a consistent payment history or change in the borrower's financial condition has been evidenced, generally for no less than twelve months. If the restructuring agreement specifies an interest rate at the time of the restructuring that is greater than or equal to the rate that we are willing to accept for a new extension of credit with comparable risk, then the loan is no longer considered a restructuring if it is in compliance with the modified terms in calendar years after the year of the restructure.

A loan is considered past due when a contractually due payment has not been received by the contractual due date. We place a loan on non-accrual when there is a clear indication that the borrower's cash flow may not be sufficient to meet payments as they become due, which is generally when a loan is 90 days past due. When a loan is placed on non-accrual status, all previously accrued and unpaid interest is reversed as a reduction of current period interest income. Interest income is subsequently recognized on a cash basis as long as the remaining book balance of the asset is deemed to be collectible. If collectability is questionable, then cash payments are applied to principal. A loan is placed back on accrual status when both principal and interest are current and it is probable that we will be able to collect all amounts due (both principal and interest) according to the terms of the loan agreement.

Loans held for investment includes legal ownership interests in mortgage loans that we purchase through our mortgage warehouse lending division. The ownership interests are purchased from unaffiliated mortgage originators who are seeking additional funding through sale of the undivided ownership interests to facilitate their ability to originate loans. The mortgage originator has no obligation to offer and we have no obligation to purchase these interests. The originator closes mortgage loans consistent with underwriting standards established by approved investors, and, at the time of the sale to the investor, our ownership interest and that of the originator are delivered by us to the investor selected by the originator and approved by us. We typically purchase up to a 99% ownership interest in each mortgage with the originator owning the remaining percentage. These mortgage ownership interests are generally held by us for a period of less than 30 days and more typically 10-20 days. Because of conditions in agreements with originators designed to reduce transaction risks, under ASC 860, *Transfers and Servicing of Financial Assets* ("ASC 860"), the ownership interests do not qualify as participating interests. Under ASC 860, the ownership interests are deemed to be loans to the originators and payments we receive from investors are deemed to be payments made by or on behalf of the originator to repay the loan deemed made to the originator. Because we have an actual, legal ownership interest in the underlying residential mortgage loan, these interests are reported as extensions of credit to the originators that are secured by the mortgage loans as collateral.

Due to market conditions or events of default by the investor or the originator, we could be required to purchase the remaining interests in the mortgage loans and hold them beyond the expected 10-20 days. Mortgage loans acquired under these conditions would require mark-to-market adjustments to income and could require future allocations of the allowance for credit losses or be subject to charge-off in the event the loans become impaired.

Allowance for Credit Losses

The allowance for credit losses is an estimate of the expected credit losses in the loans held for investment and available-for-sale debt securities portfolios.

Loans

ASU 2016-13 replaces the incurred loss impairment model, which recognizes losses when it becomes probable that a credit loss will be incurred, with a requirement to recognize lifetime expected credit losses immediately when a financial asset is originated or purchased. The allowance for credit losses is a valuation account that is deducted from the amortized cost basis of loans to present the net amount expected to be collected on the loans. Loans, or portions thereof, are charged off against the allowance when they are deemed uncollectible. Expected recoveries do not exceed the aggregate of amounts previously charged-off and expected to be charged-off.

Management estimates the allowance balance using relevant available information, from internal and external sources, relating to past events, current conditions and reasonable and supportable forecasts. Historical credit loss experience provides the basis for the estimation of expected credit losses. Adjustments to historical loss information are made for differences in current loan-specific risk characteristics such as differences in underwriting standards, portfolio mix, credit quality, or term, as well as for changes in macroeconomic conditions, such as changes in unemployment rates, crude oil prices, property values or other relevant factors.

The allowance for credit losses is comprised of reserves measured on a collective (pool) basis based on a lifetime loss-rate model when similar risk characteristics exist. Reserves on loans that do not share risk characteristics are evaluated on an individual basis. In order to determine the allowance for credit losses, all loans are assigned a credit grade. Loans graded substandard or worse and greater than \$500,000 are specifically reviewed for loss potential and when deemed appropriate are assigned a reserve based on an individual evaluation. For purposes of determining the pool-basis reserve, the remainder of the portfolio, representing all loans not assigned an individual reserve, is segregated first by portfolio segment, then by product type, to recognize differing risk profiles within portfolio segments, and finally by credit grade. Each credit grade within each product type is assigned a historical loss rate. These historical loss rates are then modified to incorporate our reasonable and supportable forecast of future losses at the portfolio segment level, as well as any necessary qualitative adjustments using a Portfolio Level Qualitative Factor ("PLQF") and/or a Portfolio Segment Level Qualitative Factor ("SLQF"). These modified historical loss rates are multiplied by the outstanding principal balance of each loan to calculate a required reserve. A similar process is employed to calculate a reserve assigned to off-balance sheet commitments, specifically unfunded loan commitments and letters of credit, and any needed reserve is recorded in other liabilities. The PLQF and SLQF are utilized to address factors that are not present in historical loss rates and are otherwise unaccounted for in the quantitative process. The PLQF is used to apply a qualitative adjustment across the entire portfolio of loans, while the SLQF is designed to apply a qualitative adjustment across a single portfolio segment. Even though portions of the allowance may be allocated to specific loans, the entire allowance is available for any credit that, in management's judgment, should be charged off.

We generally use a two-year forecast period, based on a single consensus forecast scenario, using variables we believe are most relevant to each portfolio segment. For periods beyond which we are able to develop reasonable and supportable forecasts, we immediately revert to the average historical loss rate. The forecast period and scenario used is reviewed on a quarterly basis and

[Table of Contents](#)

may be adjusted based on management's view of the current economic conditions and level of predictability the forecast can provide.

Portfolio segments are used to pool loans with similar risk characteristics and align with our methodology for measuring expected credit losses. A summary of our primary portfolio segments is as follows:

Commercial. Our commercial loan portfolio is comprised of lines of credit for working capital, term loans and leases to finance equipment and other business assets across a variety of industries. These loans are used for general corporate purposes including financing working capital, internal growth, acquisitions and business insurance premiums and are generally secured by accounts receivable, inventory, equipment and other assets of our clients' businesses. Our commercial loan portfolio also includes consumer loans because our small portfolio of consumer loans is largely comprised of accommodation loans to individuals associated with our commercial clients.

Energy. Our energy loan portfolio is primarily comprised of loans to exploration and production ("E&P") companies that are generally collateralized with proven reserves based on appropriate valuation standards that take into account the risk of oil and gas price volatility. The majority of this portfolio is first lien, senior secured, reserve-based lending, which we believe is the lowest-risk form of energy lending. Energy loans are impacted by commodity price volatility, as well as changes in consumer and business demand.

Mortgage finance. Mortgage finance loans relate to our mortgage warehouse lending operations in which we purchase mortgage loan ownership interests from unaffiliated mortgage originators that are generally held by us for a period of less than 30 days and more typically 10-20 days before they are sold to an approved investor. Volumes fluctuate based on the level of market demand for the product and the number of days between purchase and sale of the loans, which can be affected by changes in overall market interest rates and housing demand and tend to peak at the end of each month.

Mortgage finance loans are consistently underwritten based on standards established by the approved investors. Market conditions or events of default by an investor or originator could require that we repurchase the remaining interests in the mortgage loans and hold them beyond the expected 10-20 days.

Real estate. Our real estate portfolio is comprised of the following types of loans:

Commercial real estate ("CRE"). Our CRE portfolio is comprised of both construction/development financing and limited term financing provided to professional real estate developers and owners/managers of commercial real estate projects and properties who have a demonstrated record of past success with similar properties. Collateral properties include office buildings, warehouse/distribution buildings, shopping centers, hotels/motels, senior living, apartment buildings and residential and commercial tract development. The primary source of repayment on these loans is expected to come from the sale, permanent financing or lease of the real property collateral. CRE loans are impacted by fluctuations in collateral values, as well as the ability of the borrower to obtain permanent financing.

Residential homebuilder finance ("RBF"). The RBF portfolio is comprised of loans made to residential builders and developers. Loans to residential builders are typically in the form of uncommitted guidance lines and are for the purpose of developing lots into single-family homes, while loans to developers are typically in the form of borrowing base lines extended for the purpose of acquiring and developing raw land into lots that can be further sold to home builders. RBF loans, if not structured and monitored correctly, can be impacted by volatility in consumer demand, as well as fluctuation in housing prices.

Secured by 1-4 family. This category of loans includes both first and second lien loans made for the purpose of purchasing or constructing 1-4 family residential dwellings, as well as home equity revolving lines of credit and loans to purchase lots for future construction of 1-4 family residential dwellings.

Other. The "other" category is primarily comprised of real estate loans originated through a Small Business Administration (SBA) program where repayment is partially guaranteed by the SBA, as well as other loans secured by real estate where the primary source of repayment is not expected to come from the sale or lease of the real property collateral.

We have several pass credit grades that are assigned to loans based on varying levels of risk, ranging from credits that are secured by cash or marketable securities, to watch credits which have all the characteristics of an acceptable credit risk but warrant more than the normal level of monitoring. Within our criticized/classified credit grades are special mention, substandard and doubtful. Special mention loans are those that are currently protected by the sound worth and paying capacity of the borrower, but that are potentially weak and constitute an additional credit risk. These loans have the potential to deteriorate to a substandard grade due to the existence of financial or administrative deficiencies. Substandard loans have a well-defined weakness or weaknesses that jeopardizes the liquidation of the debt. They are characterized by the distinct possibility that we will sustain some loss if the deficiencies are not corrected. Some substandard loans are inadequately protected by the sound worth and paying capacity of the borrower and of the collateral pledged and may be considered impaired. Substandard loans can be accruing or can be on non-accrual depending on the circumstances of the individual loans.

[Table of Contents](#)

Loans classified as doubtful have all the weaknesses inherent in substandard loans with the added characteristics that the weaknesses make collection in full highly questionable and improbable. The possibility of loss is extremely high. All doubtful loans are on non-accrual.

The methodology used in the estimation of the allowance, which is performed at least quarterly, is designed to be dynamic and responsive to changes in portfolio credit quality and forecasted economic conditions. Changes are reflected in the pool-basis allowance and in reserves assigned on an individual basis as the collectability of classified loans is evaluated with new information. As our portfolio has matured, historical loss ratios have been closely monitored. The review of the appropriateness of the allowance is performed by executive management and presented to the audit and risk committees of our board of directors for their review. The committees report to the board as part of the board's review on a quarterly basis of our consolidated financial statements.

When management determines that foreclosure is probable, and for certain collateral-dependent loans where foreclosure is not considered probable, expected credit losses are based on the estimated fair value of the collateral adjusted for selling costs, when appropriate. A loan is considered collateral-dependent when the borrower is experiencing financial difficulty and repayment is expected to be provided substantially through the operation or sale of the collateral.

Expected credit losses are estimated over the contractual term of the loans, adjusted for expected prepayments when appropriate. The contractual term excludes expected extensions, renewals and modifications unless either of the following applies: management has a reasonable expectation that a loan will be restructured, or the extension or renewal options are included in the borrower contract and are not unconditionally cancellable by us.

We do not measure an allowance for credit losses on accrued interest receivable balances because these balances are written off in a timely manner as a reduction to interest income when loans are placed on non-accrual status as discussed above.

Investment Securities

Available-for-Sale

For available-for-sale debt securities in an unrealized loss position, we first assess whether we intend to sell, or it is more-likely-than-not that we will be required to sell, the securities before recovery of the amortized cost basis. If either of these criteria is met, the securities' amortized cost basis is written down to fair value as a current period expense. If either of the above criteria is not met, we evaluate whether the decline in fair value is the result of credit losses or other factors. In making this assessment, we may consider various factors including the extent to which fair value is less than amortized cost, performance of any underlying collateral and adverse conditions specifically related to the security, among other factors. If this assessment indicates that a credit loss exists, the present value of cash flows expected to be collected are compared to the amortized cost basis of the security and any excess of the amortized cost basis over the present value of expected cash flows is recorded as an allowance for credit loss, limited to the amount by which the fair value is less than the amortized cost basis. Any impairment not recorded through an allowance for credit loss is recognized in other comprehensive income as a non credit-related impairment.

We have made a policy election to exclude accrued interest from the amortized cost basis of available-for-sale debt securities and report accrued interest separately in accrued interest and other assets in the consolidated balance sheets. Available-for-sale debt securities are placed on non-accrual status when we no longer expect to receive all contractual amounts due, which is generally at 90 days past due. Accrued interest receivable is reversed against interest income when a security is placed on non-accrual status. Accordingly, we do not recognize an allowance for credit loss against accrued interest receivable.

All debt securities are available-for-sale as of September 30, 2020 and December 31, 2019.

Included in debt securities available-for-sale are Credit Risk Transfer ("CRT") securities. CRT securities represent unsecured obligations issued by government sponsored entities ("GSEs") such as Freddie Mac and are designed to transfer mortgage credit risk from the GSE to private investors. CRT securities are structured to be subject to the performance of a reference pool of mortgage loans in which we share in 50% of the first losses with the GSE. If the reference pool incurs losses, the amount we will recover on the notes is reduced by our share of the amount of such losses, which could potentially be up to 100% of the amount outstanding. Unrealized losses recognized in accumulated other comprehensive income ("AOCI") for the CRT securities are primarily related to the difference between the current market rate for similar securities and the stated interest rate and are not considered to be related to credit loss events. The CRT securities are generally interest-only for an initial period of time and may be restricted from being transferred until a future date.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results could differ from those estimates. The allowance for credit losses, the fair value of financial instruments and the status of contingencies are particularly susceptible to significant change.

(2) Earnings Per Share

The following table presents the computation of basic and diluted earnings per share:

	Three months ended September 30,				Nine months ended September 30,			
(in thousands except share and per share data)	2020		2019		2020		2019	
Numerator:								
Net income	\$	57,116	\$	88,082	\$	6,113	\$	247,595
Preferred stock dividends		2,438		2,438		7,313		7,313
Net income/(loss) available to common stockholders	\$	54,678	\$	85,644	\$	(1,200)	\$	240,282
Denominator:								
Denominator for basic earnings per share—weighted average shares		50,446,691		50,305,844		50,417,563		50,273,485
Effect of employee stock-based awards(1)		126,382		110,558		103,984		119,277
Denominator for dilutive earnings per share—adjusted weighted average shares and assumed conversions		50,573,073		50,416,402		50,521,547		50,392,762
Basic earnings/(loss) per common share	\$	1.08	\$	1.70	\$	(0.02)	\$	4.78
Diluted earnings/(loss) per common share	\$	1.08	\$	1.70	\$	(0.02)	\$	4.77

(1) SARs and RSUs outstanding of 480,062 at September 30, 2020 and 107,615 at September 30, 2019 have not been included in diluted earnings/(loss) per share because to do so would have been antidilutive for the periods presented.

(3) Investment Securities

Available-for-Sale Debt Securities

The following is a summary of available-for-sale debt securities:

(in thousands)	Amortized Cost(1)	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
September 30, 2020				
Available-for-sale debt securities:				
U.S. Government Agency Securities	\$ 125,000	\$ —	\$ (1,052)	\$ 123,948
Residential mortgage-backed securities	1,004,279	490	(2,987)	1,001,782
Tax-exempt asset-backed securities	184,963	15,858	—	200,821
Credit risk transfer securities	14,713	—	(3,655)	11,058
Total	\$ 1,328,955	\$ 16,348	\$ (7,694)	\$ 1,337,609
December 31, 2019				
Available-for-sale debt securities:				
Residential mortgage-backed securities	\$ 4,991	\$ 275	\$ —	\$ 5,266
Tax-exempt asset-backed securities	183,225	13,802	—	197,027
Credit risk transfer securities	14,713	—	(2,749)	11,964
Total	\$ 202,929	\$ 14,077	\$ (2,749)	\$ 214,257

(1) Excludes accrued interest receivable of \$3.3 million and \$1.6 million at September 30, 2020 and December 31, 2019, respectively, that is recorded in accrued interest receivable and other assets.

[Table of Contents](#)

The amortized cost and estimated fair value, excluding accrued interest receivable, and weighted average yield of available-for-sale debt securities are presented below by contractual maturity:

<i>(in thousands, except percentage data)</i>	Less Than One Year	After One Through Five Years	After Five Through Ten Years	After Ten Years	Total
September 30, 2020					
Available-for-sale:					
U.S. Government Agency Securities:(1)					
Amortized cost	\$ —	\$ —	\$ 125,000	\$ —	\$ 125,000
Estimated fair value	—	—	123,948	—	123,948
Weighted average yield(3)	—%	—%	1.13%	—%	1.13%
Residential mortgage-backed securities:(1)					
Amortized cost	\$ —	\$ 653	\$ 17,514	\$ 986,112	\$ 1,004,279
Estimated fair value	—	719	17,521	983,542	1,001,782
Weighted average yield(3)	—%	4.58%	1.08%	1.25%	1.25%
Tax-exempt asset-backed securities:(1)					
Amortized Cost	—	—	—	184,963	184,963
Estimated fair value	—	—	—	200,821	200,821
Weighted average yield(2)(3)	—%	—%	—%	4.92%	4.92%
CRT securities:(1)					
Amortized Cost	—	—	—	14,713	14,713
Estimated fair value	—	—	—	11,058	11,058
Weighted average yield(3)	—%	—%	—%	0.15%	0.15%
Total available-for-sale debt securities:					
Amortized cost					\$ 1,328,955
Estimated fair value					\$ 1,337,609
December 31, 2019					
Available-for-sale:					
Residential mortgage-backed securities:(1)					
Amortized cost	\$ —	\$ 1,005	\$ —	\$ 3,986	\$ 4,991
Estimated fair value	—	1,088	—	4,178	5,266
Weighted average yield(3)	—%	5.54%	—%	4.31%	4.55%
Tax-exempt asset-backed securities:(1)					
Amortized Cost	—	—	—	183,225	183,225
Estimated fair value	—	—	—	197,027	197,027
Weighted average yield(2)(3)	—%	—%	—%	5.32%	5.32%
CRT securities:(1)					
Amortized Cost	—	—	—	14,713	14,713
Estimated fair value	—	—	—	11,964	11,964
Weighted average yield(3)	—%	—%	—%	1.71%	1.71%
Total available-for-sale debt securities:					
Amortized cost					\$ 202,929
Estimated fair value					\$ 214,257

(1) Actual maturities may differ from contractual maturities because borrowers may have the right to call or prepay obligations with or without prepayment penalties.

(2) Yields have been adjusted to a tax equivalent basis assuming a 21% federal tax rate.

(3) Yields are calculated based on amortized cost.

Table of Contents

The following table discloses our available-for-sale debt securities that have been in a continuous unrealized loss position for less than 12 months and those that have been in a continuous unrealized loss position for 12 or more months:

(in thousands)	Less Than 12 Months		12 Months or Longer		Total	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
September 30, 2020						
U.S. Government Agency Securities	\$ 123,948	\$ (1,052)	\$ —	\$ —	\$ 123,948	\$ (1,052)
Residential mortgage-backed securities	\$ 879,209	\$ (2,987)	\$ —	\$ —	\$ 879,209	\$ (2,987)
CRT securities	—	—	11,058	(3,655)	11,058	(3,655)
Total	\$ 1,003,157	\$ (4,039)	\$ 11,058	\$ (3,655)	\$ 1,014,215	\$ (7,694)
December 31, 2019						
CRT securities	\$ 11,964	\$ (2,749)	\$ —	\$ —	\$ 11,964	\$ (2,749)

We conduct periodic reviews of securities with unrealized losses to evaluate whether the decline in fair value has resulted from credit losses or other factors. Based on the results of our periodic review, at September 30, 2020 management believes that all of our unrealized losses have resulted from factors not deemed credit-related and no allowance for credit loss was recorded. We have evaluated the near-term prospects of each securities portfolio in relation to the severity of the non credit-related unrealized losses and adverse conditions related to the securities among other factors. Based on that evaluation management has determined that we have the ability and intent to hold the securities until recovery of fair value and have recorded the non credit-related unrealized losses in AOCI.

Available-for-sale debt securities with carrying values of approximately \$33.0 million and \$2.0 million were pledged to secure certain customer repurchase agreements and deposits, respectively, at September 30, 2020. The comparative amounts at December 31, 2019 were \$3.5 million and \$1.2 million, respectively.

Equity Securities

Equity securities consist of Community Reinvestment Act funds and investments related to our non-qualified deferred compensation plan. At September 30, 2020 and December 31, 2019, we had \$29.7 million and \$25.6 million, respectively, in equity securities recorded at fair value. The following is a summary of unrealized and realized gains/(losses) recognized on equity securities and included in other non-interest income in the consolidated statements of income:

(in thousands)	Three months ended September 30,				Nine months ended September 30,			
	2020		2019		2020		2019	
Net gains recognized during the period	\$	1,350	\$	37	\$	1,285	\$	1,876
Less: Realized net gains/(losses) recognized during the period on equity securities sold		177		111		(68)		87
Unrealized net gains/(losses) recognized during the period on equity securities still held	\$	1,173	\$	(74)	\$	1,353	\$	1,789

(4) Loans Held for Investment and Allowance for Credit Losses on Loans

Loans held for investment are summarized by portfolio segment as follows:

(in thousands)	September 30, 2020		December 31, 2019	
Commercial	\$	8,786,917	\$	9,133,444
Energy		968,993		1,425,309
Mortgage finance(1)		9,378,104		8,169,849
Real estate		6,112,672		6,008,040
Gross loans held for investment(2)		25,246,686		24,736,642
Deferred income (net of direct origination costs)		(78,624)		(90,380)
Allowance for credit losses on loans		(290,165)		(195,047)
Total loans held for investment, net(2)	\$	24,877,897	\$	24,451,215

(1) Balances at September 30, 2020 and December 31, 2019 are stated net of \$1.1 billion and \$682.7 million of participations sold, respectively.

(2) Excludes accrued interest receivable of \$57.2 million and \$63.4 million at September 30, 2020 and December 31, 2019, respectively, that is recorded in accrued interest receivable and other assets.

[Table of Contents](#)

The following table summarizes our gross loans held for investment by year of origination and internally assigned credit grades:

<i>(in thousands)</i>	2020	2019	2018	2017	2016	2015 and prior	Revolving lines of credit	Revolving lines of credit converted to term loans	Total
September 30, 2020									
Commercial									
(1-7) Pass	\$ 1,104,589	\$ 2,973,613	\$ 661,999	\$ 384,067	\$ 207,610	\$ 256,339	\$ 2,764,619	\$ 33,888	\$ 8,386,724
(8) Special mention	319	36,072	21,423	35,407	9,208	9,371	14,067	9,226	135,093
(9) Substandard - accruing	17,476	30,923	46,453	40,670	11,875	9,737	43,533	1,922	202,589
(9+) Non-accrual	9,167	10,202	386	11,030	2,144	22,191	7,260	131	62,511
Total commercial	\$ 1,131,551	\$ 3,050,810	\$ 730,261	\$ 471,174	\$ 230,837	\$ 297,638	\$ 2,829,479	\$ 45,167	\$ 8,786,917
Energy									
(1-7) Pass	\$ 1,009	\$ 14,500	\$ 25,472	\$ 10,423	\$ 21,400	\$ 68,284	\$ 553,125	\$ 250	\$ 694,463
(8) Special mention	—	27,909	22,394	—	—	15,314	64,037	—	129,654
(9) Substandard - accruing	—	—	30,977	—	—	—	40,088	—	71,065
(9+) Non-accrual	—	—	—	5,968	11,822	34,336	19,873	1,812	73,811
Total energy	\$ 1,009	\$ 42,409	\$ 78,843	\$ 16,391	\$ 33,222	\$ 117,934	\$ 677,123	\$ 2,062	\$ 968,993
Mortgage finance									
(1-7) Pass	\$ 628,926	\$ 1,111,019	\$ 824,564	\$ 531,556	\$ 148,745	\$ 6,133,294	\$ —	\$ —	\$ 9,378,104
(8) Special mention	—	—	—	—	—	—	—	—	—
(9) Substandard - accruing	—	—	—	—	—	—	—	—	—
(9+) Non-accrual	—	—	—	—	—	—	—	—	—
Total mortgage finance	\$ 628,926	\$ 1,111,019	\$ 824,564	\$ 531,556	\$ 148,745	\$ 6,133,294	\$ —	\$ —	\$ 9,378,104
Real estate									
CRE									
(1-7) Pass	\$ 257,066	\$ 877,307	\$ 949,785	\$ 631,875	\$ 229,186	\$ 456,647	\$ 100,067	\$ 74,789	\$ 3,576,722
(8) Special mention	—	333	56,081	66,742	49,755	52,454	—	6,385	231,750
(9) Substandard - accruing	—	—	12,002	—	—	34,610	—	1,250	47,862
(9+) Non-accrual	—	—	4,028	—	—	237	—	—	4,265
RBF									
(1-7) Pass	158,135	134,598	117,955	21,943	7,029	25,175	506,363	—	971,198
(8) Special mention	—	577	—	—	—	—	—	—	577
(9) Substandard - accruing	—	—	—	—	—	—	—	—	—
(9+) Non-accrual	—	—	—	—	—	—	—	—	—
Other									
(1-7) Pass	156,602	160,006	123,021	123,932	91,834	114,276	19,035	32,551	821,257
(8) Special mention	—	11,423	8,604	26,952	9,351	27,740	—	1,018	85,088
(9) Substandard - accruing	—	—	—	4,496	—	2,745	—	—	7,241
(9+) Non-accrual	—	—	—	—	1,107	6,133	—	13,901	21,141
Secured by 1-4 family									
(1-7) Pass	46,521	63,274	48,779	61,165	85,470	32,718	4,725	—	342,652
(8) Special mention	—	—	—	—	—	1,774	—	—	1,774
(9) Substandard - accruing	—	—	—	818	—	109	—	—	927
(9+) Non-accrual	—	—	—	—	—	218	—	—	218
Total real estate	\$ 618,324	\$ 1,247,518	\$ 1,320,255	\$ 937,923	\$ 473,732	\$ 754,836	\$ 630,190	\$ 129,894	\$ 6,112,672
Total loans held for investment	\$ 2,379,810	\$ 5,451,756	\$ 2,953,923	\$ 1,957,044	\$ 886,536	\$ 7,303,702	\$ 4,136,792	\$ 177,123	\$ 25,246,686

[Table of Contents](#)

The following table details activity in the allowance for credit losses on loans. Allocation of a portion of the allowance to one category of loans does not preclude its availability to absorb losses in other categories.

