WMS INDUSTRIES INC /DE/
Form POS AM
September 03, 2004

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As filed with the Securities and Exchange Commission on September 3, 2004

Registration No. 333-107321

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

Amendment No. 1 to
Post-Effective Amendment No. 1 to

FORM S-3
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

WMS INDUSTRIES INC.

(Exact name of Registrant as specified in its charter)

Delaware	**36-2814522**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

800 South Northpoint Boulevard, Waukegan, Illinois 60085 (847) 785-3000
(Address, including zip code, and telephone number, including area code,
of Registrant s principal executive offices)

Kathleen J. McJohn, Esq.
Vice President, General Counsel and Secretary
WMS Industries Inc.
800 South Northpoint Boulevard, Waukegan, Illinois 60085 (847) 785-3000
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Pamela E. Flaherty, Esq.
Shack Siegel Katz & Flaherty P.C.
530 Fifth Avenue
New York, New York 10036
(212) 782-0700

Approximate date of commencement of proposed sale to the public: From time to time after this Amendment becomes effective as the selling securityholders shall determine.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. o

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. x

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If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. o

The registrant hereby amends this Post-Effective Amendment #1 on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Post-Effective Amendment #1 shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE UPDATED SELLING SECURITYHOLDER TABLE

The prospectus filed herewith has been updated and contains an updated selling securityholder table compiling all of the selling securityholder information contained in the selling securityholder table of the prospectus dated August 4, 2003 and all supplements thereto.

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WMS INDUSTRIES INC.

$115,000,000

2.75% Convertible Subordinated Notes due July 15, 2010
and the Common Stock, par value $.50 per share, issuable upon conversion of the Notes

We issued the notes offered by this prospectus in a private placement in June and July 2003. This prospectus will be used by selling securityholders to resell their notes and the common stock issuable upon conversion of their notes. We will not receive any proceeds from this offering. The selling securityholders, and the maximum amount of securities that they may offer, are identified on pages 27-29 of this prospectus. The selling securityholders may sell their securities at any time, but they are not required to sell.

A holder of notes may convert the notes into shares of our common stock at any time before their maturity unless we have previously repurchased them. The notes will be due on July 15, 2010. The conversion rate is 50.5561 shares per each $1,000 principal amount of notes, subject to readjustment in specified circumstances. This is equivalent to an initial conversion price of approximately $19.78 per share.

We will pay interest on the notes on January 15 and July 15 of each year. The first interest payment was made on January 15, 2004. The notes are subordinated in right of payment to all of our existing and future senior debt and are also effectively subordinated to all of the indebtedness and liabilities of our subsidiaries.

We will make additional payments of interest on the notes, referred to in this prospectus as dividend protection payments. The amount of the payments will be equal to the cash dividends that would have been payable to the holders of the notes if the holders had converted their notes into shares of our common stock on the record date for the dividend. However, no dividend protection payment will be made if the dividend that would otherwise trigger the payment causes an adjustment to the note conversion rate.

In the event of a change in control, as described in this prospectus, a holder of notes may require us to repurchase any notes held by the holder.

The notes are not listed on any securities exchange or included in any automated quotation system. The notes are eligible for trading in The PORTAL Market of the National Association of Securities Dealers, Inc.

Our common stock is listed on the New York Stock Exchange under the symbol WMS. On September 2, 2004, the last reported sale price of our common stock on the NYSE was $21.07 per share. The selling securityholders may offer notes or shares through public or private transactions, at prevailing market prices, or at privately negotiated prices. More detailed information about the distribution of the securities is found in the section of this prospectus entitled Plan of Distribution.

Investing in the notes or our common stock involves risks. See Risk Factors beginning on page 3.

None of the Securities and Exchange Commission, any state securities commission, any state gaming authority nor any other gaming authority has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is September ___, 2004.

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As used in this prospectus, the terms we, us, our and WMS mean WMS Industries Inc., a Delaware corporation, and its subsidiaries, unless the context indicates a different meaning.

Forward-Looking Statements

This report contains forward-looking statements concerning our future business performance, strategy, outlook, plans, liquidity, pending regulatory matters and outcomes of contingencies including legal proceedings, among others. Forward-looking statements may be typically identified by such words as may, will, should, expect, anticipate, believe, estimate, and intend, among others. These forward-looking statements are subject to risks and uncertainties that could cause our actual results to differ materially from the expectations expressed in the forward-looking statements. Although we believe that, the expectations reflected in our forward-looking statements are reasonable, any or all of our forward-looking statements may prove to be incorrect. Consequently, no forward-looking statements may be guaranteed. Factors which could cause our actual results to differ from expectations include:

a delay or refusal by regulators to approve our new gaming platforms, cabinet designs, game themes and related hardware and software;

a failure to obtain and maintain our gaming licenses and regulatory approvals;

an inability to introduce in a timely manner new games themes and gaming machines or product lines that achieve and maintain market acceptance;

a software anomaly or fraudulent manipulation by third parties of our gaming machines and software;

a failure to obtain the right to use, or an inability to adapt to the rapid development of new technologies; and

an infringement claim seeking to restrict our use of material technologies.

These factors and other factors that could cause our actual results to differ from expectations are more fully described under Item 1. Business Risk Factors in our Annual Report on Form 10-K for the year ended June 30, 2004

and in any more recent report on Form 10-Q and 8-K filed with the Securities and Exchange Commission.

