UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WACHOVIA CORPORATION,

Plaintiff,

-against-

CITIGROUP, INC.

Defendant.

AFFIDAVIT OF ROBERT K. STEEL

Robert K. Steel, being first duly sworn, states as follows:

1. I am of sound mind and over 21 years of age. I generally have an understanding and in many cases first hand knowledge of the matters set forth in this Affidavit.

2. I am employed by Wachovia Corporation ("Wachovia"), and I serve as President and Chief Executive Officer of the company. I am also a member of the board of directors of Wachovia. In that capacity, I have been actively and personally involved in the various transactions that Wachovia has considered and negotiated as it has evaluated its strategic alternatives in response to events in the financial markets. In particular, I was involved in the negotiations that Wachovia has had with Citigroup Inc. ("Citigroup") relating to Citigroup's proposed purchase of Wachovia's banking subsidiaries and certain other assets. I have also been involved in the negotiations and discussions that Wachovia has had with representatives of the federal government and with Wells Fargo & Co. ("Wells"). The following chronology is based upon my best recollection and on information provided me by senior Wachovia participants in the events.

3. On September 25, 2008, the Federal Deposit Insurance Corporation (FDIC) seized the banking assets of Washington Mutual Inc. and placed it into receivership. On

that same day, the House of Representatives failed to pass the financial "bailout" package. These two events resulted in significant downward financial pressure in the market on the price of Wachovia stock.

4. On September 26, in response to these concerns, Wachovia and Citigroup entered into a Confidentiality Agreement and initiated intense substantive negotiations regarding a possible acquisition of Wachovia by Citigroup. On that same date, Wachovia and Wells Fargo likewise entered a Confidentiality Agreement.

5. On Saturday, September 27, I had a discussion with Chairman of Wells Fargo, Richard M. Kovacevich, in which Mr. Kovacevich indicated that Wells Fargo was interested in purchasing all of Wachovia in a stock-for-stock purchase. Mr. Kovacevich further indicated to me that the Wells Fargo proposed transaction would not require support from the FDIC and that a merger agreement could be executed before the market opened on Monday.

6. Both Wells Fargo and Citigroup conducted extensive due diligence investigations of Wachovia on September 27 and 28. Wachovia's outside counsel, Sullivan & Cromwell, prepared and transmitted a draft Agreement and Plan of Merger to the counsel for Wells Fargo, Wachtell, Lipton, Rosen & Katz. Mr. Kovacevich again indicated to me that Wells Fargo was interested in purchasing all of Wachovia in a stock-for-stock purchase without FDIC assistance. Representatives of Citigroup had indicated to me that their interest was to acquire only Wachovia's banking subsidiaries, with an FDIC guarantee and assistance.

7. At approximately 6:00 p.m. on Sunday, September 28, Mr. Kovacevich informed me that Wells Fargo was not prepared on such a compressed timetable to offer to acquire Wachovia without substantial government assistance.

8. Shortly after I spoke with Mr. Kovacevich, Sheila Bair, Chairman of the Federal Deposit Insurance Corporation ("FDIC") contacted me by telephone. She advised me that that the FDIC believed that no transaction with Citigroup or Wells Fargo could be effected without substantial government assistance. Chairman Bair confirmed that in the FDIC's view this situation posed a systemic risk to the banking system, and that the FDIC was prepared to exercise its powers under Chapter 13 of the Federal Deposit Insurance Act to effect an open bank assisted transaction. Subsequently, Chairman Bair directed Wachovia to commence negotiations with Citi.

9. Wachovia had a telephonic board meeting on the morning of September 29 at approximately 6:30 a.m. I participated in that Board meeting. The company's advisors and I informed the Board that Wachovia had two options: (1) to place Wachovia Corporation into bankruptcy and its banking subsidiaries into receivership; or (2) to negotiate the transaction with the FDIC and Citigroup. The Board voted in favor of proceeding with the transaction with the FDIC and Citigroup.