<i>(in thousands)</i>	Commercial		Energy		Mortgage Finance		Real Estate		Additional Qualitative Reserve		Total
Nine months ended September 30, 2020											
Allowance for credit losses on loans:											
Beginning balance	\$	102,254	\$	60,253	\$	2,265	\$	30,275	\$	—	\$ 195,047
Impact of CECL adoption		(15,740)		24,154		2,031		(1,860)		—	8,585
Provision for credit losses on loans		47,263		127,470		430		44,799		—	219,962
Charge-offs		35,376		100,239		—		—		—	135,615
Recoveries		883		1,303		—		—		—	2,186
Net charge-offs (recoveries)		34,493		98,936		—		—		—	133,429
Ending balance	\$	99,284	\$	112,941	\$	4,726	\$	73,214	\$	—	\$ 290,165
Nine months ended September 30, 2019											
Allowance for credit losses on loans:											
Beginning balance	\$	96,814	\$	34,882	\$	—	\$	52,595	\$	7,231	\$ 191,522
Provision for credit losses on loans		30,309		42,243		1,966		(7,204)		(7,231)	60,083
Charge-offs		30,869		31,828		—		177		—	62,874
Recoveries		1,300		107		—		—		—	1,407
Net charge-offs (recoveries)		29,569		31,721		—		177		—	61,467
Ending balance	\$	97,554	\$	45,404	\$	1,966	\$	45,214	\$	—	\$ 190,138

During the first quarter of 2020, we adopted ASU 2016-13, which replaced the incurred loss methodology for determining our provision for credit losses and allowance for credit losses with an expected loss methodology that is referred to as the CECL model. Upon adoption, the allowance for credit losses was increased by \$9.1 million, which included a \$563,000 increase to the allowance for off-balance sheet credit losses, with no impact to the consolidated statement of income. We recorded a \$30.0 million provision for credit losses for the third quarter of 2020, compared to \$100.0 million for the second quarter of 2020 and \$11.0 million for the third quarter of 2019. The decreased provision for credit losses in the third quarter of 2020 as compared to the second quarter of 2020 resulted primarily from a decrease in charge-offs. We recorded \$1.6 million in net charge-offs during the third quarter of 2020, compared to \$74.1 million during the second quarter of 2020 and \$36.9 million during the third quarter of 2019. Criticized loans totaled \$1.1 billion at September 30, 2020, compared to \$584.1 million at December 31, 2019 and \$536.3 million at September 30, 2019. Criticized loan levels have remained heightened throughout 2020 due to the downgrade of loans to borrowers that have been impacted by the COVID-19 pandemic or that are in categories that are expected to be more significantly impacted by COVID-19.

A loan is considered collateral-dependent when the borrower is experiencing financial difficulty and repayment is expected to be provided substantially through the operation or sale of the collateral. The following table summarizes collateral-dependent gross loans held for investment by collateral type as follows:

(in thousands)	Collateral Type						U.S. Government Guaranty	Total
	Business Assets	Real Property	Oil/Gas Mineral Reserves	Rolling Stock				
September 30, 2020								
Commercial	\$ 26,243	\$ —	\$ —	\$ 774	\$ 544	\$ —	\$ 27,561	
Energy	—	—	41,102	—	—	—	41,102	
Real estate								
Other	—	5,650	—	—	—	—	5,650	
Total collateral-dependent loans held for investment	\$ 26,243	\$ 5,650	\$ 41,102	\$ 774	\$ 544	\$ —	\$ 74,313	

[Table of Contents](#)

The table below provides an age analysis of our loans held for investment:

<i>(in thousands)</i>	30-59 Days Past Due	60-89 Days Past Due	90 Days or More Past Due(1)	Total Past Due	Non-accrual loans as of June 30, 2020(2)	Current	Total	Non-accrual With No Allowance
September 30, 2020								
Commercial	\$ 25,387	\$ 1,650	\$ 12,248	\$ 39,285	\$ 62,511	\$ 8,685,121	\$ 8,786,917	\$ 19,367
Energy	20,670	—	1,995	22,665	73,811	872,517	968,993	25,090
Mortgage finance loans	—	—	—	—	—	9,378,104	9,378,104	—
Real estate								
CRE	24,158	9,619	1,250	35,027	4,265	3,821,307	3,860,599	4,028
RBF	—	—	—	—	—	971,775	971,775	—
Other	1,018	—	—	1,018	21,141	912,568	934,727	20,796
Secured by 1-4 family	897	497	403	1,797	218	343,556	345,571	—
Total loans held for investment	\$ 72,130	\$ 11,766	\$ 15,896	\$ 99,792	\$ 161,946	\$ 24,984,948	\$ 25,246,686	\$ 69,281

- (1) Loans past due 90 days and still accruing includes premium finance loans of \$11.9 million. These loans are generally secured by obligations of insurance carriers to refund premiums on canceled insurance policies. The receipt of the refund of premiums from the insurance carriers can take 180 days or longer from the cancellation date.
- (2) As of September 30, 2020 and December 31, 2019, none of our non-accrual loans were earning interest income on a cash basis. Additionally, no interest income was recognized on non-accrual loans for the nine months ended September 30, 2020. Accrued interest of \$1.0 million was reversed during the nine months ended September 30, 2020.

On January 1, 2020, the date we adopted CECL, non-accrual loans totaled \$225.4 million, and included \$88.6 million in commercial loans, \$125.0 million in energy loans, \$9.4 million in CRE loans, \$881,000 in real estate-other loans and \$1.4 million in secured by 1-4 family loans.

As of September 30, 2020 and December 31, 2019, we did not have any loans considered restructured that were not on non-accrual. Of the non-accrual loans at September 30, 2020 and December 31, 2019, \$47.7 million and \$35.1 million, respectively, met the criteria for restructured. These loans had no unfunded commitments at their respective balance sheet dates.

The following table details the recorded investment at September 30, 2020 and September 30, 2019 of loans restructured during the nine months ended September 30, 2020 and September 30, 2019 by type of modification:

<i>(in thousands, except number of contracts)</i>	Extended Maturity		Adjusted Payment Schedule		Total	
	Number of Contracts	Balance at Period End	Number of Contracts	Balance at Period End	Number of Contracts	Balance at Period End
Nine months ended September 30, 2020						
Commercial loans	2	\$ 7,636	2	\$ 14,663	4	\$ 22,299
Energy loans	1	5,969	3	13,469	4	19,438
Total	3	\$ 13,605	5	\$ 28,132	8	\$ 41,737
Nine months ended September 30, 2019						
Commercial loans	1	\$ 1,824	—	\$ —	1	\$ 1,824
Energy loans	1	3,941	—	—	1	3,941
Total	2	\$ 5,765	—	\$ —	2	\$ 5,765

Restructured loans generally include terms to temporarily place the loan on interest only, extend the payment terms or reduce the interest rate. We did not forgive any principal on the above restructured loans. At September 30, 2020 and 2019, all of the above restructured loans were on non-accrual. The restructuring of the loans did not have a significant impact on our allowance for credit losses at September 30, 2020 or 2019. As of September 30, 2020 and 2019, we did not have any loans that were restructured within the last 12 months that subsequently defaulted.

In response to the COVID-19 pandemic, we implemented a short-term modification program in late March 2020 to provide temporary payment relief to borrowers who meet the program's qualifications. This program allows for a deferral of payments for 90 days, which we may extend for an additional 90 days, for a maximum of 180 days on a cumulative basis. The deferred payments along with interest accrued during the deferral period are due and payable on the maturity date of the existing loan. Through September 30, 2020, we granted temporary modifications on 483 loans with a total outstanding balance of \$1.3 billion, resulting in the deferral of \$10.7 million in interest payments. As of September 30, 2020, 73 loans with a total

[Table of Contents](#)

outstanding balance of \$166.2 million remain on deferral, of which \$61.2 million have been granted a second deferral. Under the applicable guidance, none of these loans were considered restructured as of September 30, 2020.

(5) Certain Transfers of Financial Assets

The table below presents a reconciliation of the changes in loans held for sale:

(in thousands)	Nine Months Ended September 30,			
	2020		2019	
Outstanding balance(1):				
Beginning balance	\$	2,568,362	\$	1,949,785
Loans purchased and originated		8,963,499		7,288,823
Payments and loans sold		(10,889,549)		(6,571,942)
Ending balance		642,312		2,666,666
Fair value adjustment:				
Beginning balance		8,772		19,689
Increase/(decrease) to fair value		(3,075)		(12,130)
Ending balance		5,697		7,559
Loans held for sale at fair value	\$	648,009	\$	2,674,225

(1) Includes \$9.0 million and \$5.8 million of loans held for sale that are carried at lower of cost or market as of September 30, 2020 and December 31, 2019, respectively, as well as \$7.1 million and \$299,000 as of September 30, 2019 and December 31, 2018, respectively.

No loans held for sale were on non-accrual as of September 30, 2020 or December 31, 2019. At September 30, 2020 and December 31, 2019, we had \$15.6 million and \$8.2 million, respectively, of loans held for sale that were 90 days or more past due. The \$15.6 million in loans held for sale that were 90 days or more past due at September 30, 2020 included \$3.7 million of loans guaranteed by U.S. government agencies that were purchased out of Ginnie Mae securities and recorded as loans held for sale, at fair value, on the balance sheet. Interest on these past due loans accrues at the debenture rate guaranteed by the U.S. government. Also included in the \$15.6 million were \$11.9 million in loans that, pursuant to Ginnie Mae servicing guidelines, we have the unilateral right, but not the obligation, to repurchase if defined delinquent loan criteria are met, and therefore must record as held for sale on our balance sheet regardless of whether the repurchase option has been exercised. At December 31, 2019, \$6.0 million of the \$8.2 million in loans held for sale that were 90 days or more past due were loans guaranteed by U.S. government agencies that were purchased out of Ginnie Mae securities and recorded as loans held for sale, at fair value, on the balance sheet and \$1.9 million were loans that we have the unilateral right, but not the obligation, to repurchase if defined delinquent loan criteria are met.

From time to time we retain the right to service the loans sold through our Mortgage Correspondent Aggregation ("MCA") program, creating mortgage servicing rights ("MSRs") which are recorded as assets on our balance sheet. A summary of MSR activity is as follows:

(in thousands)	Nine months ended September 30,			
	2020		2019	
MSRs:				
Balance, beginning of year	\$	70,707	\$	42,474
Capitalized servicing rights		76,905		22,610
Amortization		(25,553)		(7,599)
Balance, end of period	\$	122,059	\$	57,485
Valuation allowance:				
Balance, beginning of year	\$	5,803	\$	—
Increase in valuation allowance		20,933		8,360
Balance, end of period	\$	26,736	\$	8,360
MSRs, net	\$	95,323	\$	49,125
MSRs, fair value	\$	95,323	\$	49,125

At September 30, 2020 and December 31, 2019, our servicing portfolio of residential mortgage loans had outstanding principal balances of \$12.7 billion and \$6.7 billion, respectively.

In connection with the servicing of these loans, we hold deposits in the name of investors representing escrow funds for taxes and insurance, as well as collections in transit to the investors. These escrow funds are segregated and held in separate non-

Table of Contents

interest-bearing deposit accounts at the Bank. These deposits, included in total non-interest-bearing deposits on the consolidated balance sheets, were \$173.5 million at September 30, 2020 and \$63.7 million at December 31, 2019.

The estimated fair value of the MSR assets is obtained from an independent third party and reviewed by management on a quarterly basis. MSRs typically do not trade in an active, open market with readily observable prices; as such, the fair value of MSRs is determined using a discounted cash flow model to calculate the present value of the estimated future net servicing income. The assumptions utilized in the discounted cash flow model are based on market data for comparable assets, where available. Each quarter, management and the independent third party review the key assumptions used in the discounted cash flow model and make adjustments as necessary to estimate the fair value of the MSRs. At September 30, 2020, the estimated fair value of MSRs was adjusted as a result of the decline in mortgage interest rates experienced in the first nine months of 2020, which resulted in a \$20.9 million impairment charge, compared to an \$8.4 million impairment charge for the first nine months of 2019. To mitigate exposure to potential impairment charges from adverse changes in the fair value of our residential MSR portfolio, we enter into certain derivative contracts, as is further discussed in Note 10 - Derivative Financial Instruments. The following summarizes the assumptions used by management to determine the fair value of MSRs:

	September 30, 2020	December 31, 2019
Average discount rates	9.11%	9.06%
Expected prepayment speeds	16.96%	13.11%
Weighted-average life, in years	4.7	5.8

A sensitivity analysis of changes in the fair value of our MSR portfolio resulting from certain key assumptions is presented in the following table:

<i>(in thousands)</i>	September 30, 2020	December 31, 2019
50 bp adverse change in prepayment speed	\$ (11,049)	\$ (10,768)
100 bp adverse change in prepayment speed	(13,100)	(17,965)

These sensitivities are hypothetical and actual results may differ materially due to a number of factors. The effect on fair value of a 10% variation in assumptions generally cannot be determined with confidence because the relationship of the change in assumptions to the fair value may not be linear. Additionally, the impact of a variation in a particular assumption on the fair value is calculated while holding other assumptions constant. In reality, changes in one factor may be correlated with changes in other factors, which could impact the sensitivity analysis as presented.

In conjunction with the sale and securitization of loans held for sale, we may be exposed to liability resulting from repurchase, indemnification and make-whole agreements. Our estimated exposure related to those agreements totaled \$1.0 million and \$3.6 million at September 30, 2020 and December 31, 2019, respectively, and is recorded in other liabilities on the consolidated balance sheets. \$7.8 million in make-whole obligation payments were made during the nine months ended September 30, 2020 compared to \$4.5 million during the nine months ended September 30, 2019. The increase in make-whole obligation payments is primarily related to an increase in early payoffs resulting from the declining interest rate environment.

(6) Financial Instruments with Off-Balance Sheet Risk

The table below presents our financial instruments with off-balance sheet risk, as well as the activity in the allowance for off-balance sheet credit losses related to those financial instruments. This allowance is recorded in other liabilities on the consolidated balance sheets.

<i>(in thousands)</i>	Three months ended September 30,			Nine months ended September 30,		
	2020	2019		2020	2019	
Beginning balance of allowance for off-balance sheet credit losses	\$ 12,268	\$ 10,790	\$ 8,640	\$ 11,434		
Impact of CECL adoption	—	—	563	—		
Provision for off-balance sheet credit losses	2,973	(1,439)	6,038	(2,083)		
Ending balance of allowance for off-balance sheet credit losses	\$ 15,241	\$ 9,351	\$ 15,241	\$ 9,351		

<i>(in thousands)</i>	September 30, 2020	December 31, 2019
Commitments to extend credit - period end balance	\$ 8,356,525	\$ 8,066,655
Standby letters of credit - period end balance	\$ 258,491	\$ 261,405

(7) Regulatory Restrictions

The Company and the Bank are subject to various regulatory capital requirements administered by the federal banking agencies. Failure to meet minimum capital requirements can initiate certain mandatory (and possibly additional discretionary) actions by regulators that, if undertaken, could have a direct material adverse effect on the Company's and the Bank's financial statements. Under capital adequacy guidelines and the regulatory framework for prompt corrective action, the Company and the Bank must meet specific capital guidelines that involve quantitative measures of the Company's and the Bank's assets, liabilities, and certain off-balance sheet items as calculated under regulatory accounting practices. The Company's and the Bank's capital amounts and classification are also subject to qualitative judgments by the regulators about components, risk weightings and other factors.

The Basel III regulatory capital framework (the "Basel III Capital Rules") adopted by U.S. federal regulatory authorities, among other things, (i) establishes the capital measure called "Common Equity Tier 1" ("CET1"), (ii) specifies that Tier 1 capital consist of CET1 and "Additional Tier 1 Capital" instruments meeting stated requirements, (iii) requires that most deductions/adjustments to regulatory capital measures be made to CET1 and not to other components of capital and (iv) defines the scope of the deductions/adjustments to the capital measures.

Additionally, the Basel III Capital Rules require that we maintain a 2.5% capital conservation buffer with respect to each of CET1, Tier 1 and total capital to risk-weighted assets, which provides for capital levels that exceed the minimum risk-based capital adequacy requirements. A financial institution with a conservation buffer of less than the required amount is subject to limitations on capital distributions, including dividend payments and stock repurchases, and certain discretionary bonus payments to executive officers.

In the first quarter of 2020, U.S. federal regulatory authorities issued an interim final rule that provides banking organizations that adopt CECL during the 2020 calendar year with the option to delay for two years the estimated impact of CECL on regulatory capital relative to regulatory capital determined under the prior incurred loss methodology, followed by a three-year transition period to phase out the aggregate amount of the capital benefit provided during the initial two-year delay (i.e., a five-year transition in total). In the third quarter of 2020, a final rule was issued that was substantially similar to the interim rule issued in the first quarter. In connection with our adoption of CECL on January 1, 2020, we have elected to utilize the five-year CECL transition.

Quantitative measures established by regulation to ensure capital adequacy require the Company and the Bank to maintain minimum amounts and ratios of CET1, Tier 1 and total capital to risk-weighted assets, and of Tier 1 capital to average assets, each as defined in the regulations. Management believes, as of September 30, 2020, that the Company and the Bank meet all capital adequacy requirements to which they are subject.

Financial institutions are categorized as well capitalized or adequately capitalized based on minimum total risk-based, Tier 1 risk-based, CET1 and Tier 1 leverage ratios. As shown in the table below, the Company's capital ratios exceeded the regulatory definition of adequately capitalized as of September 30, 2020 and December 31, 2019. Based upon the information in its most recently filed call report, the Bank met the capital ratios necessary to be well capitalized. The regulatory authorities can apply changes in classification of assets and such changes may retroactively subject the Company to changes in capital ratios. Any such change could reduce one or more capital ratios below well-capitalized status. In addition, a change may result in imposition of additional assessments by the FDIC or could result in regulatory actions that could have a material adverse effect on our financial condition and results of operations.

Because our Bank had less than \$15.0 billion in total consolidated assets as of December 31, 2009, we are allowed to continue to classify our trust preferred securities, all of which were issued prior to May 19, 2010, as Tier 1 capital.

[Table of Contents](#)

The table below summarizes our actual and required capital ratios under the Basel III Capital Rules. The ratios presented below include the effects of our election to utilize the five-year CECL transition described above.

	Actual		For Capital Adequacy Purposes		Required to be Considered Well Capitalized	
	Capital Amount	Ratio	Capital Amount	Ratio	Capital Amount	Ratio
<i>(dollars in thousands)</i>						
September 30, 2020						
CET1						
Company	\$ 2,654,677	9.05%	\$ 2,052,372	7.00%	N/A	N/A
Bank	2,688,350	9.18%	2,049,511	7.00%	1,903,117	6.50%
Total capital (to risk-weighted assets)						
Company	3,470,192	11.84%	3,078,558	10.50%	N/A	N/A
Bank	3,345,075	11.42%	3,074,266	10.50%	2,927,873	10.00%
Tier 1 capital (to risk-weighted assets)						
Company	2,914,677	9.94%	2,492,166	8.50%	N/A	N/A
Bank	2,848,350	9.73%	2,488,692	8.50%	2,342,298	8.00%
Tier 1 capital (to average assets)(1)						
Company	2,914,677	7.58%	1,537,325	4.00%	N/A	N/A
Bank	2,848,350	7.41%	1,536,902	4.00%	1,921,127	5.00%
December 31, 2019						
CET1						
Company	\$ 2,653,999	8.88%	\$ 2,091,591	7.00%	N/A	N/A
Bank	2,676,513	8.96%	2,090,870	7.00%	1,941,522	6.50%
Total capital (to risk-weighted assets)						
Company	3,398,345	11.37%	3,137,926	10.50%	N/A	N/A
Bank	3,262,144	10.92%	3,136,305	10.50%	2,986,957	10.00%
Tier 1 capital (to risk-weighted assets)						
Company	2,912,529	9.75%	2,540,226	8.50%	N/A	N/A
Bank	2,835,043	9.49%	2,538,913	8.50%	2,389,565	8.00%
Tier 1 capital (to average assets)(1)						
Company	2,912,529	8.42%	1,383,640	4.00%	N/A	N/A
Bank	2,835,043	8.20%	1,383,190	4.00%	1,728,988	5.00%

(1) The Tier 1 capital ratio (to average assets) is not impacted by the Basel III Capital Rules; however, the Federal Reserve Board and the FDIC may require the Company and the Bank, respectively, to maintain a Tier 1 capital ratio (to average assets) above the required minimum.

Our mortgage finance loan volumes can increase significantly at month-end, causing a meaningful difference between ending balance and average balance for any period. At September 30, 2020, our mortgage finance loans were \$9.4 billion compared to the average for the quarter ended September 30, 2020 of \$9.1 billion. As CET1, Tier 1 and total capital ratios are calculated using quarter-end risk-weighted assets and our mortgage finance loans are 100% risk-weighted (excluding MCA mortgage loans held for sale, which receive lower risk weights), the period-end fluctuation in these balances can significantly impact our reported ratios. Due to the actual risk profile and liquidity of this asset class, we manage capital allocated to mortgage finance loans based on changing trends in average balances and do not believe that the period-end balance is representative of risk characteristics that would justify higher allocations. However, we monitor our capital allocation to confirm that all capital levels remain above well-capitalized levels.

Dividends that may be paid by banks are routinely restricted by various regulatory authorities. The amount that can be paid in any calendar year without prior approval of our Bank's regulatory agencies cannot exceed the lesser of the net profits (as defined) for that year plus the net profits for the preceding two calendar years, or retained earnings. The Basel III Capital Rules further limit the amount of dividends that may be paid by our Bank. No dividends were declared or paid on our common stock during the nine months ended September 30, 2020, or 2019.

(8) Stock-based Compensation

We have long-term incentive plans under which stock-based compensation awards are granted to employees and directors by the board of directors, or its designated committee. Grants are subject to vesting requirements and may include, among other things, nonqualified stock options, stock appreciation rights ("SARs"), restricted stock units ("RSUs"), restricted stock and performance units, or any combination thereof. There are 2,550,000 total shares authorized for grant under the plans.

The table below summarizes our stock-based compensation expense:

(in thousands)	Three months ended September 30,			Nine months ended September 30,		
	2020		2019	2020		2019
Stock-settled awards:						
SARs	\$	—	\$	—	\$	6
RSUs		4,794		3,015	11,326	8,532
Restricted stock		5		8	22	27
Cash-settled units		236		1,005	716	4,408
Total	\$	5,035	\$	4,028	\$ 12,064	\$ 12,973

(in thousands except period data)

	September 30, 2020
Unrecognized compensation expense related to unvested stock-settled awards	\$ 33,314
Weighted average period over which expense is expected to be recognized, in years	2.9

(9) Fair Value Disclosures

We determine the fair market values of our assets and liabilities measured at fair value on a recurring and nonrecurring basis using the fair value hierarchy as prescribed in ASC 820. The standard describes three levels of inputs that may be used to measure fair value as provided below.

Level 1	Quoted prices in active markets for identical assets or liabilities.
Level 2	Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
Level 3	Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. Level 3 assets and liabilities include financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair values requires significant management judgment or estimation.

[Table of Contents](#)

Assets and liabilities measured at fair value are as follows:

(in thousands)	Fair Value Measurements Using			
	Level 1	Level 2	Level 3	
September 30, 2020				
Available-for-sale debt securities:(1)				
U.S. government agency securities	\$ —	\$ 123,948	\$ —	
Residential mortgage-backed securities	—	1,001,782	—	
Tax-exempt asset-backed securities	—	—	200,821	
CRT securities	—	—	11,058	
Equity securities(1)(2)	22,442	7,262	—	
Loans held for sale(3)	—	632,071	6,974	
Loans held for investment(4)	—	—	36,490	
Derivative assets(5)	—	124,627	—	
Derivative liabilities(5)	—	114,259	—	
Non-qualified deferred compensation plan liabilities(6)	23,342	—	—	
December 31, 2019				
Available-for-sale debt securities:(1)				
Residential mortgage-backed securities	\$ —	\$ 5,266	\$ —	
Tax-exempt asset-backed securities	—	—	197,027	
CRT securities	—	—	11,964	
Equity securities(1)(2)	18,484	7,130	—	
Loans held for sale(3)	—	2,564,281	7,043	
Loans held for investment(4)	—	—	109,585	
Derivative assets(5)	—	48,684	—	
Derivative liabilities(5)	—	51,310	—	
Non-qualified deferred compensation plan liabilities(6)	18,484	—	—	

(1) Securities are measured at fair value on a recurring basis, generally monthly, except for tax-exempt asset-backed securities and CRT securities which are measured quarterly.

(2) Equity securities consist of Community Reinvestment Act funds and investments related to our non-qualified deferred compensation plan.

(3) Loans held for sale purchased through our MCA program are measured at fair value on a recurring basis, generally monthly.

(4) Includes certain collateral-dependent loans held for investment for which a specific allocation of the allowance for credit losses is based upon the fair value of the loan's underlying collateral. These loans held for investment are measured on a nonrecurring basis, generally annually or more often as warranted by market and economic conditions.

(5) Derivative assets and liabilities are measured at fair value on a recurring basis, generally quarterly.

(6) Non-qualified deferred compensation plan liabilities represent the fair value of the obligation to the employee, which generally corresponds to the fair value of the invested assets, and are measured at fair value on a recurring basis, generally monthly.

Level 3 Valuations

The following table presents a reconciliation of the level 3 fair value category measured at fair value on a recurring basis:

	Net Realized/Unrealized Gains (Losses)						
(in thousands)	Balance at Beginning of Period	Purchases / Additions	Sales / Reductions	Realized	Unrealized	Balance at End of Period	
Three months ended September 30, 2020							
Available-for-sale debt securities:(1)							
Tax-exempt asset-backed securities	\$ 191,417	\$ —	\$ (2,248)	\$ —	\$ 11,652	\$ 200,821	
CRT securities	\$ 10,953	\$ —	\$ —	\$ —	\$ 105	\$ 11,058	
Loans held for sale(2)	\$ 6,159	\$ 785	\$ (170)	\$ 132	\$ 68	\$ 6,974	
Three months ended September 30, 2019							
Available-for-sale debt securities:(1)							
Tax-exempt asset-backed securities	\$ 201,339	\$ —	\$ (4,116)	\$ —	\$ 390	\$ 197,613	
CRT securities	\$ 10,953	\$ —	\$ —	\$ —	\$ 502	\$ 11,455	
Loans held for sale(2)	\$ 10,930	\$ —	\$ (2,056)	\$ 102	\$ 222	\$ 9,198	
Nine months ended September 30, 2020							
Available-for-sale debt securities:(1)							
Tax-exempt asset-backed securities	\$ 197,027	\$ 8,470	\$ (6,733)	\$ —	\$ 2,057	\$ 200,821	
CRT securities	\$ 11,964	\$ —	\$ —	\$ —	\$ (906)	\$ 11,058	
Loans held for sale(2)	\$ 7,043	\$ 1,105	\$ (1,634)	\$ 248	\$ 212	\$ 6,974	
Nine months ended September 30, 2019							
Available-for-sale debt securities:(1)							
Tax-exempt asset-backed securities	\$ 95,804	\$ 92,010	\$ (4,254)	\$ —	\$ 14,053	\$ 197,613	
CRT securities	\$ —	\$ 15,044	\$ —	\$ (331)	\$ (3,258)	\$ 11,455	
Loans held for sale(2)	\$ 16,415	\$ —	\$ (8,466)	\$ 450	\$ 799	\$ 9,198	

(1) Unrealized gains/(losses) on available-for-sale debt securities are recorded in AOCI and relate to assets that remain outstanding at period end. Realized gains/(losses) are recorded in other non-interest income.

(2) Realized and unrealized gains/(losses) on loans held for sale are recorded in gain/(loss) on sale of loans held for sale.

Tax-exempt asset-backed securities

The fair value of tax-exempt asset-backed securities is based on a discounted cash flow model, which utilizes Level 3, or unobservable, inputs, the most significant of which were a discount rate and weighted-average life. At September 30, 2020, the discount rates utilized ranged from 2.55% to 2.66% and the weighted-average life ranged from 6.3 years to 7.5 years. On a combined amortized cost weighted-average basis a discount rate of 2.61% and weighted-average life of 6.9 years were utilized to determine the fair value of these securities at September 30, 2020. At December 31, 2019, the combined weighted-average discount rate and weighted-average life utilized were 2.99% and 7.0 years, respectively.

CRT securities

The fair value of CRT securities is based on a discounted cash flow model, which utilizes Level 3, or unobservable, inputs, the most significant of which were a discount rate and weighted-average life. At September 30, 2020, the discount rates utilized ranged from 2.76% to 7.57% and the weighted-average life ranged from 6.6 years to 10.8 years. On a combined amortized cost weighted-average basis a discount rate of 4.36% and a weighted-average life of 8.0 years were utilized to determine the fair value of these securities at September 30, 2020. At December 31, 2019, the combined weighted-average discount rate and combined weighted-average life utilized were 4.54% and 9.3 years, respectively.

Loans held for sale

The fair value of loans held for sale using Level 3 inputs include loans that cannot be sold through normal sale channels and thus require significant management judgment or estimation when determining the fair value. The fair value of such loans is generally based upon quoted prices of comparable loans with a liquidity discount applied. At September 30, 2020, the fair value of these loans was calculated using a weighted-average discounted price of 96.8%, compared to 94.1% at December 31, 2019.

[Table of Contents](#)

Loans held for investment

Certain collateral-dependent loans held for investment are reported at fair value when, based upon an individual evaluation, the specific allocation of the allowance for credit losses that is deducted from the loan's amortized cost is based upon the fair value of the loan's underlying collateral. The \$36.5 million fair value of loans held for investment at September 30, 2020 reported above includes loans held for investment with a carrying value of \$74.3 million that were reduced by specific allowance allocations totaling \$37.8 million based on collateral valuations utilizing Level 3 inputs. The \$109.6 million fair value of loans held for investment at December 31, 2019 reported above includes loans with a carrying value of \$145.4 million that were reduced by specific allowance allocations totaling \$35.8 million based on collateral valuations utilizing Level 3 inputs.

Fair Value of Financial Instruments

GAAP requires disclosure of fair value information about financial instruments, whether or not recognized on the balance sheet, for which it is practical to estimate that value. In cases where quoted market prices are not available, fair values are based on estimates using present value or other valuation techniques. Those techniques are significantly affected by the assumptions used, including the discount rate and estimates of future cash flows. This disclosure does not and is not intended to represent the fair value of the Company.

A summary of the carrying amounts and estimated fair values of financial instruments is as follows:

(in thousands)	September 30, 2020		December 31, 2019	
	Carrying Amount	Estimated Fair Value	Carrying Amount	Estimated Fair Value
Financial assets:				
Level 1 inputs:				
Cash and cash equivalents	\$ 10,646,786	\$ 10,646,786	\$ 4,425,583	\$ 4,425,583
Investment securities	22,442	22,442	18,484	18,484
Level 2 inputs:				
Investment securities	1,132,992	1,132,992	12,396	12,396
Loans held for sale	632,071	632,071	2,570,091	2,570,091
Derivative assets	124,627	124,627	48,684	48,684
Level 3 inputs:				
Investment securities	211,879	211,879	208,991	208,991
Loans held for sale	6,974	6,974	7,043	7,043
Loans held for investment, net	24,877,897	24,925,427	24,451,215	24,478,586
Financial liabilities:				
Level 2 inputs:				
Federal funds purchased	202,605	202,605	132,270	132,270
Customer repurchase agreements	5,578	5,578	9,496	9,496
Other borrowings	2,700,000	2,700,000	2,400,000	2,400,000
Subordinated notes	282,400	289,012	282,129	292,302
Trust preferred subordinated debentures	113,406	113,406	113,406	113,406
Derivative liabilities	114,259	114,259	51,310	51,310
Level 3 inputs:				
Deposits	31,959,487	31,960,471	26,478,593	26,486,090

The estimated fair value for cash and cash equivalents, variable rate loans and variable rate debt approximates carrying value. The following methods and assumptions were used by the Company in estimating its fair value disclosures for financial instruments:

Investment Securities

Within the investment securities portfolio, we hold equity securities related to our non-qualified deferred compensation plan that are valued using quoted market prices for identical equity securities in an active market, and are classified as Level 1 assets in the fair value hierarchy. The fair value of the remaining equity securities and residential mortgage-backed securities in our investment portfolio are based on prices obtained from independent pricing services that are based on quoted market prices for the same or similar securities, and are characterized as Level 2 assets in the fair value hierarchy. We have obtained documentation from our primary pricing service regarding their processes and controls applicable to pricing investment securities, and on a quarterly basis we independently verify the prices that we receive from the service provider using two additional independent pricing sources. We also hold tax-exempt asset-backed securities and CRT securities that are valued

[Table of Contents](#)

using a discounted cash flow model, which utilizes Level 3 inputs, and are classified as Level 3 assets in the fair value hierarchy.

Loans Held for Sale

Fair value for loans held for sale is derived from quoted market prices for similar loans, in which case they are characterized as Level 2 assets in the fair value hierarchy, or is derived from third party pricing models, in which case they are characterized as Level 3 assets in the fair value hierarchy.

Derivatives

The estimated fair value of interest rate swaps and caps is obtained from independent pricing services based on quoted market prices for similar derivative contracts and these financial instruments are characterized as Level 2 assets and liabilities in the fair value hierarchy. On a quarterly basis, we independently verify the fair value using an additional independent pricing source. Foreign currency forward contracts are valued based upon quoted market prices obtained from independent pricing services for similar derivative contracts. As such, these financial instruments are characterized as Level 2 assets and liabilities in the fair value hierarchy. The derivative instruments related to the loans held for sale portfolio include loan purchase commitments and forward sale commitments. Loan purchase commitments are valued based upon the fair value of the underlying mortgage loans to be purchased, which is based on observable market data for similar loans. Forward sale commitments are valued based upon quoted market prices from brokers. As such, these loan purchase commitments and forward sales commitments are characterized as Level 2 assets or liabilities in the fair value hierarchy. The derivative instruments related to our residential MSRs include interest rate swap futures and forward sale commitments. The interest rate swap futures are valued based on quoted market prices obtained from brokers for similar derivative contracts, while the forward sale commitments are valued based on the fair value of the underlying mortgage loans to be purchased, which is based on observable market data for similar loans. As such, these derivative instruments are characterized as Level 2 assets and liabilities in the fair value hierarchy.

(10) Derivative Financial Instruments

The notional amounts and estimated fair values of derivative positions outstanding are presented in the following table:

	September 30, 2020				December 31, 2019			
	Notional Amount	Estimated Fair Value		Notional Amount	Estimated Fair Value			
		Asset Derivative	Liability Derivative		Asset Derivative	Liability Derivative		
(in thousands)								
Non-hedging derivatives:								
Financial institution counterparties:								
Commercial loan/lease interest rate swaps	\$ 1,919,938	\$ —	\$ 108,977	\$ 1,548,234	\$ 182	\$ 46,518		
Commercial loan/lease interest rate caps	652,188	23	—	639,163	32	—		
Foreign currency forward contracts	2,229	7	98	2,219	169	—		
Customer counterparties:								
Commercial loan/lease interest rate swaps	1,919,938	108,977	—	1,548,234	46,518	182		
Commercial loan/lease interest rate caps	652,188	—	23	639,163	—	32		
Foreign currency forward contracts	2,229	98	7	2,219	—	169		
Economic hedging derivatives to hedge:								
Residential MSRs:								
Interest rate swap futures	260,000	81	211	—	—	—		
Forward sale commitments	155,000	351	8	—	—	—		
Loans held for sale:								
Loan purchase commitments	1,295,374	15,090	86	214,012	1,965	4		
Forward sale commitments	1,525,000	—	4,849	2,654,653	—	4,587		
Gross derivatives		124,627	114,259		48,866	51,492		
Offsetting derivative assets/liabilities		—	—		(182)	(182)		
Net derivatives included in the consolidated balance sheets		\$ 124,627	\$ 114,259		\$ 48,684	\$ 51,310		

During the second quarter of 2020, we initiated a strategy to mitigate exposure to potential impairment losses from adverse changes in the fair value of our residential MSR portfolio using interest rate derivative contracts, primarily interest rate swap futures and forward sale commitments of mortgage-backed securities. These derivative instruments are considered highly liquid and can be settled daily, which allows us to dynamically manage our exposure. The derivative instruments are used to

Table of Contents

economically hedge the fair value of the residential MSR portfolio impacted by changes in anticipated prepayments resulting from mortgage interest rate movements and are classified as other assets and other liabilities on the consolidated balance sheets. Any unrealized or realized gains/(losses) related to derivatives economically hedging the residential MSR portfolio are recognized in servicing-related expenses along with changes to the MSR valuation allowance.

The weighted-average received and paid interest rates for interest rate swaps outstanding were as follows:

	June 30, 2020 Weighted-Average Interest Rate		December 31, 2019 Weighted-Average Interest Rate	
	Received	Paid	Received	Paid
Non-hedging interest rate swaps	3.21%	1.42%	3.94%	3.26%

The weighted-average strike rate for outstanding interest rate caps was 3.38% at September 30, 2020 and 3.29% at December 31, 2019.

Our credit exposure on derivative instruments is limited to the net favorable value and interest payments by each counterparty. In some cases collateral may be required from the counterparties involved if the net value of the derivative instruments exceeds a nominal amount. Our credit exposure associated with these instruments, net of any collateral pledged, was approximately \$124.6 million at September 30, 2020, and approximately \$48.7 million at December 31, 2019. Collateral levels are monitored and adjusted on a regular basis for changes in interest rate swap and cap values, as well as for changes in the value of forward sale commitments. At September 30, 2020, we had \$123.4 million in cash collateral pledged for these derivatives, of which \$119.7 million was included in interest-bearing deposits in other banks and \$3.7 million was included in accrued interest receivable and other assets. At December 31, 2019, we had \$56.6 million in cash collateral pledged for these derivatives, of which \$54.3 million was included in interest-bearing deposits in other banks and \$2.3 million was included in accrued interest receivable and other assets.

We also enter into credit risk participation agreements with financial institution counterparties for interest rate swaps related to loans in which we are either a participant or a lead bank. The risk participation agreements entered into by us as a participant bank provide credit protection to the financial institution counterparty should the borrower fail to perform on its interest rate derivative contract with that financial institution. We are party to 8 risk participation agreements where we are a participant bank with a notional amount of \$110.2 million at September 30, 2020, compared to 12 risk participation agreements having a notional amount of \$146.7 million at December 31, 2019. The maximum estimated exposure to these agreements, assuming 100% default by all obligors, was approximately \$6.3 million at September 30, 2020 and \$3.6 million at December 31, 2019. The fair value of these exposures was insignificant to the consolidated financial statements at both September 30, 2020 and December 31, 2019. Risk participation agreements entered into by us as the lead bank provide credit protection to us should the borrower fail to perform on its interest rate derivative contract with us. We are party to 16 risk participation agreements where we are the lead bank having a notional amount of \$166.3 million at September 30, 2020, compared to 12 agreements having a notional amount of \$145.9 million at December 31, 2019.

(11) New Accounting Standards

ASU 2019-12 *"Income Taxes (Topic 740)"* ("ASU 2019-12") simplifies the accounting for income taxes by removing certain exceptions and improves the consistent application of GAAP by clarifying and amending other existing guidance. ASU 2019-012 will be effective for us on January 1, 2021 and is not expected to have any material impact on our consolidated financial statements.

ASU 2020-01 *"Investments - Equity Securities (Topic 321), Investments - Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815)"* ("ASU 2020-01") clarifies the interaction of the accounting for equity securities under Topic 321 and investments accounted for under the equity method of accounting in Topic 323 and the accounting for certain forward contracts and purchased options accounted for under Topic 815. ASU 2020-01 will be effective for us on January 1, 2021 and is not expected to have any material impact on our consolidated financial statements.

ASU 2020-02 *"Financial Instruments - Credit Losses (Topic 326) and Leases (Topic 842)"* ("ASU 2020-02") incorporates SEC SAB 119 (updated from SAB 102) into the Accounting Standards Codification (the "Codification") by aligning SEC recommended policies and procedures with ASC 326. ASU 2020-02 was effective on January 1, 2020 and has not had a significant impact on our documentation requirements.

ASU 2020-03 *"Codification Improvements to Financial Instruments"* ("ASU 2020-03") revised a wide variety of topics in the Codification with the intent to make the Codification easier to understand and apply by eliminating inconsistencies and

providing clarifications. ASU 2020-03 was effective immediately upon its release in March 2020 and did not have a material impact on our consolidated financial statements.

ASU 2020-04, *Reference Rate Reform (Topic 848)* ("ASU 2020-04") provides optional expedients and exceptions for applying GAAP to loan and lease agreements, derivative contracts, and other transactions affected by the anticipated transition away from LIBOR toward new interest rate benchmarks. For transactions that are modified because of reference rate reform and that meet certain scope guidance (i) modifications of loan agreements should be accounted for by prospectively adjusting the effective interest rate and the modification will be considered "minor" so that any existing unamortized origination fees/costs would carry forward and continue to be amortized and (ii) modifications of lease agreements should be accounted for as a continuation of the existing agreement with no reassessments of the lease classification and the discount rate or remeasurements of lease payments that otherwise would be required for modifications not accounted for as separate contracts. ASU 2020-04 also provides numerous optional expedients for derivative accounting. ASU 2020-04 is effective March 12, 2020 through December 31, 2022. An entity may elect to apply ASU 2020-04 for contract modifications as of January 1, 2020, or prospectively from a date within an interim period that includes or is subsequent to March 12, 2020, up to the date that the financial statements are available to be issued. Once elected for a Topic or an Industry Subtopic within the Codification, the amendments in this ASU must be applied prospectively for all eligible contract modifications for that Topic or Industry Subtopic. We anticipate this ASU will simplify any modifications we execute between the selected start date (yet to be determined) and December 31, 2022 that are directly related to LIBOR transition by allowing prospective recognition of the continuation of the contract, rather than extinguishment of the old contract resulting in writing off unamortized fees/costs. We are evaluating the impacts of this ASU and have not yet determined whether LIBOR transition and this ASU will have material effects on our business operations and consolidated financial statements.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition as of September 30, 2020 and December 31, 2019 and results of operations for the three and nine month periods ended September 30, 2020 and September 30, 2019 should be read in conjunction with our consolidated financial statements and notes to the financial statements for the year ended December 31, 2019, and the other information included in our Annual Report on Form 10-K for the year ended December 31, 2019 (the "2019 Form 10-K"). Certain risks, uncertainties and other factors, including those set forth under "Risk Factors" in Part I, Item 1A of the 2019 Form 10-K, and in Part II, Item 1A of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2020, may cause actual results to differ materially from the results discussed in the forward-looking statements appearing in this discussion and analysis.

Forward-Looking Statements

Certain statements and financial analysis contained in this report that are not historical facts are forward-looking statements made pursuant to the safe harbor provisions of federal securities laws. Forward-looking statements may also be contained in our future filings with SEC, in press releases and in oral and written statements made by us or with our approval that are not statements of historical fact. These forward-looking statements are based on our beliefs, assumptions and expectations of our future performance taking into account all information available to us at the time such statements are made. Words such as "believes," "expects," "estimates," "anticipates," "plans," "goals," "objectives," "expects," "intends," "seeks," "likely," "targeted," "continue," "remain," "will," "should," "may" and other similar expressions are intended to identify forward-looking statements but are not the exclusive means of identifying such statements.

Forward-looking statements may include, among other things, statements about the credit quality of our loan portfolio, general economic conditions in the United States and in our markets, including the continued impact on our customers from volatility in oil and gas prices, the material risks and uncertainties for the U.S. and world economies, and for our business, resulting from the novel Coronavirus Disease 2019 ("COVID-19") pandemic, expectations regarding rates of default and loan losses, volatility in the mortgage industry, our business strategies and our expectations about future financial performance, future growth and earnings, the appropriateness of our allowance for credit losses and provision for credit losses, the impact of changing regulatory requirements and legislative changes on our business, increased competition, interest rate risk, new lines of business, new product or service offerings and new technologies.

Forward-looking statements are subject to various risks and uncertainties, which change over time, are based on management's expectations and assumptions at the time the statements are made and are not guarantees of future results. Important factors that could cause actual results to differ materially from the forward-looking statements include, but are not limited to, the following:

- Deterioration of the credit quality of our loan portfolio or declines in the value of collateral related to external factors such as commodity prices, real estate values or interest rates, increased default rates and loan losses or adverse changes in the industry concentrations of our loan portfolio.
- The COVID-19 pandemic is adversely affecting us and our customers, employees and third-party service providers; the adverse impacts of the pandemic on our business, financial position, operations and prospects have been material. It is not possible to accurately predicts the extent, severity or duration of the pandemic or when normal economic and operational conditions will return.
- Operational issues stemming from, and/or capital spending necessitated by, the potential need to adapt to industry changes in information technology systems, on which we are highly dependent.
- Changes in interest rates, which may affect our net income and other future cash flows, or the market value of our assets, including the market value of investment securities.
- Changes in our ability to access the capital markets, including changes in our credit ratings.
- Changes in the value of commercial and residential real estate securing our loans or in the demand for credit to support the purchase and ownership of such assets.
- Changing economic conditions or other developments adversely affecting our commercial, entrepreneurial and professional customers.
- Adverse economic conditions and other factors affecting our middle market customers and their ability to continue to meet their loan obligations.
- The failure to correctly assess and model the assumptions supporting our allowance for credit losses, causing it to become inadequate in the event of deteriorations in loan quality and increases in charge-offs, or increases or decreases to our allowance for credit losses as a result of the implementation of CECL.

[Table of Contents](#)

- Changes in the U.S. economy in general or the Texas economy specifically resulting in deterioration of credit quality, increases in non-performing assets or charge-offs or reduced demand for credit or other financial services we offer, including the effects from declines in the level of drilling and production related to volatility in oil and gas prices and the effects of the COVID-19 pandemic.
- Adverse changes in economic or market conditions, in Texas, the United States or internationally, that could affect the credit quality of our loan portfolio or our operating performance.
- Unanticipated effects from the Tax Cuts and Jobs Act of 2017 may limit its benefits or adversely impact our business, which could include decreased demand for borrowing by our middle market customers or increased price competition that offsets the benefits of decreased federal income tax expense.
- Unexpected market conditions or regulatory changes that could cause access to capital market transactions and other sources of funding to become more difficult to obtain on terms and conditions that are acceptable to us.
- The inadequacy of our available funds to meet our deposit, debt and other obligations as they become due, or our failure to maintain our capital ratios as a result of adverse changes in our operating performance or financial condition, or changes in applicable regulations or regulator interpretation of regulations impacting our business or the characterization or risk weight of our assets.
- The failure to effectively balance our funding sources with cash demands by depositors and borrowers.
- The failure to manage information systems risk or to prevent cyber-attacks against us, our customers or our third party vendors, or to manage risks from disruptions or security breaches affecting us, our customers or our third party vendors, which risks have been materially enhanced by our increased reliance on technology to support associates working outside our offices.
- The failure to effectively manage our interest rate risk resulting from unexpectedly large or sudden changes in interest rates, maturity imbalances in our assets and liabilities, potential adverse effects to our borrowers including their inability to repay loans with increased interest rates and the impact to our net interest income from the increasing cost of interest-bearing deposits.
- The failure of our enterprise risk management framework, our compliance program, or our corporate governance and supervisory oversight functions to timely identify and address emerging risks adequately, which may result in unexpected losses.
- Uncertainty regarding the future of the London Interbank Offered Rate ("LIBOR"), and the expected transition away from LIBOR toward new interest rate benchmarks.
- Legislative and regulatory changes imposing further restrictions and costs on our business, a failure to maintain well capitalized or well managed status or regulatory enforcement actions against us, and uncertainty related to future implementation and enforcement of regulatory requirements resulting from the current political environment.
- Changes in the monetary and fiscal policies of the U.S. Government, including policies of the U.S. Department of Treasury and the Federal Reserve.
- The failure to successfully execute our business strategy, which may include expanding into new markets, developing and launching new lines of business or new products and services within the expected timeframes and budgets or to successfully manage the risks related to the development and implementation of these new businesses, products or services.
- The failure to attract and retain key personnel or the loss of key individuals or groups of employees, including our ability to identify, employ and retain a successor chief executive officer.
- Increased or more effective competition from banks and other financial service providers in our markets.
- Structural changes in the markets for origination, sale and servicing of residential mortgages.
- Uncertainty in the pricing of mortgage loans that we purchase, and later sell or securitize, as well as competition for the MSRs related to these loans and related interest rate risk or price risk resulting from retaining MSRs, and the potential effects of higher interest rates on our Mortgage Correspondent Aggregation ("MCA") loan volumes.
- Changes in accounting principles, policies, practices or guidelines.
- Volatility in the market price of our common stock.
- Material failures of our accounting estimates and risk management processes based on management judgment, or the supporting analytical and forecasting models.
- Failure of our risk management strategies and procedures, including failure or circumvention of our controls.