10. On behalf of Wachovia, Jane Sherburne, Wachovia's General Counsel, proceeded to sign the three-party Agreement-in-Principle with the FDIC and Citigroup, attached hereto as Exhibit A. That document, which by its terms is not binding on any of the parties thereto, set forth certain basic terms of a transaction. The

Agreement-in-Principle provided that there was no binding agreement between the parties unless and until the parties enter into definitive agreements that provided for all necessary terms and conditions of a transaction that were satisfactory to each party. Any definitive agreement would require the approval of Wachovia's Board and its shareholders to be effective.

11. Under the proposed terms in the Agreement-in-Principle, Citigroup would acquire Wachovia's banking subsidiaries but not Wachovia Securities, Evergreen Investments, certain insurance-related businesses and other businesses or Wachovia itself. Thus, the transaction proposed in the Agreement-in-Principle would require the separation of some business units that are functionally and operationally integrated. Under the terms of the Agreement-in-Principle, the FDIC committed to use taxpayer money to limit Citigroup's losses on a $312 billion loan portfolio to $42 billion if the transaction were consummated and the FDIC was to receive $12 billion of preferred stock in Citigroup.

12. Jane Sherburne also signed a Letter Agreement between Citigroup and Wachovia dated September 29, 2008, attached hereto as Exhibit B (the "Exclusivity Agreement"). Ms. Sherburne was given no opportunity to modify or negotiate these documents before signing.

13. Since the signing of the Agreement-in-Principle and Exclusivity Agreement, I have participated on behalf of Wachovia in the negotiations with Citigroup toward reaching definitive agreements that would be presented to Wachovia's Board and shareholders for approval. Those negotiations began immediately and

were conducted earnestly and in good faith by a team of Wachovia employees and outside advisors.

14. These negotiations proved extremely complicated and difficult.

15. Wachovia was under tremendous pressure from Citi and the regulators to conclude a transaction with Citigroup with definitive agreements by the following Monday, October 6, 2008. On multiple occasions I and our advisors attempted to persuade Citigroup to structure a whole – company transaction because of its substantially reduced completion risk, but Citigroup refused.

16. On October 2, 2008 at approximately 7:15p.m., I received an unexpected call from Chairman Bair. She asked if I had heard from Mr. Kovacevich I assured her I had not spoken to him since the initiation of the negotiations with Citi. She advised me that it was her understanding that he would be calling me to propose a merger transaction that would result in Wachovia's shareholders receiving $7.00 per share of Wells Fargo common stock and encouraged me to give serious consideration to that offer. As I was on an airplane and about to take off, I asked Chairman Bair to call Jane Sherburne. Chairman Bair shortly thereafter called Ms. Sherburne and provided details on the proposed transaction to her. Chairman Bair acknowledged that the Wells Fargo proposal sounded superior to the Citi proposal. Mr. Sherburne advised Ms. Bair that unless Wachovia had a signed and Board-approved merger agreement from Wells Fargo, it could not consider this proposal. Ms. Bair said she would so inform Mr. Kovacevich.

17. When my plane landed in North Carolina later that evening, I returned Chairman Bair's call to further understand Mr. Kovacevich's proposal. She described it to me as requiring no government support with no risk to the FDIC Fund.

18. At approximately 9:00p.m., I received a call from Mr. Kovacevich telling me that momentarily he would be sending me a signed, Board-approved, merger agreement for the acquisition of all of Wachovia. At approximately 9:04 p.m., I received an email from Mr. Kovacevich attaching an executed Agreement and Plan of Merger between Wachovia and Wells Fargo, which is attached hereto as Exhibit C (the "Merger Agreement"). That Agreement was for a stock-for-stock transaction that would result in Wachovia's shareholders receiving Wells Fargo stock worth approximately $7.00 per share of common stock.