[Table of Contents](#)

- Credit risk resulting from our exposure to counterparties.
- An increase in the incidence or severity of fraud, illegal payments, security breaches and other illegal acts impacting our Bank and our customers.
- The failure to maintain adequate regulatory capital to support our business.
- Unavailability of funds obtained from borrowing or capital transactions or from our Bank to fund our obligations.
- Incurrence of material costs and liabilities associated with legal and regulatory proceedings, investigations, inquiries and related matters with respect to the financial services industry, including those directly involving us or our Bank and arising from our participation in government stimulus programs responding to the economic impact of the COVID-19 pandemic.
- Environmental liability associated with properties related to our lending activities.
- Severe weather, natural disasters, acts of war or terrorism and other external events.

Actual outcomes and results may differ materially from what is expressed in our forward-looking statements and from our historical financial results due to the factors discussed elsewhere in this report or disclosed in our other SEC filings. Forward-looking statements included herein speak only as of the date hereof and should not be relied upon as representing our expectations or beliefs as of any date subsequent to the date of this report. Except as required by law, we undertake no obligation to revise any forward-looking statements contained in this report, whether as a result of new information, future events or otherwise. The factors discussed herein are not intended to be a complete summary of all risks and uncertainties that may affect our businesses. Though we strive to monitor and mitigate risk, we cannot anticipate all potential economic, operational and financial developments that may adversely impact our operations and our financial results. Forward-looking statements should not be viewed as predictions and should not be the primary basis upon which investors evaluate an investment in our securities.

Overview of Our Business Operations

We commenced our banking operations in December 1998. An important aspect of our growth strategy has been our ability to effectively service and manage a large number of loans and deposit accounts in multiple markets in Texas, as well as several lines of business serving a regional or national clientele of commercial borrowers. Accordingly, we have created an operations infrastructure sufficient to support our lending and banking operations that we continue to build out as needed to serve a larger customer base and specialized industries.

On December 9, 2019, we and Independent Bank Group, Inc. ("IBTX") entered into a merger agreement to combine the companies in an all-stock merger of equals. On May 22, 2020, we and IBTX mutually agreed to terminate the merger agreement. The termination was approved by each company's board of directors after careful consideration of the significant impact of the COVID-19 pandemic on global markets and on the companies' ability to fully realize the benefits expected to be achieved through the merger. Neither party paid a termination fee in connection with the termination of the merger agreement.

In response to the pressures of the current economic environment and a refinement of our strategy, we took actions during the second and third quarters of 2020 which are expected to decrease our non-interest expenses, including a workforce reduction and write-offs of certain software assets. Significant transactions affecting our income statement during the nine months ended September 30, 2020 included:

- \$226.0 million provision for credit losses; driven by an increase in charge-offs and reserve build related to higher criticized loan levels and continued economic uncertainty from the COVID-19 pandemic,
- \$42.1 million in non-recurring software expenses; including \$36.2 million in write-offs of certain software assets and \$5.9 million in technology expense related to the roll-out of our Paycheck Protection Program ("PPP") capabilities,
- \$18.0 million in severance accruals related to the workforce reduction referenced above,
- \$17.8 million in merger-related expenses, and
- \$20.9 million MSR impairment.

While these expenses had a significant impact on our year-to-date operating results, we believe that we are better positioned to improve our core profitability going forward as the non-interest expense items are not expected to recur in future periods.

We continue to focus on balance sheet strength and while we intend to operate with above-average liquidity in response to the uncertain economic environment, we believe opportunities exist to improve core earnings by reducing or replacing higher cost funding sources and improving the earning asset mix.

Our organic growth model and the depth of talent on our team have built a resilient business with lasting client relationships and a record of value creation through dynamic markets and business cycles.

Impact of COVID-19

Overview

In March 2020, the outbreak of COVID-19 was recognized as a pandemic by the World Health Organization. The spread of COVID-19 has created a global public health crisis that has resulted in unprecedented uncertainty, volatility and disruption in financial markets and in governmental, commercial and consumer activity in the United States and globally, including the markets that we serve. Governmental responses to the pandemic included orders to close businesses not deemed essential and directing individuals to restrict their movements, observe social distancing and shelter in place. These actions, together with responses to the pandemic by businesses and individuals, resulted in rapid decreases in commercial and consumer activity, temporary, and some permanent, closures of many businesses that have led to a loss of revenues and a rapid increase in unemployment, material decreases in oil and gas prices and in business valuations, disrupted global supply chains, market downturns and volatility, changes in consumer behavior related to pandemic fears, related emergency response legislation and an expectation that Federal Reserve policy will maintain a low interest rate environment for the foreseeable future. Many of the more restrictive orders have been eased, allowing businesses to open and operate at higher capacities, which has boosted commercial and consumer activity during the third quarter of 2020. The risk of future reimplementations of restrictions on businesses in response to increasing infection rates remains significant.

Legislative Developments

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act was signed into law. It contained substantial tax and spending provisions intended to address the impact of the COVID-19 pandemic. The CARES Act included the PPP, a nearly \$350 billion program designed to aid small- and medium-sized businesses through federally guaranteed loans distributed through banks. These loans were intended to guarantee eight weeks of payroll and other costs to help those businesses remain viable and allow their workers to pay their bills. The initial \$350 billion program was supplemented in late April 2020 with \$310 billion in additional funding. On June 5, 2020, the Paycheck Protection Program Flexibility Act (the "new Act") was signed into law, and made significant changes to the PPP to provide additional relief for small businesses, increasing flexibility for small businesses that have been unable to rehire employees due to lack of employee availability, or have been unable to operate as normal due to COVID-19 related restrictions, extending the period that businesses have to use PPP funds to qualify for loan forgiveness to 24 weeks, up from 8 weeks under the original rules, and relaxing the requirements that loan recipients must adhere to in order to qualify for loan forgiveness. In addition, the new Act extended the payment deferral period for PPP loans until the date when the amount of loan forgiveness is determined and remitted to the lender. For PPP recipients who do not apply for forgiveness, the loan deferral period is 10 months after the applicable forgiveness period ends. On July 4, 2020, Congress enacted a new law to extend the deadline for applying for a PPP loan to August 8, 2020.

We have partnered with a web-based commercial and SBA lending software provider to manage the origination, processing, closing and monitoring of SBA loans and have set up the Texas Capital Bank SBA PPP Loan Portal to provide borrowers the ability to apply and qualify for PPP loans. As of September 30, 2020, we had funded \$717.5 million in PPP loans. Those loans have an outstanding balance of \$715.0 million as of September 30, 2020. We also implemented a short-term loan modification program in late March 2020 to provide temporary payment relief to borrowers who meet the program's qualifications. This program allows for a deferral of payments for 90 days, which we may extend for an additional 90 days, for a maximum of 180 days on a cumulative basis. The deferred payments along with interest accrued during the deferral period are due and payable on the maturity date of the existing loan. Through September 30, 2020, we granted temporary modifications on 483 loans with a total outstanding loan balance of \$1.3 billion, resulting in the deferral of \$10.7 million in interest payments. As of September 30, 2020, 73 loans with a total outstanding balance of \$166.2 million remain on deferral, of which \$61.2 million have been granted a second deferral.

Impact on Our Financial Statements and Results of Operations

Financial institutions are dependent upon the ability of their loan customers to meet their loan obligations and the availability of their workforce and vendors. As a result of the shelter-at-home mandate that was in force early in the second quarter of 2020, commercial activity throughout the state of Texas, as well as nationally, decreased significantly. As of September 30, 2020, most regions in Texas have allowed businesses to re-open at limited capacities and with caution as to social-distancing and other restrictions. Commercial activity has improved, but has not returned to the levels existing prior to the outbreak of the pandemic. This continued depression in commercial activity may result in our customers' inability to meet their loan obligations to us. In addition, the economic pressures and uncertainties related to the COVID-19 pandemic have resulted in changes in consumer spending behaviors, which may negatively impact the demand for loans and other services we offer. Our business and consumer customers are experiencing varying degrees of financial distress, which is expected to continue for the remainder of 2020, especially if COVID-19 infections increase and new economic restrictions are mandated. Our borrowing base includes customers in industries such as energy, hotel/lodging, restaurants, entertainment, retail and commercial real estate, all of which have been and are likely to continue to be significantly impacted by the COVID-19 pandemic. We continue to monitor these customers closely.

Future economic conditions are subject to significant uncertainty. We have taken deliberate actions to ensure that we have the balance sheet strength to serve our clients and communities, including increases in liquidity and managing our assets and liabilities in order to maintain a strong capital position. Current economic pressures and their effects on our customers, coupled with the implementation of the CECL expected loss methodology for determining our allowance for credit losses, have contributed to a substantially increased provision for credit losses for the first nine months of 2020. We continue to monitor closely the impact of the COVID-19 pandemic on our customers, as well as the effects of the CARES Act and the new Act. Uncertainties associated with the pandemic include the duration of the outbreak, the impact to our customers, employees and vendors and the impact to the economy as a whole. COVID-19 has had, and is expected to continue to have, a significant adverse impact on our business, financial position and operating results. The extent to which the COVID-19 pandemic will impact our operations and financial results during the remainder of 2020 and in 2021 cannot be reasonably or reliably estimated at this time.

Impact on our Business Operations

In order to protect the health of our customers and employees, and to comply with applicable government directives, we have modified our business practices, including restricting employee travel, directing employees to work from home insofar as is possible and implementing our business continuity plans and protocols to the extent necessary. Since early March 2020, approximately 90% of our workforce has been working virtually with limited impact on the execution of our business and client experience. We expect to be able to continue with this strategy for the foreseeable future. When the decision is made to transition employees back into the office locations, our Business Continuity team has a plan in place to phase employees back into the office locations over an extended period of time. Our branch locations are currently open and operating during normal business hours, although customers are admitted into the branches only between the hours of 10:00 a.m. and 2:00 p.m. We are taking additional precautions within our branch locations, including enhanced cleaning procedures, to ensure the safety of our customers and our employees.

Energy Portfolio

Outstanding energy loans totaled \$969.0 million, or 4% of total loans, at September 30, 2020, compared to \$1.4 billion, or 6% of total loans, at December 31, 2019 and \$1.5 billion, or 6% of total loans, at September 30, 2019. Our energy loan portfolio is primarily comprised of loans to exploration and production ("E&P") companies that are generally collateralized with proven reserves based on appropriate valuation standards that take into account the risk of oil and gas price volatility. At September 30, 2020, loans to E&P companies represented approximately 70% of total energy loans outstanding. The majority of this portfolio consists of first lien, senior secured, reserve-based loans, which we believe is the lowest-risk form of energy lending. At September 30, 2020 approximately 40% of our exposure was located in lower cost production areas such as the Permian Basin and Eagle Ford.

We recorded \$739,000 in net recoveries during the three months ended September 30, 2020, compared to \$62.4 million in net charge-offs during the three months ended June 30, 2020. Energy non-accruals also improved during the third quarter of 2020, decreasing to \$73.8 million at September 30, 2020 compared to \$103.9 million at June 30, 2020 and \$63.2 million at September 30, 2019.

We continue to proactively manage our energy portfolio and overall credit quality. Energy loans are reviewed quarterly and a formal borrowing base re-determination for reserve-based loans is completed semi-annually to ensure that borrowing capacity is commensurate with asset values. Cash flows are assessed in the context of specific risk factors including commodity prices with corollary sensitivities, commodity hedges and select credit criteria. Reserves allocated to energy loans totaled \$112.9 million, or 12% of outstanding energy loans, at September 30, 2020, compared to \$102.7 million, or 9% of outstanding energy loans, at June 30, 2020 and \$45.4 million, or 3% of outstanding energy loans, at September 30, 2019. At September 30, 2020 approximately 70% of our E&P clients are hedged 50% or more for 2020 and approximately 50% of our E&P clients are hedged 50% or more for 2021. We believe that this hedge coverage compares favorably to the energy downturn experienced in 2015 and 2016.

Results of Operations

Summary of Performance

We reported net income of \$57.1 million and net income available to common stockholders of \$54.7 million for the third quarter of 2020 compared to net income of \$88.1 million and net income available to common stockholders of \$85.6 million for the third quarter of 2019. On a fully diluted basis, earnings per common share were \$1.08 for the third quarter of 2020, compared to \$1.70 for the third quarter of 2019. Return on average common equity ("ROE") was 8.24% and return on average assets ("ROA") was 0.59% for the third quarter of 2020, compared to 13.21% and 1.06%, respectively, for the third quarter of 2019. The decline in net income, ROE and ROA for the third quarter of 2020 resulted primarily from a \$44.6 million decline net interest income and a \$19.0 million increase in the provision for credit losses, offset by a \$40.0 million increase in non-interest income.

Net income and net loss available to common stockholders for the nine months ended September 30, 2020 totaled \$6.1 million and \$1.2 million, respectively, compared to net income and net income available to common stockholders of \$247.6 million and \$240.3 million, respectively, for the same period in 2019. On a fully diluted basis, earnings/(loss) per common share were

\$(0.02) for the nine months ended September 30, 2020, compared to \$4.77 for the same period in 2019. ROE was (0.06)% and ROA was 0.02% for the nine months ended September 30, 2020 compared to 12.92% and 1.11%, respectively, for the same period in 2019.

Details of the changes in the various components of net income are discussed below.

[Table of Contents](#)
QUARTERLY FINANCIAL SUMMARIES – UNAUDITED
Consolidated Daily Average Balances, Average Yields and Rates

	Three months ended September 30, 2020			Three months ended September 30, 2019		
(in thousands except percentages)	Average Balance	Revenue/ Expense	Yield/ Rate	Average Balance	Revenue/ Expense	Yield/ Rate
Assets						
Investment securities – taxable	\$ 525,149	\$ 1,905	1.44%	\$ 39,744	\$ 357	3.56%
Investment securities – non-taxable(2)	190,797	2,239	4.67%	200,090	2,480	4.92%
Federal funds sold and securities purchased under resale agreements	12,051	1	0.04%	100,657	554	2.18%
Interest-bearing deposits in other banks	11,028,962	2,877	0.10%	4,184,217	22,887	2.17%
Loans held for sale	543,606	3,867	2.83%	2,555,269	26,206	4.07%
Loans held for investment, mortgage finance	9,061,984	76,464	3.36%	8,118,025	68,660	3.36%
Loans held for investment(1)(2)	16,286,036	157,230	3.84%	16,901,391	235,557	5.53%
Less reserve for credit losses on loans	264,769	—	—	212,898	—	—
Loans held for investment, net	25,083,251	233,694	3.71%	24,806,518	304,217	4.87%
Total earning assets	37,383,816	244,583	2.60%	31,886,495	356,701	4.44%
Cash and other assets	1,037,760			1,000,117		
Total assets	\$ 38,421,576			\$ 32,886,612		
Liabilities and Stockholders' Equity						
Transaction deposits	\$ 4,275,574	\$ 6,652	0.62%	\$ 3,577,905	\$ 18,442	2.04%
Savings deposits	12,786,719	12,808	0.40%	10,331,078	45,586	1.75%
Time deposits	2,844,083	8,370	1.17%	2,706,434	16,939	2.48%
Total interest-bearing deposits	19,906,376	27,830	0.56%	16,615,417	80,967	1.93%
Other borrowings	2,811,435	3,493	0.49%	2,896,477	16,538	2.27%
Subordinated notes	282,343	4,191	5.91%	281,979	4,191	5.90%
Trust preferred subordinated debentures	113,406	648	2.28%	113,406	1,237	4.33%
Total interest-bearing liabilities	23,113,560	36,162	0.62%	19,907,279	102,933	2.05%
Demand deposits	12,202,065			9,992,406		
Other liabilities	314,500			264,506		
Stockholders' equity	2,791,451			2,722,421		
Total liabilities and stockholders' equity	\$ 38,421,576			\$ 32,886,612		
Net interest income(2)		\$ 208,421			\$ 253,768	
Net interest margin			2.22%			3.16%
Net interest spread			1.98%			2.39%
Loan spread(3)			3.33%			3.48%

- (1) The loan averages include non-accrual loans and are stated net of unearned income.
(2) Taxable equivalent rates used where applicable.
(3) Yield on loans, net of reserves, less funding cost including all deposits and borrowed funds.

[Table of Contents](#)

	Nine months ended September 30, 2020			Nine months ended September 30, 2019		
(in thousands except percentages)	Average Balance	Revenue/ Expense	Yield/ Rate	Average Balance	Revenue/ Expense	Yield/ Rate
Assets						
Investment securities – taxable	\$ 203,437	\$ 2,364	1.55%	\$ 36,452	\$ 918	3.37%
Investment securities – non-taxable(2)	194,049	6,983	4.81%	169,163	6,479	5.12%
Federal funds sold and securities purchased under resale agreements	151,892	692	0.61%	64,384	1,090	2.26%
Interest-bearing deposits in other banks	9,265,177	24,777	0.36%	2,841,699	48,540	2.28%
Loans held for sale	1,350,581	33,894	3.35%	2,392,404	79,116	4.42%
Loans held for investment, mortgage finance	8,267,307	206,306	3.33%	6,705,960	178,551	3.56%
Loans held for investment(1)(2)	16,632,017	529,981	4.26%	16,849,987	717,541	5.69%
Less reserve for loan losses	234,587	—	—	203,968	—	—
Loans held for investment, net	24,664,737	736,287	3.99%	23,351,979	896,092	5.13%
Total earning assets	35,829,873	804,997	3.00%	28,856,081	1,032,235	4.78%
Cash and other assets	1,030,076			945,623		
Total assets	\$ 36,859,949			\$ 29,801,704		
Liabilities and Stockholders' Equity						
Transaction deposits	\$ 3,991,908	\$ 26,232	0.88%	\$ 3,440,245	\$ 52,480	2.04%
Savings deposits	12,133,598	62,279	0.69%	9,332,059	128,253	1.84%
Time deposits	3,039,619	33,787	1.48%	2,317,339	41,817	2.41%
Total interest-bearing deposits	19,165,125	122,298	0.85%	15,089,643	222,550	1.97%
Other borrowings	3,146,756	18,489	0.78%	3,110,761	57,234	2.46%
Subordinated notes	282,253	12,573	5.95%	281,890	12,573	5.96%
Trust preferred subordinated debentures	113,406	2,573	3.03%	113,406	3,863	4.55%
Total interest-bearing liabilities	22,707,540	155,933	0.92%	18,595,700	296,220	2.13%
Demand deposits	11,028,119			8,333,719		
Other liabilities	293,101			236,136		
Stockholders' equity	2,831,189			2,636,148		
Total liabilities and stockholders' equity	\$ 36,859,949			\$ 29,801,704		
Net interest income(2)		\$ 649,064			\$ 736,015	
Net interest margin			2.42%			3.41%
Net interest spread			2.08%			2.65%
Loan spread(3)			3.39%			3.65%

- (1) The loan averages include non-accrual loans and are stated net of unearned income.
(2) Taxable equivalent rates used where applicable.
(3) Yield on loans, net of reserves, less funding cost including all deposits and borrowed funds.

Volume/Rate Analysis

The following table presents the changes in taxable-equivalent net interest income and identifies the changes due to differences in the average volume of earning assets and interest-bearing liabilities and the changes due to differences in the average interest rate on those assets and liabilities.

(in thousands)	Three months ended September 30, 2020/2019			Nine months ended September 30, 2020/2019		
	Net Change	Change due to(1)		Net Change	Change Due To(1)	
		Volume	Yield/Rate(2)		Volume	Yield/Rate(2)
Interest income:						
Investment securities	\$ 1,307	\$ 5,628	\$ (4,321)	\$ 1,950	\$ 6,817	\$ (4,867)
Loans held for sale	(22,339)	(20,637)	(1,702)	(45,222)	(31,939)	(13,283)
Loans held for investment, mortgage finance loans	7,804	7,994	(190)	27,755	42,770	(15,015)
Loans held for investment	(78,327)	(8,577)	(69,750)	(187,560)	(9,085)	(178,475)
Federal funds sold and securities purchased under resale agreements	(553)	(487)	(66)	(398)	1,523	(1,921)
Interest-bearing deposits in other banks	(20,010)	37,438	(57,448)	(23,763)	111,280	(135,043)
Total	(112,118)	21,359	(133,477)	(227,238)	121,366	(348,604)
Interest expense:						
Transaction deposits	(11,790)	3,587	(15,377)	(26,248)	8,411	(34,659)
Savings deposits	(32,778)	10,832	(43,610)	(65,974)	38,657	(104,631)
Time deposits	(8,569)	860	(9,429)	(8,030)	12,891	(20,921)
Other borrowings	(13,045)	(487)	(12,558)	(38,745)	820	(39,565)
Long-term debt	(589)	5	(594)	(1,290)	15	(1,305)
Total	(66,771)	14,797	(81,568)	(140,287)	60,794	(201,081)
Net interest income	\$ (45,347)	\$ 6,562	\$ (51,909)	\$ (86,951)	\$ 60,572	\$ (147,523)

(1) Yield/rate and volume variances are allocated to yield/rate.

(2) Taxable equivalent rates used where applicable assuming a 21% tax rate.

Net Interest Income

Net interest income was \$207.6 million for the three months ended September 30, 2020, compared to \$252.2 million for the same period in 2019. The decrease was primarily due to decreases in yields on earning assets and a shift in earning asset composition, offset by a decrease in funding costs. Average earning assets for the three months ended September 30, 2020 increased by \$5.5 billion compared to the same period in 2019, including a \$476.1 million increase in average total investment securities, reflecting our strategy of utilizing excess liquidity to build our investment portfolio, a \$276.7 million increase in average total loans held for investment, primarily attributable to increases in average mortgage finance loans related to lower long-term interest rates, and a \$6.8 billion increase in average liquidity assets, offset by a \$2.0 billion decrease in average loans held for sale. The increase in average liquidity assets was the result of actions taken by management in the first nine months of 2020 to ensure that we have the balance sheet strength to serve our clients during the COVID-19 pandemic. While we intend to operate with above-average liquidity in response to the uncertain economic environment, we believe opportunities exist to improve core earnings by reducing or replacing higher-cost funding sources and improving the earning asset mix. The decrease in average loans held for sale compared to the third quarter of 2019 resulted from holding purchased loans for shorter durations than in prior periods in order to limit exposure to forbearance risk caused by current economic uncertainties. The decline in net interest income on loans held for sale resulting from shorter hold times was offset by an increase in non-interest income. Average interest-bearing liabilities increased for the three months ended September 30, 2020 compared to the same period in 2019 and included a \$3.3 billion increase in average interest-bearing deposits, offset by an \$85.0 million decrease in average other borrowings. Net interest margin for the three months ended September 30, 2020 was 2.22% compared to 3.16% for the same period in 2019. The decrease was primarily due to the effect of decreases in interest rates on earning asset yields, coupled with the shift in earning asset composition, primarily the increases in investment securities and liquidity assets and decreases in loans held for sale and loans held for investment, excluding mortgage finance, offset by lower funding costs compared to the third quarter of 2019.

Table of Contents

The yield on total loans held for investment decreased to 3.71% for the three months ended September 30, 2020 compared to 4.87% for the same period in 2019, and the yield on earning assets decreased to 2.60% for the three months ended September 30, 2020 compared to 4.44% for the same period in 2019. The average cost of total deposits and borrowed funds decreased to 0.36% for the third quarter of 2020 from 1.31% for the third quarter of 2019. The spread on total earning assets, net of the cost of deposits and borrowed funds, was 2.24% for the third quarter of 2020 compared to 3.13% for the third quarter of 2019. The decrease was primarily a result of declining loan yields offset by a decrease in the cost of interest-bearing liabilities. Total funding costs, including all deposits, long-term debt and stockholders' equity, decreased to 0.38% for the third quarter of 2020 compared to 1.25% for the third quarter of 2019.

Net interest income was \$645.8 million for the nine months ended September 30, 2020 compared to \$731.3 million for the same period in 2019. The decrease was primarily due to decreases in yields on earning assets and a shift in earning asset composition, offset by a decrease in funding costs. Average earning assets increased for the nine months ended September 30, 2020, compared to the same period in 2019 and included a \$191.9 million increase in average total investment securities, a \$1.3 billion increase in average total loans held for investment and a \$6.5 billion increase in average liquidity assets, offset by a \$1.0 billion decrease in average loans held for sale. The increases in average total investment securities and liquidity assets were the result of deliberate actions taken by management to enhance the strength of our balance sheet as described above. The decrease in average loans held for sale was due to holding purchased loans for shorter durations as mentioned above. Average interest-bearing liabilities increased for the nine months ended September 30, 2020, compared to the same period in 2019, and included a \$4.1 billion increase in average interest-bearing deposits and a \$36.0 million increase in average other borrowings. Net interest margin for the nine months ended September 30, 2020 was 2.42% compared to 3.41% for the same period of 2019. The decrease was primarily due to the effect of decreases in interest rates on earning asset yields, coupled with the shift in earning asset composition, primarily the increases in investment securities and liquidity assets and decrease in loans held for sale, offset by lower funding costs compared to the same period in 2019.

The yield on total loans held for investment decreased to 3.99% for the nine months ended September 30, 2020, compared to 5.13% for the prior year period, and the yield on earning assets decreased to 3.00% for the nine months ended September 30, 2020, compared to 4.78% for the same period in 2019. The average cost of total deposits and borrowed funds decreased to 0.56% for the nine months ended September 30, 2020 from 1.41% for the same period in 2019. The spread on total earning assets, net of the cost of deposits and borrowed funds, was 2.44% for 2020 compared to 3.37% for 2019. The decrease was primarily a result of a declining loan yields offset by a decrease in the cost of interest-bearing liabilities. Total funding costs, including all deposits, long-term debt and stockholders' equity decreased to 0.57% for the nine months ended September 30, 2020, compared to 1.34% for the same period in 2019.

Non-interest Income

(in thousands)	Three months ended September 30,		Nine months ended September 30,	
	2020	2019	2020	2019
Service charges on deposit accounts	\$ 2,864	\$ 2,707	\$ 8,616	\$ 8,535
Wealth management and trust fee income	2,502	2,330	7,317	6,468
Brokered loan fees	15,034	8,691	33,813	21,093
Servicing income	7,329	3,549	18,195	9,409
Swap fees	484	1,196	4,709	2,828
Net gain/(loss) on sale of loans held for sale	25,242	(6,011)	51,265	(12,502)
Other(1)	6,893	7,839	18,715	38,848
Total non-interest income	\$ 60,348	\$ 20,301	\$ 142,630	\$ 74,679

(1) Other non-interest income includes such items as letter of credit fees, bank owned life insurance ("BOLI") income, dividends on FHLB and FRB stock, income from legal settlements and other general operating income.

Non-interest income increased by \$40.0 million during the three months ended September 30, 2020 to \$60.3 million, compared to \$20.3 million for the same period in 2019. This increase was primarily due to a \$31.3 million increase in net gain/(loss) on sale of loans held for sale and a \$6.3 million increase in brokered loan fees. The increase in net gain/(loss) on sale of loans held for sale was due to favorable economics and lower hedge costs in the third quarter of 2020 as a result of holding purchased loans for shorter durations than in prior periods, which was offset by the decline in net interest income on loans held for sale noted above. The increase in brokered loan fees was due to an increase in total mortgage finance volumes during the three months ended September 30, 2020 compared to the same period in 2019.

Non-interest income increased by \$68.0 million during the nine months ended September 30, 2020 to \$142.6 million, compared to \$74.7 million for the same period in 2019. This increase was primarily due to a \$63.8 million increase in net gain/(loss) on sale of loans held for sale, a \$12.7 million increase in brokered loans fees and an \$8.8 million increase in servicing income, partially offset by a \$20.1 million decrease in other non-interest income. The increase in net gain/(loss) on sale of loans held for

sale was due to favorable economics and lower hedge costs in 2020 as a result of holding purchased loans for shorter durations than in prior periods. The increase in brokered loan fees was due to an increase in total mortgage finance volumes during the nine months ended September 30, 2020, compared to the same period in 2019, and the increase in servicing income was due to an overall increase in MSR balances held. The decrease in other non-interest income resulted primarily from \$15.0 million in settlements of legal claims during the nine months ended September 30, 2019 not present in 2020.

While management expects continued growth in certain components of non-interest income, the future rate of growth could be affected by increased competition from national and regional financial institutions and general economic conditions. In order to achieve continued growth in non-interest income, management from time to time evaluates new products, new lines of business or the expansion of existing lines of business. Any new product introduction or new market entry could place additional demands on capital and managerial resources and introduce new risks to our business.

Non-interest Expense

(in thousands)	Three months ended September 30,		Nine months ended September 30,	
	2020	2019	2020	2019
Salaries and employee benefits	\$ 84,096	\$ 80,722	\$ 262,080	\$ 238,235
Net occupancy expense	8,736	8,125	26,582	23,914
Marketing	3,636	14,753	20,146	40,548
Legal and professional	11,207	11,394	40,003	31,428
Communications and technology	31,098	10,805	87,649	31,025
FDIC insurance assessment	6,374	5,220	19,363	14,480
Servicing-related expenses	12,287	8,165	48,758	19,613
Merger-related expenses	—	—	17,756	—
Other(1)	8,307	10,245	31,173	33,420
Total non-interest expense	\$ 165,741	\$ 149,429	\$ 553,510	\$ 432,663

(1) Other expense includes such items as courier expenses, regulatory assessments other than FDIC insurance, insurance expenses and other general operating expenses.

Non-interest expense for the three months ended September 30, 2020 increased \$16.3 million compared to the same period in 2019. The increase was primarily due to an increase in communications and technology expenses, primarily due to the write-off of \$15.4 million in software assets in the three months ended September 30, 2020, partially offset by a decrease in marketing expense.

Non-interest expense for the nine months ended September 30, 2020 increased \$120.8 million compared to 2019. The increase was primarily due to increases in salaries and employee benefits, communication and technology, servicing-related expenses and merger-related expenses, partially offset by a decrease in marketing expenses. The increases in salaries and employee benefits and communications and technology expense were primarily due to the severance accruals and non-recurring software expenses, respectively, mentioned above. The full impact on salaries and employee benefits expense from the reduction in workforce and on software amortization expense from the software write-offs recorded in the nine months ended September 30, 2020 is expected to be realized in non-interest expense in the first half of 2021, with meaningful reductions in run-rate occurring in the fourth quarter of 2020. Further software write-offs are not expected in the fourth quarter of 2020. The increase in servicing-related expenses was primarily due to higher MSR amortization expense resulting from an increase in the cost basis of our MSR asset as well as from higher mortgage prepayment rates, and an increase in impairment expense.

Analysis of Financial Condition

Loans Held for Investment

The following table summarizes our loans held for investment on a gross basis by portfolio segment:

<i>(in thousands)</i>	September 30, 2020		December 31, 2019	
Commercial	\$	8,786,917	\$	9,133,444
Energy		968,993		1,425,309
Mortgage finance		9,378,104		8,169,849
Real estate		6,112,672		6,008,040
Gross loans held for investment	\$	25,246,686	\$	24,736,642
Deferred income (net of direct origination costs)		(78,624)	\$	(90,380)
Allowance for credit losses on loans		(290,165)	\$	(195,047)
Total loans held for investment, net	\$	24,877,897	\$	24,451,215

Mortgage finance loans relate to our mortgage warehouse lending operations in which we purchase mortgage loan ownership interests that are typically sold within 10 to 20 days and represent 38% of total loans held for investment at September 30, 2020, an increase compared to 33% at December 31, 2019. Volumes fluctuate based on the level of market demand for the product and the number of days between purchase and sale of the loans, which can be affected by changes in overall market interest rates and tend to peak at the end of each month. Traditional loans held for investment decreased 4% during the first nine months of 2020. The majority of the decrease was in our commercial and energy portfolios, and was partially offset by the addition of \$715.0 million in PPP loan balances at September 30, 2020. We continue the strategy of planned reductions in portfolios that have experienced higher historic losses, primarily energy and leveraged lending.

We originate a substantial majority of all loans held for investment. We also participate in syndicated loan relationships, both as a participant and as an agent. As of September 30, 2020, we had \$1.8 billion in syndicated loans, \$449.7 million of which we administer as agent. All syndicated loans, whether we act as agent or participant, are underwritten to the same standards as all other loans we originate. As of September 30, 2020, \$473,000 of our syndicated loans were on non-accrual.

Portfolio Geographic and Industry Concentrations

Although more than 50% of our total loan exposure is outside of Texas and more than 50% of our deposits are sourced outside of Texas, our Texas concentration remains significant. As of September 30, 2020, a majority of our loans held for investment, excluding mortgage finance loans and other national lines of business, were to businesses with headquarters or operations in Texas. This geographic concentration subjects the loan portfolio to the general economic conditions within this state. We also make loans to customers that are secured by assets located outside of Texas. The risks created by this concentration have been considered by management in the determination of the appropriateness of the allowance for credit losses.

[Table of Contents](#)

Non-performing Assets

Non-performing assets include non-accrual loans and leases and repossessed assets. The table below summarizes our non-performing assets by type and by type of property securing the credit:

<i>(in thousands)</i>	September 30, 2020	December 31, 2019	September 30, 2019
Non-accrual loans(1)			
Commercial			
Assets of the borrowers	\$ 35,829	\$ 57,901	\$ 21,975
Inventory	15,266	26,426	18,133
Other	11,416	4,308	6,013
Total commercial	62,511	88,635	46,121
Energy			
Oil and gas properties	73,811	125,049	63,189
Total energy	73,811	125,049	63,189
Real estate			
Assets of the borrowers	14,663	—	—
Commercial property	5,437	1,751	1,167
Single family residences	218	1,449	1,452
Other	5,306	8,500	8,757
Total real estate	25,624	11,700	11,376
Total non-performing assets	\$ 161,946	\$ 225,384	\$ 120,686
Restructured loans - accruing	\$ —	\$ —	\$ —
Loans held for investment past due 90 days and accruing(2)	\$ 15,896	\$ 17,584	\$ 29,648
Loans held for sale past due 90 days and accruing(3)	\$ 15,631	\$ 8,207	\$ 9,187

(1) As of September 30, 2020, December 31, 2019 and September 30, 2019, non-accrual loans included \$47.7 million, \$35.1 million and \$15.5 million, respectively, in loans that met the criteria for restructured.

(2) At September 30, 2020, December 31, 2019 and September 30, 2019, loans past due 90 days and still accruing includes premium finance loans of \$11.9 million, \$8.5 million and \$9.2 million, respectively.

(3) Includes loans guaranteed by U.S. government agencies that were repurchased out of Ginnie Mae securities. Loans are recorded as loans held for sale and carried at fair value on the balance sheet. Interest on these past due loans accrues at the debenture rate guaranteed by the U.S. government. Also includes loans that, pursuant to Ginnie Mae servicing guidelines, we have the unilateral right, but not the obligation, to repurchase if defined delinquent loan criteria are met and therefore must record as loans held for sale on our balance sheet regardless of whether the repurchase option has been exercised.

Total non-performing assets at September 30, 2020 decreased \$63.4 million from December 31, 2019 and increased \$41.3 million compared to September 30, 2019. The decrease from December 31, 2019 was primarily related to charge-offs of energy and leveraged lending loans during the first nine months of 2020. The year-over-year increase is primarily related to our energy and real estate portfolios. Non-accrual energy loans totaled \$73.8 million (46% of total NPAs) at September 30, 2020, compared to \$63.2 million (52% of total NPAs) at September 30, 2019. Non-accrual leveraged lending loans totaled \$31.3 million (19% of total NPAs) at September 30, 2020 compared to \$28.3 million (23% of total NPAs) at September 30, 2019. The COVID-19 pandemic has had an adverse effect on our non-performing assets and, based on the current trajectory, we anticipate that continued adverse impacts will occur in subsequent quarters.

Potential problem loans consist of loans that are performing in accordance with contractual terms, but for which we have concerns about the borrower's ability to comply with repayment terms because of the borrower's potential financial difficulties. We monitor these loans closely and review their performance on a regular basis. At September 30, 2020, we had \$129.5 million in loans of this type, compared to \$46.6 million at December 31, 2019 and \$58.2 million at September 30, 2019.

Summary of Credit Loss Experience

The provision for credit losses, which includes a provision for losses on unfunded commitments, is a charge to earnings to maintain the allowance for credit losses at a level consistent with management's assessment of expected losses in the loan portfolio at the balance sheet date. We adopted ASU 2016-13 on January 1, 2020, which replaced the incurred loss methodology for determining our provision for credit losses and allowance for credit losses with the Current Expected Credit Loss ("CECL") model. Upon adoption, the allowance for credit losses was increased by \$9.1 million, with no impact on the consolidated statement of income. We recorded a \$30.0 million provision for credit losses for the third quarter of 2020, compared to \$100.0 million in the second quarter of 2020 and \$11.0 million in the third quarter of 2019. The decrease from the second quarter of 2020 resulted primarily from a decrease in charge-offs. We recorded \$1.6 million in net charge-offs during the third quarter of 2020, compared to \$74.1 million during the second quarter of 2020 and \$36.9 million during the third

[Table of Contents](#)

quarter of 2019. Criticized loans totaled \$1.1 billion at September 30, 2020, compared to \$1.0 billion at June 30, 2020 and \$536.4 million at September 30, 2019. Criticized loan levels remain elevated due to the downgrade of loans to borrowers that have been impacted by the COVID-19 pandemic or that are in categories that are expected to be more significantly impacted by COVID-19.

The table below presents a summary of our loan loss experience:

<i>(in thousands except percentage and multiple data)</i>	Nine months ended September 30, 2020		Year ended December 31, 2019		Nine months ended September 30, 2019	
Allowance for credit losses on loans:						
Beginning balance	\$	195,047	\$	191,522	\$	191,522
Impact of CECL adoption		8,585		—		—
Loans charged-off:						
Commercial		35,376		44,837		30,869
Energy		100,239		32,625		31,828
Real estate		—		177		177
Total charge-offs		135,615		77,639		62,874
Recoveries:						
Commercial		883		3,054		1,300
Energy		1,303		316		107
Total recoveries		2,186		3,370		1,407
Net charge-offs		133,429		74,269		61,467
Provision for credit losses on loans		219,962		77,794		60,083
Ending balance	\$	290,165	\$	195,047	\$	190,138
Allowance for off-balance sheet credit losses:						
Beginning balance	\$	8,640	\$	11,434	\$	11,434
Impact of CECL adoption		563		—		—
Provision for off-balance sheet credit losses		6,038		(2,794)		(2,083)
Ending balance	\$	15,241	\$	8,640	\$	9,351
Total allowance for credit losses	\$	305,406	\$	203,687	\$	199,489
Total provision for credit losses	\$	226,000	\$	75,000	\$	58,000
Allowance for credit losses on loans to LHI	1.15	%	0.79	%	0.77	%
Net charge-offs to average LHI	0.72	%	0.31	%	0.35	%
Total provision for credit losses to average LHI	1.21	%	0.32	%	0.33	%
Recoveries to total charge-offs	1.61	%	4.34	%	2.24	%
Allowance for off-balance sheet credit losses to off-balance sheet credit commitments	0.18	%	0.10	%	0.11	%
Combined allowance for credit losses to LHI	1.21	%	0.83	%	0.81	%
Allowance as a multiple of non-performing loans	1.8	x	0.9	x	1.6	x

The allowance for credit losses, including the allowance for losses on unfunded commitments reported on the consolidated balance sheets in other liabilities, totaled \$305.4 million at September 30, 2020, \$203.7 million at December 31, 2019 and \$199.5 million at September 30, 2019. The combined allowance as a percentage of loans held for investment increased to 1.21% at September 30, 2020, from 0.83% at December 31, 2019 and 0.81% at September 30, 2019. The combined allowance as a percentage of loans held for investment, excluding mortgage finance, increased to 1.93% at September 30, 2020 from 1.24% at December 31, 2019 and 1.19% at September 30, 2019. The increase in the combined allowance as a percentage of loans held for investment at September 30, 2020, compared to September 30, 2019, is due primarily to an increase in the allowance for credit losses, resulting from reserve build related to higher criticized loan levels and continued economic uncertainty related to the COVID-19 pandemic.

Loans Held for Sale

Through our MCA program we commit to purchase residential mortgage loans from independent correspondent lenders and deliver those loans into the secondary market via whole loan sales to independent third parties or in securitization transactions to Ginnie Mae and GSEs such as Fannie Mae and Freddie Mac. For additional information on our loans held for sale portfolio, see Note 5 - Certain Transfers of Financial Assets in the accompanying notes to the consolidated financial statements included elsewhere in this report.

Liquidity and Capital Resources

In general terms, liquidity is a measurement of our ability to meet our cash needs. Our objectives in managing our liquidity are to maintain our ability to meet loan commitments, repurchase investment securities or repay deposits and other liabilities in accordance with their terms, without an adverse impact on our current or future earnings. Our liquidity strategy is guided by policies, formulated and monitored by our senior management and our Asset and Liability Management Committee (“ALCO”), which take into account the demonstrated marketability of our assets, the sources and stability of our funding and the level of unfunded commitments. We regularly evaluate all of our various funding sources with an emphasis on accessibility, stability, reliability and cost-effectiveness. For the year ended December 31, 2019 and the nine months ended September 30, 2020, our principal source of funding has been our customer deposits, supplemented by our short-term and long-term borrowings, primarily from federal funds purchased and FHLB borrowings, which are generally used to fund mortgage finance assets. We also rely on the availability of the mortgage secondary market provided by Ginnie Mae and the GSEs to support the liquidity of our mortgage finance assets.

In accordance with our liquidity strategy, deposit growth and increases in borrowing capacity related to our mortgage finance loans have resulted in accumulating liquidity assets in recent periods. Additionally, throughout 2020 we have significantly increased our liquidity assets to ensure that we have the balance sheet strength to serve our clients during the COVID-19 pandemic. The following table summarizes the composition of liquidity assets:

<i>(in thousands except percentage data)</i>	September 30, 2020	December 31, 2019	September 30, 2019
Federal funds sold and securities purchased under resale agreements	\$ —	\$ 30,000	\$ 25,000
Interest-bearing deposits	10,461,544	4,233,766	4,968,185
Total liquidity assets	\$ 10,461,544	\$ 4,263,766	\$ 4,993,185
Total liquidity assets as a percent of:			
Total loans held for investment	42.1%	17.3%	20.2%
Total earning assets	28.0%	13.5%	15.4%
Total deposits	32.7%	16.1%	18.2%

Our liquidity requirements to support growth in loans held for investment have been fulfilled primarily through growth in our core customer deposits. Our goal is to obtain as much of our funding for loans held for investment and other earning assets as possible from deposits of these core customers. These deposits are generated principally through development of long-term customer relationships, with a significant focus on treasury management products. In addition to deposits from our core customers, we also have access to deposits through brokered customer relationships. For regulatory purposes, these relationship brokered deposits are categorized as brokered deposits; however, since these deposits arise from a customer relationship, which involves extensive treasury services, we consider these deposits to be core deposits for our reporting purposes.

We also have access to incremental deposits through brokered retail certificates of deposit, or CDs. These traditional brokered deposits are generally of short maturities and are used to fund temporary differences in the growth in loan balances, including growth in loans held for sale or other specific categories of loans as compared to customer deposits. The following table summarizes our period-end and average core customer deposits, relationship brokered deposits and traditional brokered deposits:

<i>(in thousands)</i>	September 30, 2020	December 31, 2019	September 30, 2019
Deposits from core customers	\$ 27,339,283	\$ 22,549,568	\$ 22,885,756
Deposits from core customers as a percent of total deposits	85.5%	85.2%	83.5%
Relationship brokered deposits	\$ 2,295,530	\$ 1,617,247	\$ 2,430,543
Relationship brokered deposits as a percent of average total deposits	7.2%	6.1%	8.9%
Traditional brokered deposits	\$ 2,324,674	\$ 2,311,778	\$ 2,097,004
Traditional brokered deposits as a percent of total deposits	7.3%	8.7%	7.6%
Average deposits from core customers(1)	\$ 25,580,278	\$ 20,747,292	\$ 19,431,375
Average deposits from core customers as a percent of average total deposits	84.7%	84.1%	82.9%
Average relationship brokered deposits(1)	\$ 2,078,708	\$ 2,096,287	\$ 2,190,618
Average relationship brokered deposits as a percent of average total deposits	6.9%	8.5%	9.4%
Average traditional brokered deposits(1)	\$ 2,534,258	\$ 1,813,037	\$ 1,801,369
Average traditional brokered deposits as a percent of average total deposits	8.4%	7.4%	7.7%

(1) Annual averages presented for December 31, 2019.

Table of Contents

We have access to sources of traditional brokered deposits that we estimate to be \$7.5 billion. Based on our internal guidelines, we have chosen to limit our use of these sources to a lesser amount. We have increased our use of traditional brokered deposits in 2019 and 2020 in response to favorable rates available in that market relative to other available funding sources.

We have short-term borrowing sources available to supplement deposits and meet our funding needs. Such borrowings are generally used to fund our mortgage finance loans, due to their liquidity, short duration and interest spreads available. These borrowing sources include federal funds purchased from our downstream correspondent bank relationships (which consist of banks that are smaller than our Bank) and from our upstream correspondent bank relationships (which consist of banks that are larger than our Bank), customer repurchase agreements and advances from the FHLB and the Federal Reserve. The following table summarizes our short-term and other borrowings:

<i>(in thousands)</i>	September 30, 2020	
Federal funds purchased	\$	202,605
Repurchase agreements		5,578
FHLB borrowings		2,700,000
Line of credit		—
Total short-term borrowings	\$	2,908,183
Maximum short-term borrowings outstanding at any month-end during 2020	\$	5,195,267

The following table summarizes our other borrowing capacities net of balances outstanding. As of September 30, 2020, all are scheduled to mature within one year.

<i>(in thousands)</i>	September 30, 2020	
FHLB borrowing capacity relating to loans	\$	7,987,126
FHLB borrowing capacity relating to securities		1,118,321
Total FHLB borrowing capacity(1)	\$	9,105,447
Unused federal funds lines available from commercial banks	\$	975,000
Unused Federal Reserve borrowings capacity	\$	2,230,000
Unused revolving line of credit(2)	\$	130,000

(1) FHLB borrowings are collateralized by a blanket floating lien on certain real estate secured loans, mortgage finance assets and also certain pledged securities.

(2) Unsecured revolving, non-amortizing line of credit with maturity date of December 15, 2020. Proceeds may be used for general corporate purposes, including funding regulatory capital infusions into the Bank. The loan agreement contains customary financial covenants and restrictions. No borrowings were made against this line of credit during the nine months ended September 30, 2020.

Our equity capital averaged \$2.8 billion for the three months ended September 30, 2020 as compared to \$2.7 billion for the same period in 2019. We have not paid any cash dividends on our common stock since we commenced operations and have no plans to do so in the foreseeable future.

For additional information regarding our capital and stockholders' equity, see Note 7 - Regulatory Restrictions in the accompanying notes to the consolidated financial statements included elsewhere in this report.

Commitments and Contractual Obligations

The following table presents, as of September 30, 2020, significant fixed and determinable contractual obligations to third parties by payment date. Amounts in the table do not include accrued or accruing interest.

<i>(in thousands)</i>	Within One Year		After One But Within Three Years		After Three But Within Five Years		After Five Years		Total
Deposits without a stated maturity	\$	29,142,214	\$	—	\$	—	\$	—	29,142,214
Time deposits		1,769,116		1,043,127		5,024		6	2,817,273
Federal funds purchased and customer repurchase agreements		208,183		—		—		—	208,183
FHLB borrowings		2,700,000		—		—		—	2,700,000
Subordinated notes		—		—		—		282,400	282,400
Trust preferred subordinated debentures		—		—		—		113,406	113,406
Total contractual obligations	\$	33,819,513	\$	1,043,127	\$	5,024	\$	395,812	35,263,476

Critical Accounting Policies

SEC guidance requires disclosure of “critical accounting policies.” The SEC defines “critical accounting policies” as those that are most important to the presentation of a company’s financial condition and results, and require management’s most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain.

We follow financial accounting and reporting policies that are in accordance with accounting principles generally accepted in the United States. The more significant of these policies are summarized in Note 1 - Operations and Summary of Significant Accounting Policies in the notes to the consolidated financial statements included elsewhere in this report and in our 2019 Form 10-K. Not all significant accounting policies require management to make difficult, subjective or complex judgments. However, the policy noted below could be deemed to meet the SEC’s definition of a critical accounting policy.