19. Wachovia's board of directors met by telephone conference call at approximately 11:00 p.m. to review the Wells Fargo Proposal. I participated in the board meeting by telephone. At that meeting, Wachovia's financial advisors, Goldman Sachs and Perella Weinberg Partners, both advised the Board that they were prepared, subject to completion of remaining limited due diligence investigations and final financial analysis, to provide their opinions to the Board that the consideration to be received by Wachovia shareholders in the proposed Wells Fargo transaction would be fair from a financial point of view. The company's advisors and I told the Board that we believed that unless a definitive merger agreement was signed with either Citigroup or Wells Fargo by the end of the day Friday, October 3 that the FDIC was prepared to place Wachovia's banking subsidiaries into receivership. After extensive consideration and discussion by

the Board, the Board approved accepting the Wells Fargo Proposal subject to receipt of fairness opinions from Goldman Sachs and Perella Weinberg Partners. Goldman Sachs and Perella Weinberg Partners delivered their fairness opinions orally early in the morning of Friday, October 3. I executed the Agreement and Plan of Merger, and together with Jane Sherburne called Mr. Kovacevich to inform him of the approval of Wachovia's Board of the Wells Fargo proposal. Chairman Bair, Jane Sherburne and I then called Vikram Pandit, Chairman of Citigroup, to inform him that Wachovia had entered into the Wells Fargo Agreement and Plan of Merger.

20. Between the execution of the Exclusivity Agreement with Citigroup on September 29 and receiving the telephone call from Mr. Kovacevich on October 2, I had no contact with Wells Fargo other than at 9:00 a.m. on September 29 when he called me by telephone to congratulate Wachovia on its deal with Citi. I did not have any contact with Wells Fargo during that period nor did I direct anyone else to have such contact. Prior to Wachovia's execution of the Agreement-in-Principle and Exclusivity Agreement, Wells Fargo had conducted extensive due diligence on Wachovia and had access to the data room that Wachovia made available to potential acquirers. To the best of my knowledge, after Wachovia signed the Agreement-in-Principle and Exclusivity Agreement, with Citigroup Wells Fargo did not access the data room.

21. I have compared the Citigroup proposal to the proposal that Wachovia received from Wells Fargo. The Wells Fargo Proposal, in my opinion, is for superior to the Citigroup proposal for a number of reasons, among them the following:

- the price to shareholders is substantially greater;
- it is a whole company transaction - the Citigroup transaction separates the existing Wachovia franchise and destroys the potential future earnings power of wealth management, retail financial advisory and general banking together in a combined entity;
- all Wachovia preferred stock is assumed by Wells Fargo- the Citigroup proposal would have Wachovia cease paying preferred stock dividends and then launch an exchange offer based on 45% of liquidation preference;
- no government assistance is required for the Wells Fargo transaction;
- unlike the Citigroup proposal, the Wells Fargo transaction does not trigger any rights by Prudential Financial under the Wachovia Securities JV, pursuant to which Wachovia could be exposed to liabilities in excess of $5 billion;
- it does not force a division of Wachovia Securities by extracting the Investment Service Group—Branch Channel out of the branch banks from the rest of Wachovia Securities;
- the surviving company will continue to pay common stock dividends ($0.067 per quarterly share pro forma); whereas the Citigroup proposal would have Wachovia cease paying a common stock dividend;
- Wells Fargo is the only AAA-rated financial institution by the rating agencies, which provides a lower cost of funding for the surviving entity. Citigroup's proposal leaves the surviving Wachovia Corporation in a position where its debt would likely be below investment grade because Citigroup proposes to keep the deposit spread on Wachovia Securities' sweep deposits and thereby deprive Wachovia of a needed source of funding;
- The entire transaction structure is simpler, easier for shareholders to understand, more likely to close and more likely to receive shareholder approval that the Citigroup offer.