Allowance for Credit Losses

Management considers the policies related to the allowance for credit losses as the most critical to the financial statement presentation. The total allowance for credit losses includes activity related to allowances calculated in accordance with Accounting Standards Codification (“ASC”) 326, *Credit Losses*. The allowance for credit losses is established through a provision for credit losses charged to current earnings. The amount maintained in the allowance reflects management’s continuing evaluation of the loan losses expected to be recognized over the life of the loans in our portfolio. The allowance for credit losses is a valuation account that is deducted from the loans’ amortized cost basis to present the net amount expected to be collected on the loans. For purposes of determining the allowance for credit losses, the loan portfolio is segregated by product types in order to recognize differing risk profiles among categories, and then further segregated by credit grades. Loans that do not share risk characteristics are evaluated on an individual basis and are not included in the collective evaluation. Management estimates the allowance balance using relevant available information from internal and external sources relating to past events, current conditions and reasonable and supportable forecasts. Adjustments to historical loss information are made to incorporate our reasonable and supportable forecast of future losses at the portfolio segment level, as well as any necessary qualitative adjustments using a Portfolio Level Qualitative Factor (“PLQF”) and/or a Portfolio Segment Level Qualitative Factor (“SLQF”). The PLQF and SLQF are utilized to address factors that are not present in historical loss rates and are otherwise unaccounted for in the quantitative process. A reserve is recorded upon origination or purchase of a loan. See “*Summary of Credit Loss Experience*” above and Note 4 – Loans Held for Investment and Allowance for Credit Losses on Loans in the accompanying notes to the consolidated financial statements included elsewhere in this report for further discussion of the risk factors considered by management in establishing the allowance for credit losses.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK

Market risk is a broad term for the risk of economic loss due to adverse changes in the fair value of a financial instrument. These changes may be the result of various factors, including interest rates, foreign exchange rates, commodity prices, or equity prices. Additionally, the financial instruments subject to market risk can be classified either as held for trading purposes or held for other than trading.

We are subject to market risk primarily through the effect of changes in interest rates on our portfolio of assets held for purposes other than trading. Additionally, we have some market risk relative to commodity prices through our energy lending activities. Declines and volatility in commodity prices negatively impacted our energy clients' ability to perform on their loan obligations in recent years, and further uncertainty and volatility could have a negative impact on our customers and our loan portfolio in future periods. Foreign exchange rates, commodity prices (other than energy) and equity prices are not expected to pose significant market risk to us.

The responsibility for managing market risk rests with the ALCO, which operates under policy guidelines established by our board of directors. The acceptable negative variation in net interest revenue due to a 100 basis point increase or decrease in interest rates is generally limited by these guidelines to plus or minus 10-12%. These guidelines establish maximum levels for short-term borrowings, short-term assets and public and brokered deposits and minimum levels for liquidity, among other things. Oversight of our compliance with these guidelines is the ongoing responsibility of the ALCO, with exceptions reported to the Risk Management Committee, and to our board of directors if deemed necessary, on a quarterly basis. Additionally, the Credit Policy Committee ("CPC") specifically manages risk relative to commodity price market risks. The CPC establishes maximum portfolio concentration levels for energy loans as well as maximum advance rates for energy collateral.

Interest Rate Risk Management

Our interest rate sensitivity is illustrated in the following table. The table reflects rate-sensitive positions as of September 30, 2020, and is not necessarily indicative of positions on other dates. The balances of interest rate sensitive assets and liabilities are presented in the periods in which they next reprice to market rates or mature and are aggregated to show the interest rate sensitivity gap. The mismatch between repricings or maturities within a time period is commonly referred to as the "gap" for that period. A positive gap (asset sensitive), where interest rate-sensitive assets exceed interest rate sensitive liabilities, generally will result in the net interest margin increasing in a rising rate environment and decreasing in a falling rate environment. A negative gap (liability sensitive) will generally have the opposite results on the net interest margin. To reflect anticipated prepayments, certain asset and liability categories are shown in the table using estimated cash flows rather than contractual cash flows. The Company employs interest rate floors in certain variable rate loans to enhance the yield on those loans at times when market interest rates are extraordinarily low. The degree of asset sensitivity, spreads on loans and net interest margin may be reduced until rates increase by an amount sufficient to eliminate the effects of floors. The adverse effect of floors as market rates increase may also be offset by the positive gap, the extent to which rates on deposits and other funding sources lag increasing market rates for loans and changes in composition of funding.

Interest Rate Sensitivity Gap Analysis
September 30, 2020

<i>(in thousands)</i>	0-3 mo Balance	4-12 mo Balance	1-3 yr Balance	3+ yr Balance	Total Balance
Assets:					
Interest-bearing deposits in other banks, federal funds sold and securities purchased under resale agreements	\$ 10,461,544	\$ —	\$ —	\$ —	10,461,544
Investment securities(1)	42,958	931	719	1,322,705	1,367,313
Total variable loans	\$ 22,150,473	\$ 135,188	\$ 26,846	\$ 279,597	22,592,104
Total fixed loans	235,631	1,309,363	934,563	823,034	3,302,591
Total loans(2)	22,386,104	1,444,551	961,409	1,102,631	25,894,695
Total interest sensitive assets	\$ 32,890,606	\$ 1,445,482	\$ 962,128	\$ 2,425,336	\$ 37,723,552
Liabilities:					
Interest-bearing customer deposits	\$ 16,803,002	\$ —	\$ —	\$ —	16,803,002
CDs & IRAs	176,981	255,064	55,524	5,030	492,599
Traditional brokered deposits	681,450	655,621	987,603	—	2,324,674
Total interest-bearing deposits	17,661,433	910,685	1,043,127	5,030	19,620,275
Repurchase agreements, federal funds purchased, FHLB borrowings	908,183	2,000,000	—	—	2,908,183
Subordinated notes	—	—	—	282,400	282,400
Trust preferred subordinated debentures	—	—	—	113,406	113,406
Total borrowings	908,183	2,000,000	—	395,806	3,303,989
Total interest sensitive liabilities	\$ 18,569,616	\$ 2,910,685	\$ 1,043,127	\$ 400,836	\$ 22,924,264
GAP	\$ 14,320,990	\$ (1,465,203)	\$ (80,999)	\$ 2,024,500	\$ —
Cumulative GAP	\$ 14,320,990	\$ 12,855,787	\$ 12,774,788	\$ 14,799,288	\$ 14,799,288
Demand deposits					12,339,212
Stockholders' equity					2,800,404
Total					\$ 15,139,616

(1) Investment securities based on fair market value.

(2) Total loans includes loans held for investments, stated at gross, and loans held for sale.

While a gap interest table is useful in analyzing interest rate sensitivity, an interest rate sensitivity simulation provides a better illustration of the sensitivity of earnings to changes in interest rates. Earnings are also affected by the effects of changing interest rates on the value of funding derived from demand deposits and stockholders' equity. We perform a sensitivity analysis to identify interest rate risk exposure on net interest income. We quantify and measure interest rate risk exposure using a model to dynamically simulate the effect of changes in net interest income relative to changes in interest rates over the next twelve months based on three interest rate scenarios. These are a static rate scenario and two "shock test" scenarios.

These scenarios are based on interest rates as of the last day of a reporting period published by independent sources and incorporate relevant spreads of instruments that are actively traded in the open market. The Federal Reserve's federal funds target affects short-term borrowing; the prime lending rate and LIBOR are the basis for most of our variable-rate loan pricing. The 10-year treasury rate is also monitored because of its effect on prepayment speeds for mortgage-backed securities and MSRs. These are our primary interest rate exposures. We are currently not using derivatives to manage our interest rate exposure although we may do so in the future if that appears advisable.

For modeling purposes, the "shock test" scenarios as of September 30, 2019 assume immediate, sustained 100 and 200 basis point increases in interest rates and a 100 basis point decrease in interest rates. As short-term rates have declined during the first nine months of 2020, we do not believe that analysis of an assumed decrease in interest rates would provide meaningful results. As such, the scenarios as of September 30, 2020 assume immediate, sustained 100 and 200 basis point increases only. We will continue to evaluate these scenarios as interest rates change, until short-term rates rise above 3.0%, at which point we will resume evaluations of shock scenarios in which interest rates decrease.

[Table of Contents](#)

Our interest rate risk exposure model incorporates assumptions regarding the level of interest rate on indeterminable maturity deposits (demand deposits, interest-bearing transaction accounts and savings accounts) for a given level of market rate change. In the current environment of decreasing short-term rates, deposit pricing can vary by product and customer. These assumptions have been developed through a combination of historical analysis and projection of future expected pricing behavior. Changes in prepayment behavior of mortgage-backed securities, residential and commercial mortgage loans in each rate environment are captured using industry estimates of prepayment speeds for various coupon segments of the portfolio. The impact of these changes is factored into the simulation model. This modeling indicated interest rate sensitivity as follows:

(in thousands)	Anticipated Impact Over the Next Twelve Months as Compared to Most Likely Scenario					
	September 30, 2020		September 30, 2019			
	100 bps Increase	200 bps Increase	100 bps Increase	200 bps Increase	100 bps Decrease	
Change in net interest income	\$ 52,308	\$ 121,512	\$ 97,080	\$ 194,542	\$ (99,756)	

The simulations used to manage market risk are based on numerous assumptions regarding the effect of changes in interest rates on the timing and extent of repricing characteristics, future cash flows and customer behavior. These assumptions are inherently uncertain and, as a result, the model cannot precisely estimate net interest income or precisely predict the impact of higher or lower interest rates on net interest income. Actual results will differ from simulated results due to timing, magnitude and frequency of interest rate changes as well as changes in market conditions, customer behavior and management strategies, among other factors.

Our business relies upon a large volume of loans, derivative contracts and other financial instruments with attributes that are either directly or indirectly dependent on LIBOR to establish their interest rate and/or value. In 2017, the U.K. Financial Conduct Authority announced that it would no longer compel banks to submit rates for the calculation of LIBOR after 2021. The full impact of alternatives to LIBOR on the valuations, pricing and operation of our financial instruments is not yet known; however, the primary instruments that may be impacted include loans, securities, borrowings and derivatives indexed to LIBOR that mature after December 31, 2021. We have established a working group, consisting of key stakeholders from throughout the Bank, to monitor developments relating to LIBOR uncertainty and changes and to guide the Bank's response. This team is currently working to ensure that our technology systems are prepared for the transition, our loan documents that reference LIBOR-based rates have been appropriately amended to reference other methods of interest rate determination and internal and external stakeholders are apprised of the transition.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the supervision and participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based upon that evaluation, we have concluded that, as of the end of such period, our disclosure controls and procedures were effective in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by us in the reports that we file or submit under the Exchange Act and were effective in ensuring that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to the Company's management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(e) and 15d-15(f) under the Exchange Act) during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The Company is subject to various claims and legal actions that may arise in the ordinary course of conducting its business. Management does not expect the disposition of any of these matters to have a material adverse impact on the Company's financial statements or results of operations.

ITEM 1A. RISK FACTORS

There have been no material changes in the risk factors previously disclosed in the June 30, 2020 Quarterly Report on Form 10-Q and the 2019 Form 10-K.

ITEM 6. *EXHIBITS, FINANCIAL STATEMENT SCHEDULES*

(a) Exhibits

3.1	Amended and Restated Bylaws of Texas Capital Bancshares, Inc.*
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) of the Exchange Act*
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) of the Exchange Act*
32.1	Section 1350 Certification of Chief Executive Officer**
32.2	Section 1350 Certification of Chief Financial Officer**
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH	XBRL Taxonomy Extension Schema Document*
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document*
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document*
101.LAB	XBRL Taxonomy Extension Label Linkbase Document*
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document*

* Filed herewith
** Furnished herewith

SIGNATURES

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

TEXAS CAPITAL BANCSHARES, INC.

Date: October 22, 2020

/s/ Julie Anderson

Julie Anderson

Chief Financial Officer

(Duly authorized officer and principal financial officer)

AMENDED AND RESTATED
BYLAWS
OF
TEXAS CAPITAL BANCSHARES, INC.
(a Delaware Corporation)
[As Amended Through October 5, 2020]

Table of Contents

	Page
ARTICLE I OFFICES	1
Section 1.1 Registered Office	1
Section 1.2 Other Offices	1
ARTICLE II MEETINGS OF STOCKHOLDERS	1
Section 2.1 Place of Meetings	1
Section 2.2 Annual Meetings	1
Section 2.3 Special Meetings	1
Section 2.4 Notice of Stockholder Meetings	4
Section 2.5 Business at Special Meetings	5
Section 2.6 Adjournments, Postponements and Cancellations	5
Section 2.7 Stockholder List	6
Section 2.8 Conduct of Stockholder Meetings	6
Section 2.9 Requirements for Stockholder Business to be Brought Before an Annual Meeting	7
Section 2.10 Quorum	12
Section 2.11 Majority Vote	12
Section 2.12 Proxies	12
Section 2.13 Voting	13
Section 2.14 Consent of Stockholder in Lieu of Meeting	14
Section 2.15 Inspectors	14
Section 2.16 Application to Stock Other Than Common	15
ARTICLE III BOARD OF DIRECTORS	15
Section 3.1 Powers	15

Section 3.2 Number of Directors	15
Section 3.3 Election and Term	15
Section 3.4 Vacancies and Newly Created Directorships	16
Section 3.5 Director Qualifications	16
Section 3.6 Director Nominations	17
Section 3.7 Resignation and Removal	19
Section 3.8 Application to Stock Other Than Common	20
ARTICLE IV MEETINGS OF THE BOARD	20
Section 4.1 First Meeting	20
Section 4.2 Place of Meetings	20
Section 4.3 Regular Meetings	20
Section 4.4 Special Meetings	20
Section 4.5 Quorum and Voting	20
Section 4.6 Telephone Meetings	21
Section 4.7 Directors Meetings Organization	21
Section 4.8 Action by Written Consent	21
ARTICLE V COMMITTEES	21
Section 5.1 Creation of Committees	21
Section 5.2 Committee Charters and Rules; Quorum	21
Section 5.3 Limitation on Power and Authority of Committees	22
ARTICLE VI COMPENSATION OF DIRECTORS	22
ARTICLE VII NOTICES	22
Section 7.1 Methods of Notice	22
Section 7.2 Waiver of Notice	24
ARTICLE VIII OFFICERS	24
Section 8.1 Executive Officers	24
Section 8.2 Election and Qualification	24
Section 8.3 Other Officers and Agents	24
Section 8.4 Salaries	24
Section 8.5 Term, Removal and Vacancies	24
Section 8.6 Execution of Instruments	25

Section 8.7 Duties of Officers	25
Section 8.8 Chairman of the Board	25
Section 8.9 Chief Executive Officer	25
Section 8.10 President	25
Section 8.11 Vice Presidents	26
Section 8.12 Secretary	26
Section 8.13 Treasurer	26
ARTICLE IX SHARES AND STOCKHOLDERS	26
Section 9.1 Certificates Representing Shares	26
Section 9.2 Transfer of Shares	27
Section 9.3 Fixing Record Date	28
Section 9.4 Information Required Prior to Consent Solicitation	29
Section 9.5 Registered Stockholders	30
Section 9.6 Lost Certificates	30
Section 9.7 Severability	30
ARTICLE X INDEMNIFICATION	31
ARTICLE XI GENERAL	33
Section 11.1 Dividends	33
Section 11.2 Reserves	34
Section 11.3 Shares of Other Corporations	34
Section 11.4 Checks	34
Section 11.5 Corporate Records	34
Section 11.6 Fiscal Year	34
Section 11.7 Interested Director and Officer Transactions	34
ARTICLE XII AMENDMENTS	35

AMENDED AND RESTATED BYLAWS
OF
TEXAS CAPITAL BANCSHARES, INC.

ARTICLE I
OFFICES

Section 1.1 Registered Office. The registered office and registered agent of Texas Capital Bancshares, Inc., a Delaware Corporation (the "Corporation"), shall be as designated from time to time by the appropriate filing by the Corporation in the office of the Secretary of State of the State of Delaware.

Section 1.2 Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or as the business of the Corporation may require.

ARTICLE II
MEETINGS OF STOCKHOLDERS

Section 2.1 Place of Meetings. Meetings of stockholders may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication (a "Remote Meeting") as authorized by the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law").

Section 2.2 Annual Meetings. An annual meeting of stockholders shall be held on such day in each fiscal year of the Corporation and at such time and place as may be fixed by the Board of Directors, at which meeting the stockholders shall elect a Board of Directors and transact such other business as may properly be brought before the meeting.

Section 2.3 Special Meetings.

(a) Power to Call Special Meeting. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or the Certificate of Incorporation of the Corporation then in effect (the "Certificate of Incorporation"), may be called by the Chairman of the Board or the Chief Executive Officer, and shall be called by the Chief Executive Officer, the President or the Secretary at the request in writing of a majority of the total number of authorized

directors (without regard as to whether there exist any vacancies in previously authorized director positions at the time of such request), or at the request in writing of stockholders of record owning at least 10% of all shares issued and outstanding and entitled to vote at such meeting, based upon the Corporation's most recent public report of the number of issued and outstanding shares.

(b) Date, Time and Place of Special Meeting. Any special meeting properly called shall be held at such place, if any, on such date, and at such time as designated by the Board of Directors; *provided, however*, that the special meeting shall not be held more than 120 days after receipt of a request for a special meeting of stockholders submitted by one or more stockholders (a "Special Meeting Request").

(c) Required Form of Special Meeting Request. To be in a proper form, a Special Meeting Request must: (i) be in writing, signed and dated by each stockholder of record submitting the Special Meeting Request and each beneficial owner, if any, on whose behalf the Special Meeting Request is being made, or such stockholder's or beneficial owner's duly authorized agent (each, a "Requesting Stockholder"); (ii) be delivered in person or by registered mail, postage prepaid, return receipt requested, or courier service, postage prepaid, to the Secretary of the Corporation at the principal executive offices of the Corporation; (iii) specify in reasonable detail the specific purpose(s) of and the business proposed to be conducted at the special meeting and the reasons the Requesting Stockholder is proposing such business; (iv) suggest a date for the special meeting, which date shall be no fewer than 30 and no more than 120 days from the date on which the request is delivered to the Secretary of the Corporation; and (v) contain the following information:

a. In the case of any director nominations proposed to be presented at the special meeting, the information required by Sections 3.5 and 3.6 of these Bylaws;

b. in the case of any matter (other than a director nomination) proposed to be conducted at the special meeting, the information required by Section 2.9 of these Bylaws with respect to annual meetings of stockholders;

c. a representation that each Requesting Stockholder, or one or more representatives of each such stockholder, intends to appear in person or by proxy at the special meeting to present the proposal(s) or business to be brought before the special meeting;

d. documentary evidence that the Requesting Stockholders had ownership of at least 10% of all shares issued and outstanding and entitled to vote at such meeting, based upon the Corporation's most recent public report of the number of issued and outstanding shares (the "Requisite Percentage"), as of the date of delivery of the Special Meeting Request to the Secretary; *provided, however*, that if any of the Requesting Stockholders are not the beneficial owners of the shares representing the Requisite Percentage, then to be valid, the Special Meeting Request must also include documentary evidence (or, if not simultaneously provided with the Special Meeting Request, such documentary evidence must be delivered to the

Secretary within ten days after the date of delivery of the Special Meeting Request to the Secretary) that the beneficial owners on whose behalf the Special Meeting Request is made had, together with any Requesting Stockholders who are beneficial owners, stock ownership of the Requisite Percentage as of the date of delivery of such Special Meeting Request to the Secretary;

e. an agreement by the Requesting Stockholders to (1) notify the Corporation promptly in the event of any disposition prior to the time of the special meeting of any shares included within any Requesting Stockholder's stock ownership as of the date on which the Special Meeting Request was delivered to the Secretary, (2) notify the Corporation promptly in the event of any material change prior to the time of the special meeting in any Requesting Stockholder's stock ownership, (3) timely provide to the Corporation any updates or supplements to the information provided in the Special Meeting Request at the times and in the forms required by Sections 2.9(e) or 3.6(e) of these Bylaws so that the information provided or required to be provided therein shall be true and correct as of the record date for the special meeting and as of the date that is ten business days prior to the date of the special meeting or any adjournment or postponement thereof, or, if there are fewer than ten business days between the date of the special meeting and such adjournment or postponed meeting, then as of the date of the special meeting so adjourned or postponed, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for notice of and voting at the special meeting (in the case of an update and supplement required to be made as of such record date), and not later than eight business days prior to the date of the special meeting or, if practicable, any adjournment or postponement thereof and, if not practicable, on the first practicable date prior to the date to which the special meeting has been adjourned or postponed (in the case of an update and supplement required to be made as of ten business days prior to the meeting or any adjournment or postponement thereof) and (4) promptly provide any other information reasonably requested by the Corporation; and

f. an acknowledgement that prior to the special meeting any disposition of shares of the Corporation's common stock included within any Requesting Stockholder's stock ownership as of the date on which the Special Meeting Request was delivered to the Secretary shall be deemed to be a revocation of such Special Meeting Request with respect to such disposed shares and that any decrease in the Requesting Stockholders' aggregate stock ownership to less than the Requisite Percentage shall be deemed to be an absolute revocation of such Special Meeting Request.

(d) Revocation of Special Meeting Request. The Requesting Stockholders may revoke a Special Meeting Request by written revocation delivered to the Secretary at the principal executive offices of the Corporation at any time prior to the special meeting. If, following such revocation or

any deemed revocation pursuant to Section 2.3(c) f., there are unrevoked requests from Requesting Stockholders holding in the aggregate less than the Requisite Percentage or there are no unrevoked requests at all, the Board, in its discretion, may cancel the special meeting. If none of the Requesting Stockholders appears or sends a duly authorized agent to present the business specified in the Special Meeting Request at the special meeting, the Corporation need not (but may, in the discretion of the Board of Directors) present such business for a vote at the special meeting, notwithstanding that proxies in respect of such matters may have been received by the Corporation.

(e) Additional Matters. The Board of Directors in its discretion may authorize additional matters to be considered by the stockholders at a special meeting beyond those stated in the Special Meeting Request.

(f) Invalidity of Special Meeting Request. A Special Meeting Request shall not be valid, and a special meeting requested by stockholders shall not be held, if: (i) the Special Meeting Request does not comply with this Section 2.3; (ii) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law; (iii) the Special Meeting Request is delivered during the period commencing 120 days prior to the anniversary of the date of the immediately preceding annual meeting of stockholders and ending on the earlier of (x) the date of the next annual meeting or (y) 30 days after the anniversary of the date of the previous annual meeting; (iv) an identical or substantially similar item as determined in good faith by the Board (a "Similar Item"), other than the election of directors, (1) was presented at an annual or special meeting of stockholders held not more than 12 months before delivery of the Special Meeting Request or (2) is included in the Corporation's notice of meeting as an item of business to be brought before an annual or special meeting of stockholders that has been called but not yet held or that is called for a date within 120 days of the receipt by the Corporation of a Special Meeting Request; (v) a proposed item of business involves the election or removal of directors, changing the size of the Board of Directors, the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors or any similar matter as determined in good faith by the Board (an "Election Item") and any such Election Item (1) was presented at an annual or special meeting of stockholders held not more than 120 days before delivery of the Special Meeting Request or (2) is included in the Corporation's notice of meeting as an item of business to be brought before an annual or special meeting of stockholders that has been called but not yet held or that is called for a date within 120 days of the receipt by the Corporation of a Special Meeting Request; or (vi) the Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or other applicable law.

Section 2.4 Notice of Stockholder Meetings.

(a) Content of Notice. Written notice of all meetings of stockholders shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if

such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

(b) Time of Notice. Unless otherwise required by applicable law or the Certificate of Incorporation, the written notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to notice of such meeting. Notice of any special meeting of stockholders called at the request of the Board of Directors or stockholders in accordance with these Bylaws shall be issued not more than 30 days following the date of such request.

(c) Adjourned Meetings. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with the Delaware General Corporation Law and Section 9.3(a) of these Bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 2.5 Business at Special Meetings. Business transacted at all special meetings of stockholders shall be confined to the purpose or purposes stated in the notice thereof, and no other business may be transacted or conducted, and, except as permitted by Section 2.6 of these Bylaws with respect to adjourning a meeting of stockholders, no vote of the stockholders may be taken with respect to any other matter or proposal not so specified in the notice of that special meeting of stockholders.

Section 2.6 Adjournments, Postponements and Cancellations.

(a) Adjournments. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, or as a Remote Meeting, and notice need not be given of any such adjournment meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(b) Postponements and Cancellations. Any previously scheduled meeting of stockholders, other than a meeting validly called by stockholders pursuant to a Special Meeting

Request, may be postponed or canceled by resolution of the Board of Directors and public announcement (as defined in Section 2.9(h)(ii) of these Bylaws) of the postponement or cancellation given prior to the time previously scheduled for any such meeting of stockholders. Any previously scheduled meeting of stockholders validly called by stockholders pursuant to a Special Meeting Request may be postponed for not more than 30 days by resolution of the Board of Directors and public announcement of the postponement given prior to the time previously scheduled for any such meeting of stockholders.

Section 2.7 Stockholder List.

(a) Preparation of Stockholder List. At least ten days before each meeting of stockholders, a complete list of the stockholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of voting shares held by each, shall be prepared by the Secretary (the "Stockholder List"); *provided, however*, that (i) the Corporation is not required to include electronic mail addresses or other telephone or electronic contact information on the Stockholder List and (ii) if the record date for determining the stockholders entitled to vote is less than ten days before the meeting date, the Stockholder List shall reflect the stockholders entitled to vote as of the tenth day before the meeting date.