22. According to recent news coverage and releases, Citigroup has publicly announced that Well Fargo has interfered with its Exclusivity Agreement with Wachovia, provided the Exclusivity Agreement to the press in violation of a Confidentiality Agreement, and asserted that the Wells Fargo Transaction is improper, unenforceable and prohibited by the Exclusivity Agreement.

23. Citigroup's efforts to undermine and create uncertainty about the Wells Fargo Transaction severely damages Wachovia. The announcement of the Wells Fargo Proposal caused an increase of approximately $10 billion in the common and preferred stock of market capitalization of Wachovia. Unless the issues and threats raised by Citigroup are resolved promptly, Wachovia's shareholders, creditors, retirees and employees are at risk as are the interests of the public generally.

I do declare under penalty of perjury that the foregoing is true and correct.

Robert K. Steel

Sworn to before me this
5th day of October, 2008

Notary Public

JOHN A. PASTERICK
NOTARY PUBLIC, STATE OF NEW YORK
NO.01PA6082750
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES 11/04/2010

EXHIBIT A
TO STEEL AFFIDAVIT

Confidential

AGREEMENT-IN-PRINCIPLE

- Subject to the conditions below, Crimson agrees to buy the stock of Wednesday's bank subsidiaries and other assets to be mutually agreed (except as set forth below and except for an appropriate level of working capital of Wednesday to be agreed) for $2.160bn in cash and/or stock at Crimson's election and the assumption of approximately $53.2bn of Wednesday's senior and subordinated debt
    - Section 338(h)(10) election/asset deal for tax purposes
    - Wednesday continues as a public company owning the AG Edwards (to be defined) and Evergreen businesses and other selected assets, if needed, with an aggregate book value not to exceed $2.0bn. To the extent possible, a majority of the $2.0bn will be in the form of liquid assets
    - Liquidity rights and orderly sell down restrictions on Crimson stock to be agreed
    - Certain subsidiaries of acquired subsidiaries to be excluded

- FDIC provides the acquired bank subsidiaries of Wednesday with loss protection on the current marked value of a $312bn portfolio to be identified by Crimson prior to closing
    - Crimson absorbs the first $30bn of losses
    - Crimson also absorbs up to $4bn a year of losses for first three years
    - FDIC compensates Crimson for all losses above these amounts through the life of all assets in the portfolio
    - FDIC to receive face value of $12bn (fair value [approximately $7 - 9]bn) in preferred stock and approximately [$3-5]bn of value in warrants
    - FDIC non-cumulative perpetual preferred stock and warrants to be structured as Tier 1 Capital and GAAP equity of Crimson

- If the acquisition of Wednesday's bank subsidiaries is not consummated (and regardless of the reasons of any such deal failure, other than due solely to a willful breach by Crimson) Crimson will have an irrevocable option to purchase any or all of Wednesday's branches, deposits, and corresponding assets selected by Crimson in NJ, CA and FL for their fair market value exercisable at any time through 12 months following deal termination

- Wednesday will issue to FDIC a limited duration preferred stock
    - De minimis liquidation preference
    - Redeemable for its liquidation preference on the earlier of the closing of the deal or 12 months after deal failure
    - Voting rights representing 19.9% of the total voting rights

    - Record dates for any matters on which Wednesday's shareholders are entitled to vote to be set for a date following the issuance of such shares

- Fed to irrevocably agree to vote in favor of the deal and, unless otherwise agreed by Crimson, against any other inconsistent transaction

- Wednesday to continue to seek shareholder approval for up to 6 months following the first meeting of Wednesday at which shareholders vote against this transaction
  - Wednesday can change its recommendation of the deal to its shareholders only if required by its fiduciary duties
  - Wednesday cannot terminate the deal until such 6 month period expires

- Substantial presence to be maintained in Charlotte, NC

- Wednesday to continue to provide depository services on current terms to A G Edwards

- Transition services to be mutually agreed

- Wednesday to indemnify Crimson for:

  - Pre-closing tax liabilities (in excess of applicable reserves at banks)
  - All litigation and liabilities other than any such litigation or liability arising primarily from the ordinary course operations of the business of the acquired subsidiaries

- Crimson to indemnify Wednesday post-closing for liabilities and litigation arising primarily from the ordinary course operation of the business of the acquired subsidiaries

- Contemporaneous with signing, Crimson will need to raise $10bn in common stock

- Crimson to reduce its dividend by approximately $0.16 per share per quarter

- With respect to any deconsolidated entity owned, directly or indirectly, by an acquired consolidated subsidiary (each a "**Deconsolidated Entities**"), prior to closing, Wednesday shall take such steps as are necessary to (i) permit the acquisition of such Deconsolidated Entity to be treated as the acquisition of the assets of such Deconsolidated Entity for U.S. federal income tax purposes or (ii) cause such Deconsolidated Entity to transfer its assets to Crimson in a transaction treated as a taxable sale for U.S. federal income tax purposes, in each case, in form reasonably satisfactory to Crimson (each, an "**Asset Purchase Restructuring**"). Crimson shall reasonably cooperate with Wednesday in the implementation of each such Asset Purchase Restructuring; *provided*, that Crimson shall have no obligation to implement an Asset Purchase Restructuring to the extent so doing would reasonably be expected to adversely affect Crimson or any of its Affiliates after the Closing Date.

- Conditions:
  - Satisfactory due diligence prior to signing

- Satisfactory solvency opinion, delivered upon signing of definitive agreements, on Wednesday pro forma after giving effect to the transaction
- Board approvals
- Wednesday shareholder approval
- Regulatory approvals including confirmation from the Fed and the OCC that $270bn of the $312bn asset pool will have a zero risk-weighting for risk-based capital purposes and be excluded from average total assets for leverage capital purposes, and the outstanding amount of any other assets in the pool will have a risk-weighting equal to (A * B) / (A + $270bn), where A equals $42bn minus the amount of any assets written off (the "Remaining Assets") and B equals the normal risk-weighting on the Remaining Assets.
- No material adverse change
- Closing before year-end
- Other customary conditions

- Exclusivity for seven days from announcement

Each of the undersigned confirms its agreement-in-principle to the forgoing. Expect for the separate letter agreement with respect to exclusivity, none of the foregoing shall be legally binding on any of the parties. No such binding obligations shall arise except pursuant to duly executed definitive agreements in form and substance satisfactory to each party. This agreement-in-principle shall be governed by New York Laws.

Dated: September 29, 2008

Wachovia Corporation	Citigroup Inc.	Federal Deposit Insurance Corporation
By:_____	By: [signature]	By: _____
Name:	Name: GARY CRITTENDEN	Name:
Title:	Title: C.F.O.	Title:

EXHIBIT B
TO STEEL AFFIDAVIT

Citigroup Inc.

September 29, 2008

Wachovia Corporation

Ladies and Gentlemen:

Citigroup Inc. ("Citigroup") and Wachovia Corporation ("Wachovia") are party to that non-binding term sheet dated September 29, 2008 (the "**Term Sheet**") setting forth the terms and conditions of a proposed transaction between them (the "**Transaction**"). Citigroup and Wachovia will continue to proceed to negotiate definitive agreements (the "**Definitive Documentation**") relating to the Transaction in form and substance satisfactory to each of them with a view to executing such Definitive Documentation prior to October 6, 2008 (the "**Exclusivity Termination Date**").