(b) Examination of Stockholder List. The Stockholder List shall be open to the examination of any stockholder for such ten day period, for any purpose germane to the meeting, either (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, (ii) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, the Stockholder List shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder during the meeting. In the case of a Remote Meeting, the Stockholder List shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

(c) Stockholders Entitled to Examine List. The Stockholder List shall be the only evidence as to who are the stockholders entitled to examine the Stockholder List or to vote in person or by proxy at any meeting of the stockholders.

Section 2.8 Conduct of Stockholder Meetings. Meetings of stockholders shall be presided over by the Chief Executive Officer of the Corporation, or, in the absence of such person, the Chairman of the Board of the Corporation, or, in the absence of such person, such person as the Board of Directors may designate as chair of the meeting. The Secretary of the Corporation shall act as secretary of the meeting, but in the absence of the Secretary, the chair of the meeting may appoint any person to act as secretary of the meeting. The Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chair of the meeting shall have the right and authority to prescribe such rules, regulations and

procedures and to do all such acts as, in the judgment of such chair, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, (i) establishing an agenda or order of business for the meeting, (ii) prescribing rules, regulations and procedures for maintaining order at the meeting and the safety of those present, (iii) prescribing rules, regulations and procedures limiting entry to and participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies, and such other persons as the chair of the meeting shall permit, (iv) prescribing rules, regulations and procedures restricting entry to the meeting after the time fixed for the commencement thereof, (v) prescribing rules, regulations and procedures limiting the number of times stockholders and other authorized meeting participants may address the meeting and limiting the number of questions that may be asked by stockholders and other authorized meeting participants, (vi) prescribing rules, regulations and procedures limiting the time allotted to stockholders and other authorized meeting participants to make motions or nominations, ask questions, or make comments, (vii) prescribing rules, regulations and procedures for the opening and closing of the polls for each matter upon which stockholders will vote at the meeting and for the matters which are to be voted on by ballot, and (viii) adjourning the meeting (whether or not a quorum is present). Unless, and only to the extent, determined by the Board of Directors or the chair of the meeting, meetings of stockholders shall not be required to be held in accordance with any rules of parliamentary procedure.

Section 2.9 Requirements for Stockholder Business to be Brought Before an Annual Meeting.

(a) Business Properly Brought Before an Annual Meeting. At an annual meeting of the stockholders of the Corporation, only such business shall be conducted as shall have been properly brought before any such meeting. To be properly brought before an annual meeting of stockholders of the Corporation, business must be:

- (i) brought before any such meeting by the Corporation and specified in the notice of any such meeting (or supplement thereto) given by or at the direction of the Board of Directors,
- (ii) brought before any such meeting by or at the direction of the Board of Directors, or
- (iii) otherwise properly brought before any such meeting by a stockholder who:
 - (A) was a stockholder of record (and, with respect to any beneficial owner or beneficial owners, if different, on whose behalf such business is proposed, only if each such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving Timely Notice (as defined in Section 2.9(c) of these Bylaws) and at the time of any such meeting,
 - (B) is entitled to vote at any such meeting, and
 - (C) has complied with this Section 2.9 as to the business proposed to be properly brought before an annual meeting of stockholders of the Corporation.

(b) Stockholder Business to be Brought Before an Annual Meeting. A stockholder may propose business to be properly brought before an annual meeting of the stockholders of the Corporation in one, but only one, of the following ways:

(i) by meeting the eligibility requirements of, and by following the procedures required by, Rule 14a-8 (“Rule 14a-8”) promulgated by the Securities and Exchange Commission (the “Commission”) under the Exchange Act, for having a stockholder’s proposal included in the Corporation’s proxy statement and identified in the Corporation’s form of proxy card for such annual meeting, in which case, if the staff of the Commission has not permitted the Corporation to exclude such stockholder’s proposal from the Corporation’s proxy statement and form of proxy card for such annual meeting pursuant to Rule 14a-8, this Section 2.9(b)(i) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders and the stockholder’s proposal will be included in the notice of meeting given by or at the direction of the Board of Directors pursuant to Section 2.9(a)(i) of these Bylaws, or

(ii) if the stockholder elects not to comply with Rule 14a-8, by meeting the eligibility requirements of Section 2.9(a)(iii) of these Bylaws and by complying with each of the requirements of Section 2.9(c), Section 2.9(d), Section 2.9(e) and Section 2.9(g) of these Bylaws to propose business to be properly brought before an annual meeting of stockholders of the Corporation, in which case this Section 2.9(b)(ii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders.

(c) Requirement of Timely Notice of Stockholder Business. Without exception, for business to be properly brought before an annual meeting by a stockholder pursuant to Section 2.9(b)(ii) of these Bylaws, the stockholder shall:

(i) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, and

(ii) provide any updates or supplements to such notice at the times and in the forms required by Section 2.9(e) of these Bylaws.

For a stockholder’s notice to be timely for the purposes of Section 2.9(c)(i) of these Bylaws, a stockholder’s notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than 100 days nor more than 130 days prior to the one year anniversary of the preceding year’s annual meeting; *provided, however*, that if the date of the annual meeting is more than 30 days before or more than 30 days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not less than 100 days nor more than 130 days prior to the date of such annual meeting, or, if later, ten days following the day on which a public announcement (as defined in Section 2.9(h)(ii) of these Bylaws) of the date of such annual meeting was first made (such notice within such time periods, “Timely Notice”). In no event shall any adjournment, postponement, or cancellation of an annual meeting or the announcement thereof commence a new time period for the giving of Timely Notice as described above.

(d) Requirements for Proper Form of Stockholder Notice of Proposed Business. To be in proper form for purposes of Section 2.9(c)(i) of these Bylaws, a stockholder’s Timely Notice to the Secretary of the Corporation must set forth:

(i) Stockholder Information. As to each Proposing Person (as defined in Section 2.9(h)(i) of these Bylaws), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation’s books and records), (B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially

owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future, (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other person or entity (including their names) in connection with the proposal of such business by such stockholder, including, without limitation, any agreement that would be required to be disclosed pursuant to Item 5 or Item 6 of Schedule 13D promulgated under the Exchange Act (regardless of whether the requirement to file a Schedule 13D is applicable to any Proposing Person), (D) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act, (E) a representation that the Proposing Person intends to appear in person or by proxy at the annual meeting to propose such business, and (F) a representation whether the Proposing Person intends to deliver a proxy statement or form of proxy, or both, to holders of at least the percentage of the Corporation's outstanding shares required to approve the proposal, or whether the Proposing Person intends otherwise to solicit proxies from stockholders in support of the proposal, or whether the Proposing Person intends to do both (the disclosures to be made pursuant to the foregoing clauses (A) through (F) are referred to as "Stockholder Information");

(ii) Information Regarding Disclosable Interests. As to each Proposing Person, (A) any derivative, swap or other transaction or series of transactions engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to give such Proposing Person economic risk similar to ownership of shares of any class or series of the Corporation, including due to the fact that the value of such derivative, swap or other transactions are determined by reference to the price, value or volatility of any shares of any class or series of the Corporation, or which derivative, swap or other transactions provide, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of the Corporation ("Synthetic Equity Interests"), which Synthetic Equity Interests shall be disclosed without regard to whether (x) such derivative, swap or other transactions convey any voting rights in such shares to such Proposing Person, (y) the derivative, swap or other transactions are required to be, or are capable of being, settled through delivery of such shares, or (z) such Proposing Person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap or other transactions, (B) any proxy (other than a revocable proxy given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to vote any shares of any class or series of the Corporation, (C) any agreement, arrangement, understanding or relationship, including any repurchase or similar so called "stock borrowing" agreement or arrangement, engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proposing Person with respect to the shares of any class or series of the Corporation, or which provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of

the Corporation ("Short Interests"), (D) any rights to dividends on the shares of any class or series of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, and (E) any performance related fees (other than an asset based fee) to which such Proposing Person is entitled based on any increase or decrease in the price or value of shares of any class or series of the Corporation, or any Synthetic Equity Interests or Short Interests, if any (the interests identified and described pursuant to the foregoing clauses (A) through (E) are hereinafter referred to collectively as "Disclosable Interests"); *provided, however*, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder of record directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner;

(iii) Description of Proposed Business. As to each item for discussion or vote that the Proposing Person proposes to bring before the annual meeting, (A) a reasonably brief description of such business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting, and any material interest in such business of each Proposing Person, and (B) the text of the proposal or business (including the text of any resolutions proposed to be approved or adopted by the stockholders or amendments to these Bylaws proposed for consideration) (the information required by this Section 2.9(d)(iii), together with the Stockholder Information required by Section 2.9(d)(i) of these Bylaws and the information regarding Disclosable Interests required by Section 2.9(d)(ii) of these Bylaws, is referred to collectively in these Bylaws as the "Timely Notice Information"); and

(iv) Representation as to Accuracy of Information. A representation from the stockholder providing the Timely Notice in writing and in proper form to the Secretary of the Corporation pursuant to Section 2.9(c)(i) of these Bylaws that none of the Timely Notice Information contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading, and that, at the date of the Company's notice of the annual meeting at which the business of the Proposing Person is proposed to be brought is first mailed to the stockholders of the Company, and at the time of the such annual meeting, the Timely Notice Information (as updated and supplemented pursuant to Section 2.9(e) of these Bylaws) will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

(e) Update and Supplement of Stockholder Timely Notice of Proposed Business. A stockholder providing Timely Notice in writing and in proper form of business proposed to be properly brought before an annual meeting of stockholders of the Corporation must further update and supplement such Timely Notice, if necessary, so that the Timely Notice Information provided or required to be provided pursuant to this Section 2.9 shall be true and correct and in proper form as of the record date for determining stockholders entitled to vote at the annual meeting and as of the date, if later, that is 10 business days prior to the date of the annual meeting or any adjournment or postponement thereof, and such update and supplement must be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not later than five business days after the record date for determining stockholders entitled to vote at the annual meeting (in the case of the update and supplement required to be made as of the record

date for determining stockholders entitled to vote at the annual meeting), and not later than eight business days prior to the date for the annual meeting, if practicable (or, if not practicable, on the first practicable date prior to the date of any adjournment or postponement thereof) (in the case of the update and supplement required to be made as of 10 business days prior to the date of the annual meeting or any adjournment or postponement thereof).

(f) Business Not Properly Brought Before A Meeting. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual meeting of stockholders of the Corporation except in accordance with this Section 2.9. The chair of the annual meeting may determine and declare, if the facts warrant, at the annual meeting that business was not properly brought before the annual meeting and in accordance with this Section 2.9, and, if the chair of the annual meeting should so determine, the chair will so declare at the annual meeting and any such business not properly brought before the annual meeting will not be transacted. Notwithstanding the foregoing provisions of this Section 2.9, unless otherwise required by applicable law, (i) if the stockholder does not provide the information required under Section 2.9(e) of these Bylaws, (A) within five business days following the record date for determining stockholders entitled to vote at the annual meeting of stockholders (in the case of the update and supplement required to be made as of the record date for determining stockholders entitled to vote at the annual meeting), and (B) not later than eight business days prior to the date of the annual meeting, if practicable (or, if not practicable, on the first practicable date prior to the date of any adjournment or postponement thereof) (in the case of the update and supplement required to be made as of 10 business days prior to the date of the annual meeting or any adjournment or postponement thereof), or (ii) if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting to present the business described in the stockholder's Timely Notice in proper form delivered pursuant to this Section 2.9, such business need not (but may, in the discretion of the Board of Directors) be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.9(f), to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) delivered to the Corporation prior to the proposing of the business at the annual meeting by the stockholder stating that the person is authorized to act for the stockholder as the stockholder's qualified representative at the annual meeting of stockholders.

(g) Rule 14a-8; Exchange Act Compliance. Nothing in this Section 2.9 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8. The notice requirements of Section 2.9(c), Section 2.9(d), and Section 2.9(e) of these Bylaws will not apply to any stockholder who has notified the Corporation of such stockholder's intention to present a stockholder proposal only pursuant to and in compliance with Rule 14a-8 and Section 2.9(b)(i) of these Bylaws. In addition to the requirements of this Section 2.9 with respect to any business proposed to be properly brought before an annual meeting of stockholders by a stockholder, each Proposing Person shall also comply with all applicable requirements of the Exchange Act with respect to any such business proposed to be properly brought before an annual meeting of stockholders by a stockholder.

(h) Certain Definitions.

(i) "Proposing Person" Defined. For purposes of these Bylaws, the term "Proposing Person" shall mean (a) the stockholder providing the notice of business proposed to be brought before an annual meeting, (b) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, and (c) each affiliate or associate (each as defined in Rule 12b-2 under the Exchange Act for purposes of these Bylaws) of such stockholder or beneficial owner.

(ii) "Public Announcement" Defined. For purposes of these Bylaws, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act, or in a notice given pursuant to any applicable rules or regulations of any stock exchange or other self-regulatory organization applicable to the Corporation (such rules or regulations being herein referred to collectively as "SRO Rules").

(i) Stockholder Director Nominations. Stockholders seeking to nominate persons for election to the Board of Directors must comply with Section 3.6 of these Bylaws, and this Section 2.9 shall not be applicable to nominations of persons for election to the Board of Directors made by stockholders of the Corporation except as expressly provided in Section 3.6 of these Bylaws.

Section 2.10 Quorum. At each meeting of stockholders the holders of a majority of the votes attributed to the shares of capital stock issued and outstanding and entitled to vote thereat, represented in person or by proxy, shall constitute a quorum for the transaction of business, except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by statute, the Certificate of Incorporation, a certificate of designations or other constituent document approved by the Board of Directors creating and providing the rights and limitations of such class or series, or these Bylaws. If a quorum shall fail to attend any meeting, the chair of the meeting or the holders of a majority of the shares entitled to vote who are present, in person or by represented proxy, at the meeting may adjourn the meeting.

Section 2.11 Majority Vote. When a quorum is present at any meeting, the vote of the holders of a majority of the shares having voting power represented in person or by proxy shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute, the Certificate of Incorporation or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 2.12 Proxies. (a) Action by Proxy Authorized. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for the stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

(b) Manner of Authorization of Proxy. Without limiting the manner in which a stockholder may authorize another person or persons to act for the stockholder as proxy pursuant to subsection (a) of this Section, the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder may execute a writing authorizing another person or persons to act as proxy for the stockholder. Execution may be accomplished by the stockholder or an authorized officer, director, employee or agent of the stockholder signing such writing or causing any such individual's signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for the stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination, shall specify the information upon which they relied.

(c) Reliance upon Copies. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (b) of this Section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(d) Revocation of Proxies. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. Prior to the time set for the closing of the polls at a meeting of stockholders, a stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by filing a subsequent duly executed proxy with the Secretary of the Corporation.

Section 2.13 Voting. The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of the Delaware General Corporation Law and Section 9.3 of these Bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the Delaware General Corporation Law. Unless otherwise provided by statute or the Certificate of Incorporation, each stockholder shall have one vote for each share of stock having voting power, registered in the stockholder's name on the books of the Corporation. Unless otherwise

provided by applicable law, SRO Rules, the Certificate of Incorporation or these Bylaws, if a quorum exists at any meeting of stockholders, every matter, other than the election of directors, shall be decided by the affirmative vote of the majority of the shares present in person or represented by proxy at the meeting and entitled to vote on that matter.

Section 2.14 Consent of Stockholders in Lieu of Meeting. Subject to compliance with the requirements of Sections 9.3(b) and 9.4 of these Bylaws, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting if consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and such consents are delivered to the Corporation. Every written consent shall bear the date of signatures of each stockholder and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the record date for such consent solicitation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 2.15 Inspectors. (a) The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of the inspector's duties, shall take and sign an oath faithfully to execute such duties with strict impartiality and according to the best of the inspector's ability.

(b) The inspectors shall (i) ascertain the number of shares outstanding and the voting power of each, (ii) determine the shares represented at a meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

(c) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Delaware Court of Chancery, upon application by a stockholder, shall determine otherwise.

(d) In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any

information provided in accordance with Section 2.12(b)(ii) or in accordance with Section 211(e) or Section 212(c)(2) of the Delaware General Corporation Law, or any information provided pursuant to Section 211(a)(2)(b.) (i) or (iii) of the Delaware General Corporation Law, ballots and the regular books and records of the Corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons that represent more votes than the holder of a proxy is authorized by the record owner to cast, or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to subsection (b)(v) of this Section shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspector's belief that such information is accurate and reliable.

Section 2.16 Application to Stock Other Than Common. The provisions of this Article II shall be applicable to meetings of holders of classes and series of stock of the Corporation other than its common stock unless in conflict with the express terms of such classes and series of stock as set forth in their governing instruments, in which case the terms of such governing instruments will be controlling.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1 Powers. Except as may be otherwise provided in the Delaware General Corporation Law or in the Certificate of Incorporation, the business and affairs of the Corporation shall be managed by a Board of Directors. The Board may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute, by the Certificate of Incorporation or these Bylaws directed or required to be exercised or done by the stockholders.

Section 3.2 Number of Directors. The number of directors which shall constitute the whole Board shall be fixed from time to time by resolution of the Board of Directors adopted by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director, provided that such number shall not be less than one (1) nor more than fifteen (15).

Section 3.3 Election and Term. Except as provided in Section 3.4, directors shall be elected at the annual meeting of the stockholders, and each director shall be elected to serve until the next annual meeting and until the director's successor shall have been elected and shall qualify, or until the director's death, resignation or removal from office. Directors need not be stockholders of the Corporation. No decrease in the authorized number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 3.4 Vacancies and Newly Created Directorships. If the office of any director or directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, or the number of directors constituting the whole Board shall be increased, a majority of the remaining or existing directors, though less than a quorum, may choose a successor or successors, or the director or directors to fill the new directorship or directorships, who shall hold office for the unexpired term in respect to which such vacancy occurred or, in the case of a new directorship or directorships, until the next annual meeting of the stockholders.

Section 3.5 Director Qualifications.

(a) Director Qualification Commitments. In addition to any qualifications to serve as a director of the Corporation set forth in the Delaware General Corporation Law or the Certificate of Incorporation, to qualify to be elected as a member of the Board of Directors, each person nominated for election to the Board of Directors, whether at an annual meeting of stockholders, at a special meeting of stockholders at which a director or directors will be elected, to fill a vacancy, or to fill a newly created directorship resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class, must deliver to the Secretary of the Corporation at the principal executive offices of the Corporation, a written representation and agreement in the form provided by the Secretary of the Corporation, within the time periods prescribed by Section 3.5(b) of these Bylaws, confirming that such person:

(A) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question that has not been disclosed in writing to the Corporation (any of the foregoing in this clause (1), a "Voting Commitment") or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law;

(B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation (any of the foregoing in this clause (B), a "Compensation Commitment"); and

(C) if elected as a director of the Corporation, will comply with applicable law and all applicable publicly disclosed corporate governance, conflict of interest, corporate opportunities, confidentiality and stock ownership and trading policies and guidelines of the Corporation (any of the foregoing in this clause (C), a "Compliance Commitment," and, together with the Voting Commitment and the Compensation Commitment, the "Director Qualification Commitments").

(b) Timely Delivery Required.

(i) Persons Nominated by the Board of Directors. Persons nominated for election to the Board of Directors at an annual or special meeting of stockholders by or at the direction of the Board of Directors, including by any committee or persons appointed by the Board of Directors, must

deliver the Director Qualification Commitments to the Secretary on or before the date on which the Corporation files its definitive proxy statement for such meeting with the Commission.

(ii) Persons Nominated by a Stockholder. Persons nominated by a stockholder pursuant to Section 3.6 of these Bylaws for election to the Board of Directors at an annual or special meeting of stockholders must deliver the Director Qualification Commitments to the Secretary on or before the date on which the Corporation files its definitive proxy statement for such meeting with the Commission. The Corporation will confirm to such stockholder upon request the intended date on or after which the Corporation will file its definitive proxy statement.

(iii) Persons Nominated to Fill a Vacancy or Newly Created Directorship. Persons nominated pursuant to Section 3.6 of these Bylaws for election to the Board of Directors to fill a vacancy, or to fill a newly created directorship resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class, must deliver the Director Qualification Commitments to the Secretary on or before the date and time specified by the Board of Directors for such person's election to the Board of Directors to become effective.

(c) Other Information to be Furnished by Proposed Nominees. The Corporation may require any proposed nominee to furnish such other information (i) as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation in accordance with the Corporation's Corporate Governance Guidelines, applicable SRO Rules and the rules and regulations of the Commission, or (ii) that could be material to a reasonable stockholder's understanding of the independence or lack of independence of such proposed nominee.

Section 3.6 Director Nominations.

(a) Who May Make Director Nominations. Nominations of any person for election to the Board of Directors at an annual meeting, or at a special meeting called by the Board of Directors pursuant to Section 2.3 of these Bylaws at which a director or directors will be elected, may be made only as follows:

(i) By or at the direction of the Board of Directors, including by any committee or persons appointed by the Board of Directors, or

(ii) By a stockholder who:

(A) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such nomination is proposed to be made, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Section 3.6 and at the time of the meeting,

(B) is entitled to vote at the meeting, and

(C) has complied with this Section 3.6 as to such nomination.

This Section 3.6(a)(ii) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting or a special meeting.

(b) Requirement of Timely Notice of Stockholder Director Nominations. Without exception, for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting, the stockholder must do each of the following:

(i) Provide Timely Notice thereof in accordance with the provisions of Section 2.9(c) of these Bylaws in writing and in proper form to the Secretary of the Corporation, and

(ii) Provide any updates or supplements to such notice at the times and in the forms required by Section 3.6(e) of these Bylaws.

Without exception, if the election of directors is a matter specified in the notice of special meeting called by the Board of Directors pursuant to Section 2.3 of these Bylaws, then for a stockholder to make any nomination of a person or persons for election to the Board of Directors at a special meeting, the stockholder must do each of the following:

(i) Provide timely notice thereof in accordance with the provisions of the following full paragraph in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, and

(ii) Provide any updates or supplements to such notice at the times and in the forms required by Section 3.6(e) of these Bylaws.

To be timely, a stockholder's notice for nominations to be made at a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than 90 days nor more than 120 days prior to the date of such special meeting, or, if later, 10 days following the day on which a Public Announcement (as defined in Section 2.9(h)(ii) of these Bylaws) of the date of such special meeting was first made.

In no event shall any adjournment, postponement, or cancellation of an annual meeting or special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) Requirements for Proper Form of Notice of Stockholder Director Nominations. To be in proper form for purposes of this Section 3.6, a stockholder's notice to the Secretary shall set forth:

(i) Stockholder Information. As to each Nominating Person (as defined in Section 3.6(d) of these Bylaws), the Stockholder Information (as defined in Section 2.9(d)(i) of these Bylaws, except that for purposes of this Section 3.6(c)(i), the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.9(d)(i) of these Bylaws); and

(ii) Information Regarding Disclosable Interests. As to each Nominating Person, any Disclosable Interests (as defined in Section 2.9(d)(ii) of these Bylaws, except that for purposes of this Section 3.6(c)(ii), the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.9(d)(ii) of these Bylaws);

(iii) Information Regarding Proposed Nominees. As to each person whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such proposed nominee that would be required to be set forth in a stockholder's notice pursuant to Section 3.6(c)(i) of these Bylaws if such proposed nominee were a Nominating Person, (B) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act and Regulation 14A promulgated by the Commission thereunder (including such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), and (C)

a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among any Nominating Person, on the one hand, and each proposed nominee and such nominee's respective affiliates and associates, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K of the rules and regulations promulgated by the Commission ("Regulation S-K") if such Nominating Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant.

(d) "Nominating Person" Defined. For purposes of these Bylaws, the term "Nominating Person" shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, and (iii) any affiliate or associate of such stockholder or beneficial owner.

(e) Update and Supplement of Stockholder Notice of Nominations. A stockholder providing timely notice in proper form of any nomination proposed to be made at an annual meeting or a special meeting must further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 3.6 shall be true and correct and in proper form as of the record date for determining stockholders entitled to vote at such meeting and, if later, as of the date that is 10 business days prior to the date of such meeting or any adjournment or postponement thereof, and such update and supplement must be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not later than five business days after the record date for determining stockholders entitled to vote at such meeting (in the case of the update and supplement required to be made as of the record date for determining stockholders entitled to vote at such meeting), and not later than eight business days prior to the date of such meeting, if practicable (or, if not practicable, on the first practicable date prior to the date of such meeting or any adjournment or postponement thereof) (in the case of the update and supplement required to be made as of 10 business days prior to the date of such meeting or any adjournment or postponement thereof).

(f) Compliance with Exchange Act. In addition to the requirements of this Section 3.6 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall also comply with all applicable requirements of the Exchange Act and the rules and regulations of the Commission promulgated thereunder with respect to any such nominations.

(g) Defective Nominations. Notwithstanding anything in these Bylaws to the contrary, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with this Section 3.6. The chair of the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with this Section 3.6, and, if the chair of the meeting so determines, the chair of the meeting shall declare such determination to the meeting and the defective nomination shall be disregarded.