In consideration of the foregoing and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, Wachovia hereby agrees that, during the period commencing on the date hereof and ending on Exclusivity Termination Date, Wachovia shall not, and shall not permit any of its subsidiaries or any of its or their respective officers, directors, employees, investment bankers, attorneys, accountants, consultants or other agents or advisors ("**Representatives**") to, directly or indirectly, (i) solicit, initiate or take any action to facilitate or encourage the submission of any Acquisition Proposal, (ii) enter into or participate in any discussions or negotiations with, furnish any information relating to Wachovia or any of its subsidiaries, assets or businesses or afford access to the business, properties, assets, books or records of Wachovia or any of its subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or encourage any effort by, any third party that is seeking to make, or has made, an Acquisition Proposal, (iii) grant any waiver or release under any standstill or similar agreement with respect to any class of equity securities of Wachovia or (iv) enter into any agreement in principle, letter of intent, term sheet, merger agreement, acquisition agreement, option agreement or other similar instrument relating to an Acquisition Proposal. As of the date hereof, Wachovia will, and will cause its Representatives to, terminate any discussions or negotiations with respect to any Acquisition Proposal.

"**Acquisition Proposal**" means, other than the Transaction, any offer, proposal or inquiry relating to, or any third party indication of interest in, (i) any acquisition or purchase, direct or indirect, of 15% or more of the consolidated assets of Wachovia, or over 15% of any class of equity or voting securities of Wachovia or any of its subsidiaries whose assets, taken as a whole, constitute more than 15% of the consolidated assets of Wachovia, (ii) any tender offer (including a self-tender offer) or exchange offer that, if consummated, would result in such third party's beneficially owning 15% or more of any

class of equity or voting securities of Wachovia or any of its subsidiaries whose assets, taken as a whole, constitute more than 15% of the consolidated assets of Wachovia, (iii) a merger, consolidation, share exchange, business combination, reorganization, recapitalization, liquidation, dissolution or other similar transaction involving Wachovia or any of its subsidiaries whose assets, individually or in the aggregate, constitute more than 15% of the consolidated assets of Wachovia or (iv) any other transaction the consummation of which could reasonably be expected to impede, interfere with, prevent or materially delay the Transaction or that could reasonably be expected to dilute materially the benefits to Citigroup of the Transaction.

The parties agree that in the event of any breach of this letter agreement, the parties would be irreparably harmed and could not be made whole by monetary damages. Each party accordingly agrees (i) not to assert by way of defense or otherwise that a remedy at law would be adequate and (ii) that the remedy of specific performance of this letter agreement is appropriate in any action in court, in addition to any other remedy to which such party may be entitled.

This agreement shall be governed by, and construed in accordance with, the laws of the State of New York. The parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of any state or federal court sitting in New York City, Borough of Manhattan, over any suit, action or proceeding arising out of or relating to this letter agreement. The parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. The parties hereby agree that a final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon you and may be enforced in any other courts to whose jurisdiction the parties are or may be subject by suit upon such judgment.

This letter agreement may be executed in counterparts, either one of which need not contain the signature of more than one party, but both such counterparts taken together will constitute one and the same agreement.

If the foregoing accurately summarizes our understanding, we request that you approve this letter agreement and evidence such approval by causing a copy of this letter agreement to be executed and returned to the undersigned.

Very truly yours,

CITIGROUP INC.

By: _____
Name: GARY L. CRITTENDEN
Title: CFO

Agreed and accepted:

WACHOVIA CORPORATION

By: _____
Name:
Title:

EXHIBIT C
TO STEEL AFFIDAVIT

AGREEMENT AND PLAN OF MERGER

by and between

Wells Fargo & Company

and

Wachovia Corporation

Dated as of October 2, 2008

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AGREEMENT AND PLAN OF MERGER, dated as of October 2, 2008 (this "Agreement"), by and between **Wachovia Corporation**, a North Carolina corporation ("Company"), and **Wells Fargo & Company**, a Delaware corporation ("Parent").

RECITALS

A. Promptly following the execution of this Agreement, Parent shall form a new wholly owned subsidiary ("Merger Sub") as a North Carolina corporation, and Parent shall cause Merger Sub to, and Merger Sub shall, sign a joinder agreement to this Agreement and be bound hereby.

B. The Boards of Directors of Company and Parent have determined that it is in the best interests of their respective companies and their shareholders to consummate the strategic business combination transaction provided for in this Agreement in which Merger Sub will, on the terms and subject to the conditions set forth in this Agreement, merge with and into, Company (the "Merger"), with Company as the surviving company in the Merger (sometimes referred to in such capacity as the "Surviving Company").

C. Simultaneous with the entry into this Agreement, Parent and Company are entering into a share exchange agreement in the form set forth in Exhibit A (the "Share Exchange Agreement").

D. The parties desire to make certain representations, warranties and agreements in connection with the Merger and also to prescribe certain conditions to the Merger.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained in this Agreement, the parties agree as follows:

ARTICLE I

THE MERGER

1.1 The Merger. (a) Subject to the terms and conditions of this Agreement, in accordance with the Business Corporation Act of the State of North Carolina (the "BCA"), at the Effective Time, Merger Sub shall merge with and into Company. Company shall be the Surviving Company in the Merger and shall continue its existence as a corporation under the laws of the State of North Carolina. As of the Effective Time, the separate corporate existence of Merger Sub shall cease.

(b) Parent may at any time change the method of effecting the combination (including by providing for the merger of Company with and into Parent or otherwise restructuring the transaction to qualify as a "reorganization" within the meaning to Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code")) if and to the extent requested by Parent, and Company and Merger Sub agree to enter into such amendments to this Agreement as Parent may reasonably request in order to give effect to such restructuring; provided, however, that no such change or amendment shall (i) alter or change the amount or kind of the Merger Consideration provided for in this Agreement

or (ii) materially impede or delay consummation of the transactions contemplated by this Agreement.

1.2 Effective Time. The Merger shall become effective as set forth in the articles of merger (the "Articles of Merger") that shall be filed with the Secretary of State of the State of North Carolina on the Closing Date. The term "Effective Time" shall be the date and time when the Merger becomes effective as set forth in the Articles of Merger.

1.3 Effects of the Merger. At and after the Effective Time, the Merger shall have the effects set forth in the BCA.

1.4 Conversion of Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, Company or the holder of any of the following securities:

(a) At the Effective Time, each share of common stock, par value $[0.01] per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of common stock, par value $3.33 1/3, of the Surviving Corporation.

(b) All shares of common stock, par value $3.33 1/3 per share, of Company issued and outstanding immediately prior to the Effective Time (together with the preferred share purchase rights attached thereto pursuant to the Company Rights Agreement, the "Company Common Stock") that are owned by Company or Parent (other than shares of Company Common Stock held in trust accounts, managed accounts, mutual funds and the like, or otherwise held in a fiduciary or agency capacity, that are beneficially owned by third parties (any such shares, "Trust Account Common Shares") and other than shares of Company Common Stock held, directly or indirectly, by Company or Parent in respect of a debt previously contracted (any such shares, "DPC Common Shares")) shall be cancelled and shall cease to exist and no stock of Parent or other consideration shall be delivered in exchange therefor.

(c) Subject to Section 1.4(e), each share of the Company Common Stock, except for shares of Company Common Stock owned by Company or Parent (other than Trust Account Common Shares and DPC Common Shares), shall be converted, in accordance with the procedures set forth in Article II, into the right to receive 0.1991 (the "Exchange Ratio") shares of common stock, par value $1 2/3 per share, of Parent ("Parent Common Stock") (the "Merger Consideration").

(d) All of the shares of Company Common Stock converted into the right to receive the Merger Consideration pursuant to this Article I shall no longer be outstanding and shall automatically be cancelled and shall cease to exist as of the Effective Time, and each certificate previously representing any such shares of Company Common Stock (each, a "Certificate") shall thereafter represent only the right to receive the Merger Consideration and/or cash in lieu of fractional shares into which the shares of Company Common Stock represented by such Certificate have been converted pursuant to this Section 1.4 and Section 2.3(f), as well as any dividends to which holders of Company Common Stock become entitled in accordance with Section 2.3(c).