Section 3.7 Resignation and Removal. Any director of the Corporation may resign from the Board of Directors or any committee thereof at any time, by giving notice in writing or by electronic transmission to the Chairman of the Board of Directors, if there be one, the Chief Executive Officer or the President or the Secretary of the Corporation and, in the case of a committee, to the chairman of such committee, if there be one. Such resignation shall take effect at the time therein

specified or, if no time is specified, immediately; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Except as otherwise required by applicable law and subject to the rights, if any, of the holders of any shares of any class of capital stock then outstanding having the right to elect or designate one or more directors, any director or the entire Board of Directors may be removed from office at any time, with or without cause, by the affirmative vote of the holders of at least a majority of the shares then entitled to vote at an election of directors. Any director serving on a committee of the Board of Directors may be removed from such committee at any time by the Board of Directors.

Section 3.8 Application to Stock Other Than Common. The provisions of this Article III shall be applicable to the election of directors by holders of classes and series of stock of the Corporation other than its common stock to the extent the holders of such classes and series are provided the right to elect one or more directors, unless in conflict with the express terms of such classes and series of stock as set forth in their governing instruments, in which case the terms of such governing instruments will be controlling.

ARTICLE IV

MEETINGS OF THE BOARD

Section 4.1 First Meeting. The first meeting of each newly elected Board of Directors shall be held at the location of and immediately following the annual meeting of stockholders, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present.

Section 4.2 Place of Meetings. All meetings of the Board of Directors may be held at such place, either within or without the State of Delaware, as from time to time shall be determined by the Board of Directors.

Section 4.3 Regular Meetings. Regular meetings of the Board may be held at such time and place and on such notice, if any, as shall be determined from time to time by the Board.

Section 4.4 Special Meetings. Special meetings of the Board may be called by the Chief Executive Officer, the President, the Chairman of the Board or a majority of the members of the Board of Directors then in office, on not less than twenty-four hours' notice to each director, delivered either personally, by telephone, by mail or by electronic transmission.

Section 4.5 Quorum and Voting. At all meetings of the Board, a majority of the directors at the time in office shall constitute a quorum for the transaction of business; and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute, the Certificate of Incorporation or these Bylaws. If a quorum shall not be present at any meeting of directors, the

directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 4.6 Telephone Meetings. Directors may attend any meeting of the Board or any committee thereof by conference telephone or other means of electronic communication by means of which all persons participating in the meeting can hear each other, and all members so attending shall be deemed present at the meeting for all purposes including the determination of whether a quorum is present.

Section 4.7 Directors Meetings Organization. Meetings of the Board of Directors shall be presided over by the Chairman of the Board, or in his or her absence, by the Chief Executive Officer, or in his or her absence, by a chair chosen at the meeting. The Secretary shall, if present, act as secretary of the meeting, but, in his or her absence, the chair of the meeting may appoint any person to act as secretary of the meeting.

Section 4.8 Action by Written Consent. Unless otherwise provided in the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken by the Board of Directors or any committee thereof, under the applicable provisions of any statute, the Certificate of Incorporation or these Bylaws, may be taken without a meeting if a consent in writing or by electronic transmission, setting forth the action so taken, is signed by all the members of the Board or committee, or confirmed by their electronic transmission, as the case may be, and the writing or writings, or electronic transmission or transmissions, are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

ARTICLE V

COMMITTEES

Section 5.1 Creation of Committees. The Board of Directors, by resolution adopted by a majority of the whole Board, may create committees for such terms and with such powers and duties as the Board deems appropriate. The Board may designate one or more directors as alternate members of any such committee, who may replace any absent or disqualified member at any meeting of the committee. Each member of a committee must meet the requirements for membership, if any, imposed by SRO Rules or other applicable legal requirements.

Section 5.2 Committee Charters and Rules; Quorum. The Board of Directors may, by resolution adopted by a majority of the whole Board, set forth the powers, duties, requirements and procedures relating to the governance and/or operation of a committee in a written charter of any such committee that are different from, or in addition to, those set forth in these Bylaws and, to the extent that there is any inconsistency between these Bylaws and any such resolution or charter, the terms of such resolution or charter shall be controlling. To the extent not inconsistent with the resolutions or charter approved by the Board of Directors, each committee may adopt rules governing

the method of calling and time and place of holding its meetings and the conduct of its responsibilities. Unless otherwise provided by the Board of Directors, a majority of any committee shall constitute a quorum for the transaction of business, and the act of a majority of the members of such committee present at a meeting at which a quorum is present shall be the act of such committee. Each committee shall keep regular minutes of its proceedings and report the same to the Board of Directors when required.

Section 5.3 Limitation on Power and Authority of Committees. No committee of the Board of Directors shall have power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the Delaware General Corporation Law to be submitted to stockholders for approval, (ii) adopting, amending or repealing any bylaw, or (iii), unless authorized by a resolution of the Board of Directors, these Bylaws or the Certificate of Incorporation, declaring a dividend or authorizing the issuance of stock.

ARTICLE VI

COMPENSATION OF DIRECTORS

The Board of Directors shall have authority to determine, from time to time, the amount of compensation, if any, which shall be paid to its members for their services as directors and as members of committees. The Board shall also have power in its discretion to provide for and to pay to directors rendering services to the Corporation not ordinarily rendered by directors, as such, special compensation appropriate to the value of such services as determined by the Board from time to time. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

ARTICLE VII

NOTICES

Section 7.1 Methods of Notice. (a) Personal Notice and Notice by Mail. Whenever any notice is required to be given to any stockholder, director or committee member under the provisions of any statute, the Certificate of Incorporation or these Bylaws, such notice may be delivered personally, in which case it shall be deemed given when received by the individual to whom it is directed or by any person accepting such notice on their behalf, or may be given in writing by mail addressed to such stockholder, director or committee member at such address as appears on the books of the Corporation, in which case such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail with postage thereon prepaid.

(b) Notice by Electronic Transmission.

(i) Without limiting the manner by which notice otherwise may be given effectively to stockholders, notice to any stockholder, director or committee member given by the Corporation

under any provision of the Delaware General Corporation Law (except as provided in Section 7.1(e) of these Bylaws), the Certificate of Incorporation or these Bylaws may be given by a form of electronic transmission consented to by the person to whom the notice is given. Any such consent shall be revocable by written notice to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(ii) Notice given pursuant to Section 7.1(b)(i) of these Bylaws shall be deemed given: (A) if by facsimile telecommunication, when directed to a number at which the recipient has consented to receive notice; (B) if by electronic mail, when directed to an electronic mail address at which the recipient has consented to receive notice; (C) if by a posting on an electronic network together with separate notice to the recipient of such specific posting, upon the later of (1) such posting and (2) the giving of such separate notice; and (D) if by any other form of electronic transmission, when directed to the recipient. Any such consent shall be revocable by the stockholder, director or committee member by written notice to the Corporation.

(iii) For the purposes of these Bylaws, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(c) Notice to Stockholders Sharing an Address. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the Delaware General Corporation Law (except as provided in Section 7.1(e) of these Bylaws), the Certificate of Incorporation or these Bylaws may be given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any stockholder who fails to object in writing to the Corporation, within 60 days of having been given written notice by the Corporation of its intention to send the single notice pursuant to this Section 7.1(c), shall be deemed to have consented to receiving such single written notice. Any such consent shall be revocable by the stockholder by written notice to the Corporation.

(d) Affidavit of Notice. An affidavit of the Secretary or an Assistant Secretary of the Corporation or of the transfer agent or other agent of the Corporation that the notice has been given in accordance with the Delaware General Corporation Law and this Section 7.1 shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(e) Not Applicable to Certain Notices. Section 7.1(b) and Section 7.1(c) of these Bylaws shall not apply to any notice required by Section 164 (relating to failure to pay for stock), Section 296 (relating to adjudication of insolvency claims), Section 311 (relating to revocation of voluntary

dissolution), Section 312 (relating to renewal, revival, extension and restoration of certificate of incorporation) and Section 324 (relating to attachment and sale of shares of stock or any option, right or interest therein) of the Delaware General Corporation Law

Section 7.2 Waiver of Notice. Whenever any notice is required to be given to any stockholder, director or committee member under the provisions of any statute, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at any meeting shall constitute a waiver of notice thereof except as otherwise provided by statute.

ARTICLE VIII

OFFICERS

Section 8.1 Executive Officers. The executive officers of the Corporation shall consist of at least a President and a Secretary, each of whom shall be appointed by the Board of Directors. The Board of Directors may also appoint as an officer of the Corporation a Chief Executive Officer and the Chairman of the Board. Each of the Board of Directors, the Chief Executive Officer and the President shall have the authority to appoint one or more Vice Presidents, one or more of whom may be designated Executive or Senior Vice Presidents and may also have such descriptive titles as the Board shall deem appropriate, and a Treasurer, each of whom shall hold their offices for such terms and shall exercise such powers and perform such duties as may be specified in the documents or resolutions so appointing them. Any two or more offices may be held by the same person.

Section 8.2 Election and Qualification. The Board of Directors at its first meeting after each annual meeting of stockholders shall elect the officers of the Corporation.

Section 8.3 Other Officers and Agents. Each of the Board of Directors, the Chief Executive Officer and the President shall have the authority to appoint Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers, and such other officers and agents as any of them shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as may be specified in the documents or resolutions so appointing them.

Section 8.4 Salaries. The salaries of all officers of the Corporation shall be fixed by the Board of Directors except as otherwise directed by the Board.

Section 8.5 Term, Removal and Vacancies. The officers of the Corporation shall hold office until their successors are chosen and qualify. Any officer or agent of the Corporation may be removed at any time by the affirmative vote of a majority of the Board of Directors, or by the Chief Executive Officer or President. Any vacancy occurring in any office of the Corporation may be filled by the Board of Directors or Chief Executive Officer or otherwise as provided in this Article.

Any removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed.

Section 8.6 Execution of Instruments. The Chairman of the Board, the Chief Executive Officer and the President (and such other officers as are authorized thereunto by resolution of the Board of Directors) may execute in the name of the Corporation bonds, notes, debentures and other evidences of indebtedness, stock certificates, deeds, mortgages, deeds of trust, indentures, contracts, leases, agreements and other instruments, requiring a seal under the seal of the Corporation, and may execute such documents where not requiring a seal, except where such documents are required by law to be otherwise signed and executed, and except where the signing and execution thereof shall be exclusively delegated to some other officer or agent of the Corporation. The Chief Executive Officer may delegate to subordinate officers of the Company the authority to execute, in the name of the Corporation, bonds, notes, debentures and other evidences of indebtedness, stock certificates, deeds, mortgages, deeds of trust, indentures, contracts, leases, agreements and other instruments, requiring a seal under the seal of the corporation, and to execute such documents where not requiring a seal, except where the signing and execution thereof shall be exclusively delegated to some other officer or agent of the Corporation.

Section 8.7 Duties of Officers. The duties and powers of the officers of the Corporation shall be as provided in these Bylaws, or as provided for pursuant to these Bylaws, or (except to the extent inconsistent with these Bylaws or with any provision made pursuant hereto) shall be those customarily exercised by corporate officers holding such offices.

Section 8.8 Chairman of the Board. The Chairman of the Board shall advise and counsel the officers of the Corporation and shall exercise such powers and perform such duties as shall be assigned to or required of the Chairman of the Board from time to time by the Board of Directors. The Chairman of the Board may, if so designated by the Board of Directors, be the Chief Executive Officer of the Corporation; in such event the Chairman of the Board shall have all of the powers and duties granted by these Bylaws to the Chief Executive Officer and from time to time may delegate all, or any, of such powers and duties to the President.

Section 8.9 Chief Executive Officer. The Chief Executive Officer shall have general powers of oversight, supervision and management of the business and affairs of the Corporation, shall perform such duties consistent with that office as the Board may assign and shall see that all orders and resolutions of the Board of Directors are carried into effect. The Chief Executive Officer shall be ex-officio a member of all standing committees of the Board and shall perform all the duties and have all the powers of the Chairman of the Board in the absence of the Chairman of the Board,

Section 8.10 President. The President shall, subject to the title, powers of supervision and control conferred upon the Chief Executive Officer and any subordinate Vice President, be the chief operating officer of the Corporation and shall have all necessary powers to discharge such responsibility, including general supervision of the affairs of the Corporation and general and active control of all of its business. If there is no Chief Executive Officer, the President shall have the

powers and duties granted to the Chief Executive Officer by these Bylaws, subject to such other provision as may be made by the Board.

Section 8.11. Vice Presidents. The Vice Presidents in the order determined by the Board of Directors, the Chief Executive Officer or the President from time to time shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Directors, the Chairman of the Board and the President may prescribe.

Section 8.12 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the committees of the Board of Directors when required. Except as may be otherwise provided in these Bylaws, the Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chief Executive Officer and the President. The Secretary shall keep in safe custody the seal of the Corporation, if any, and shall have authority to affix the same to any instrument requiring it, and when so affixed it may be attested by the Secretary's signature. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by that officer's signature. In the absence of the Treasurer and all Assistant Treasurers, the Secretary shall perform all the duties and have all the powers of the Treasurer.

Section 8.13 Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all monies and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the Board of Directors, the Chairman of the Board, the Chief Executive Officer and the President, whenever they may require it, an account of all of the Treasurer's transactions in that capacity and of the financial condition of the Corporation.

ARTICLE IX

SHARES AND STOCKHOLDERS

Section 9.1 Certificates Representing Shares.

(a) Shares of any or all of the Corporation's stock may be evidenced by certificates for shares of stock, in such form as the board of directors may from time to time prescribe, or may be issued in uncertificated form. The issuance of shares in uncertificated form shall not affect shares already represented by a certificate. Except as expressly provided by law, there shall be no difference in the rights or obligations of stockholders based on whether or not their shares are represented by certificates.

(b) To the extent that persons or entities hold stock certificates in the Corporation, each certificate shall be signed in the name of the Corporation by the Chief Executive Officer, the President or a Vice-President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation. Any of or all the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such officer, transfer agent or registrar continued in such capacity at the date of issue. Certificates of stock shall be consecutively numbered and shall be in such form consistent with law as shall be prescribed by the board of directors.

(c) Every holder of stock in the Corporation shall be entitled to have a certificate, signed by, or in the name of the Corporation by, the Chairman of the Board of Directors, the Chief Executive Officer or the President or a Vice President and the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by the stockholder in the Corporation. The signature of any such officer may be facsimile. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if such officer continued in such capacity at the date of its issuance. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the Delaware General Corporation Law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the designations, preferences and relative, participating, optional or other special rights of each class or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 9.2 Transfer of Shares. Subject to valid transfer restrictions and to stop-transfer orders directed in good faith by the Corporation to any transfer agent to prevent possible violations of federal or state securities laws, rules or regulations, or for any other lawful purpose, upon surrender to the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 9.3 Fixing Record Date.

(a) Record Date for Meetings. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting unless otherwise required by applicable law. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the date on which notice is given, or, if notice is waived, at the close of business on the date next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) Record Date for Determining Stockholders Entitled to Consent.

(i) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors.

(ii) A stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice in proper form, to the attention of the Secretary of the Corporation, request the Board of Directors to fix a record date (a "Consent Record Date Request"). To be in proper form the Consent Record Date Request must demonstrate that the requesting stockholder or stockholders own at least 10% of all shares issued and outstanding and entitled to execute a valid written consent, based upon the Corporation's most recent public report of the number of issued and outstanding shares as of the date of delivery, and committing that any solicitor retained by such stockholder or stockholders will be required to use its best efforts to solicit consents from all stockholders.

(iii) The Board of Directors shall promptly, but in all events within 20 days after the date on which such a proper Consent Record Date Request is received, adopt a resolution fixing the record date, which record date shall not be more than 10 days following the date on which the Board of Directors takes the action fixing the record date. If no record date has been fixed by the Board of Directors within 20 days after the date on which such a proper Consent Record Date Request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable

law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery shall be by hand or by certified or registered mail, return receipt requested.

(iv) If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action.

(v) The Board of Directors in its discretion may require as a condition to setting the record date in response to a Consent Record Date Request that the period during which valid written consents may be solicited following the record date will be limited to a number of days, not less than 60, as specified by the Board of Directors.

(vi) The Board of Directors may decline to act upon a Consent Record Date Request delivered during the period commencing 90 days prior to the scheduled date of an annual or special meeting of stockholders and ending 30 days after such meeting.

(c) Record Date for Stockholders Entitled to Receive Dividends, Distributions or Allotments of Rights. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to receive any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 9.4 Information Required Prior To Consent Solicitation. Any stockholder seeking to have the stockholders authorize or take corporate action by written consent shall, at the same time such stockholder requests the Board of Directors to fix a record date pursuant to Section 9.3(b) of these Bylaws, furnish to the Board of Directors the information and undertakings specified in this Section 9.4 in writing in proper form.

(a) Requirements for Proper Form of Request for Consent Solicitation Record Date. To be in proper form for purposes of this Section 9.4, a stockholder's notice to the Secretary of the Corporation shall set forth:

(i) Stockholder Information. As to each Consent Stockholder (as defined in Section 9.4(b) of these Bylaws), the Stockholder Information (as defined in Section 2.9(d)(i) of these Bylaws, except that for purposes of this Section 9.4(a), the term "Consent Stockholder" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.9(d)(i) of these Bylaws);

(ii) Description of Actions To Be Taken By Consent. A description of the action or actions the Consent Stockholder seeks to have the stockholders take by written consent;

(iii) Information Regarding Disclosable Interests. As to each Consent Stockholder, any Disclosable Interests (as defined in Section 2.9(d)(ii) of these Bylaws, except that for purposes of this Section 9.4(a)(iii), the term “Consent Stockholder” shall be substituted for the term “Proposing Person” in all places it appears in Section 2.9(d)(ii) of these Bylaws); and

(iv) Representation of Accuracy. The Consent Stockholder’s representation that none of the information provided to the Corporation by the Consent Stockholder pursuant to Section 9.3(b) and this Section 9.4 contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading.

(b) “Consent Stockholder” Defined. For purposes of these Bylaws, the term “Consent Stockholder” shall mean (i) any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent that requests the Board of Directors to fix a record date pursuant to Section 9.3(b) of these Bylaws, and (ii) any affiliate or associate of such stockholder.

(c) Other Information to be Furnished by Consent Stockholder. The Corporation may require the Consent Stockholder to furnish such other information as may reasonably be required by the Corporation.

Section 9.5 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of any share or shares to receive dividends, and to vote as such owner, and for all other purposes as such owner; and the Corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

Section 9.6 Lost Certificates. The Corporation may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Corporation may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or the owner’s legal representative, to advertise the same in such manner as it shall require and/or give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 9.7 Severability. If any provision of these Bylaws is held to be invalid, illegal or unenforceable for any reason whatsoever, or to be in conflict with any provision of the Certificate of Incorporation:

(i) the validity, legality and enforceability of the remaining provisions of these Bylaws (including, without limitation, each portion of any paragraph of these Bylaws containing any such provision held to be invalid, illegal or unenforceable, or to be in conflict with any provision of the Certificate of Incorporation, that is not itself held to be invalid, illegal or unenforceable, or to be in conflict with any provision of the Certificate of Incorporation) will not in any way be affected or impaired thereby; and

(ii) to the fullest extent possible, the provisions of these Bylaws (including, without limitation, each such portion of any paragraph of these Bylaws containing any such provision held to be invalid, illegal or unenforceable, or to be in conflict with any provision of the Certificate of Incorporation) will be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable, or to be in conflict with any provision of the Certificate of Incorporation.

ARTICLE X

INDEMNIFICATION

(a) The Corporation shall indemnify any person (an "Indemnitee") who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation, which is addressed in paragraph (b) below) by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Indemnitee in connection with such action, suit or proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Indemnitee did not act in good faith and in a manner which the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the Indemnitee's conduct was unlawful.

(b) The Corporation shall indemnify any person (an "Indemnitee") who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that the Indemnitee is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and

reasonably incurred by the Indemnitee in connection with the defense or settlement of such action or suit if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) To the extent that an Indemnitee has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, the Indemnitee shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by the Indemnitee in connection therewith.

(d) Any indemnification under subsections (a) and (b) (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

(e) Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that the officer or director is not entitled to be indemnified by the Corporation as authorized in this Article X. Such expenses incurred by other employees or agents may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this Article X shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, any agreement or vote of stockholders or disinterested directors or otherwise, both as to action in an Indemnitee's official capacity and as to action in another capacity while holding such office.

(g) The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise against any liability asserted against

such person and incurred by such person in any such capacity, or arising out of such person's status as a director, officer, employee or agent of the Corporation, or service at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article X.

(h) For purposes of this Article X, references to "the Corporation" shall include, in addition to the resulting Corporation, any constituent Corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent Corporation, or is or was serving at the request of such constituent Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article X with respect to the resulting or surviving Corporation as such person would have with respect to such constituent Corporation if its separate existence had continued.

(i) For purposes of this Article X, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article X.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article X shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE XI

GENERAL

Section 11.1 Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, or of the resolutions, if any, providing for any series of stock, may be declared by the Board of Directors at any meeting thereof. Dividends may be paid in cash, in property or in shares of the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation or of the resolutions, if any, providing for any series of stock.

Section 11.2 Reserves. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, deem proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose or purposes as the directors shall think conducive to the interests of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 11.3 Shares of Other Corporations. The Chairman of the Board, the Chief Executive Officer, the President and any Vice President is authorized to vote, represent and exercise on behalf of the Corporation all rights incident to any and all shares of any other Corporation or other entity standing in the name of the Corporation. The authority herein granted to said officer may be exercised either by said officer in person or by any person authorized so to do by proxy or power of attorney duly executed by said officer. Notwithstanding the above, however, the Board of Directors, in its discretion, may designate by resolution any additional person to vote or represent said shares of other corporations and other entities.

Section 11.4 Checks. All checks, drafts, bills of exchange or demands for money of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 11.5 Corporate Records. The Corporation shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its stockholders giving the names and addresses of all stockholders and the number and class and series, if any, of shares held by each. All other books and records of the Corporation may be kept at such place or places within or without the State of Delaware as the Board of Directors may from time to time determine.

Section 11.6 Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board of Directors; if not so fixed, it shall be the calendar year.

Section 11.7 Interested Director and Officer Transactions. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest (an "Interested Party"), shall be void or voidable solely for this reason, or solely because the Interested Party is present at or participates in the meeting of the board of directors or committee thereof which authorizes the contract or transaction, or solely because the vote of such Interested Party is counted for such purpose, if: (i) the material facts as to the Interested Party's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to the Interested Party's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote

thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (3) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee which authorizes the contract or transaction.

ARTICLE XII

AMENDMENTS

These Bylaws may be altered, amended or repealed or new bylaws may be adopted at any annual meeting of the stockholders or at any special meeting of the stockholders at which a quorum is present or represented, by the affirmative vote of the holders of a majority of the shares entitled to vote at such meeting and present or represented thereat, or by the affirmative vote of a majority of the whole Board of Directors at any regular meeting of the Board or at any special meeting of the Board, provided notice of the proposed alteration, amendment or repeal or the adoption of new bylaws is set forth in the notice of such meeting. Any proposal by a stockholder to adopt, amend or repeal the Bylaws of the Corporation must be made in accordance with, and must comply with, the provisions of these Bylaws governing business to be brought before a meeting of stockholders.

Amended and Restated Bylaws as approved by Board on October 16, 2018 to be effective upon filing with SEC November 5, 2019

Amendment No. 1 (Section 2.3(c)-d.) as approved by Board on July 8, 2019, filed with SEC July 11, 2019

Amendment No. 2 (Section 2.3(a), (c)-d.) as approved by Board on October 5, 2020, filed with SEC October 5, 2020

CERTIFICATION

I, Larry Helm, certify that:

1. I have reviewed this report on Form 10-Q of Texas Capital Bancshares, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures, (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)), and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 22, 2020

/s/ Larry Helm

Larry Helm

Executive Chairman and Chief Executive Officer

CERTIFICATION

I, Julie Anderson, certify that:

1. I have reviewed this report on Form 10-Q of Texas Capital Bancshares, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures, (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)), and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 22, 2020

/s/ Julie Anderson

Julie Anderson

Chief Financial Officer

CERTIFICATION

In connection with the Quarterly Report on Form 10-Q of Texas Capital Bancshares, Inc. (the “Company”) for the period ending September 30, 2020 (the “Report”), as filed with the Securities and Exchange Commission on the date hereof, I, Larry Helm, Executive Chairman and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report, fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Larry Helm

Larry Helm

Executive Chairman and Chief Executive Officer

Date: October 22, 2020

CERTIFICATION

In connection with the Quarterly Report on Form 10-Q of Texas Capital Bancshares, Inc. (the “Company”) for the period ending September 30, 2020 (the “Report”), as filed with the Securities and Exchange Commission on the date hereof, I, Julie Anderson, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report, fairly presents, in all material respects, the financial condition and results of operations of the Company.

/S/ Julie Anderson

Julie Anderson

Chief Financial Officer

Date: October 22, 2020