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The Offering

Securities Offered	The selling securityholders may offer up to $115,000,000 aggregate principal amount of 2.75% Convertible Subordinated Notes due July 15, 2010 and shares of our common stock issuable upon conversion of the notes.
Interest	We will pay interest on the notes semi-annually on January 15 and July 15 of each year.
Dividend Protection	We will make dividend protection payments as additional interest on the notes in an amount equal to any per share cash dividends on our common stock that would have been payable to the holders of the notes if the holders had converted their notes into shares of our common stock at the conversion rate in effect on the record date for the dividend. Holders of the notes will not be entitled to any dividend protection payment if the dividend that would otherwise trigger the payment causes an adjustment to the conversion rate.
Conversion	The notes are convertible at the option of the holder into our common stock at a conversion rate of 50.5561 shares of common stock per $1,000 principal amount of the notes, which is equivalent to a conversion price of approximately $19.78 per share. The conversion rate is subject to adjustment. You may convert your notes at any time on or before the close of business on the maturity date unless we have previously repurchased them.
Subordination	The notes are unsecured and subordinated to our present and future Senior Debt, as that term is described in this prospectus. The notes are also effectively subordinated in right of payment to all indebtedness and other liabilities of our subsidiaries. On June 30, 2004, our outstanding Senior Debt, as such term is defined under the Indenture for the notes, was $0.4 million of outstanding, undrawn, standby letters of credit. On June 30, 2004, the consolidated accounts payable and accrued liabilities of our subsidiaries totaled $38.9 million. The Indenture under which the notes have been issued does not restrict us or our subsidiaries from incurring indebtedness, including Senior Debt.
Global Note; Book Entry System	The notes are issued in fully registered form, without interest coupons, in minimum denominations of $1,000. They are evidenced by one or more global notes deposited with the trustee for the notes, as custodian for The Depository Trust Company (DTC). Beneficial interest in the global notes are shown on, and transfers of those beneficial interests can only be made through, records maintained by DTC and its participants.
Repurchase at Option of Holders Upon a Change in Control	Upon a Change in Control, as that term is described in this prospectus, you will have the right, subject to specified conditions and restrictions, to require us to repurchase your notes, in whole or in part, at 100% of their principal amount, plus accrued interest to their repurchase date. The repurchase price is payable in cash or, at our option, in shares of common stock. However, we or the successor entity in the Change in Control transaction, may pay the repurchase price in common stock only if the conditions provided in the Indenture designed to ensure that such shares will be freely transferable are satisfied. If the

repurchase price is paid in shares of common stock, the common stock will be valued at 95% of the average of the high and low sales prices of our common stock on The New York Stock Exchange for each of the five trading days ending with the third trading day prior to the repurchase date. A Change in Control could be an event of default under any Senior Debt. In those circumstances, the subordination provisions of the Indenture would likely

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prevent us from repurchasing the notes until the Senior Debt, if any, is paid in full.

Use of Proceeds

We will not receive any proceeds from the sale by any selling securityholder of the notes or the shares of common stock offered by this prospectus.

Events of Default

The following will be events of default under the Indenture for the notes:

- we fail to pay the principal of any note when due, whether or not the payment is prohibited by the Indenture s subordination provisions;
- we fail to pay any interest on the notes when due and that default continues for 30 days, whether or not the payment is prohibited by the Indenture s subordination provisions;
- we fail to give the notice that we are required to give if there is a Change in Control, whether or not the notice is prohibited by the Indenture s subordination provisions;
- we fail to perform or observe any other term contained in the notes or the Indenture, and that failure continues for 60 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of outstanding notes;
- we fail to pay by the end of any applicable grace period or after the maturity of any indebtedness for money borrowed by us or any of our significant subsidiaries in excess of $5 million if the indebtedness is not discharged, or, if such indebtedness has been accelerated, such acceleration is not annulled, within 30 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of the outstanding notes;
- we fail to deliver shares of common stock, together with cash instead of fractional shares, when those shares are required to be delivered upon conversion of a note, and such failure continues for 10 days after such delivery date; and

	events of bankruptcy, insolvency or reorganization that are specified in the Indenture occur regarding us and our significant subsidiaries.
Trading	The notes are eligible for trading in The PORTAL Market of the National Association of Securities Dealers, Inc. We cannot predict whether an active trading market for the notes will develop or, if such market develops, how liquid it will be.
Listing	Our common stock is listed on the NYSE under the symbol WMS .
Risk Factors	You should read Risk Factors below before you invest, so that you understand the risks associated with an investment in the notes or our common stock.

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RISK FACTORS

Risks Related to Our Business

You should carefully read the documents that are incorporated by reference in this prospectus identified under the heading Documents Incorporated by Reference at the end of this prospectus. These documents contain descriptions of Risk Factors associated with our business and an investment in our common stock.

Risks Related to the Notes

The notes are subordinated.

The notes are unsecured and subordinated in right of payment to all of our existing and future senior indebtedness, which includes all indebtedness not expressly subordinated to the notes. In the event of our bankruptcy, liquidation or reorganization or upon acceleration of the notes due to an event of default under the Indenture governing the notes and in other circumstances described in the Indenture, our assets will be available to pay obligations on the notes only after all senior indebtedness has been paid. As a result, there may not be sufficient assets remaining to pay amounts due on any or all of the outstanding notes. The notes also are effectively subordinated to the liabilities, including trade payables, of all of our subsidiaries. We may incur additional debt, including Senior Debt. If we or our subsidiaries were to incur additional debt or liabilities, our ability to pay our obligations on the notes could be adversely affected. On June 30, 2004, our outstanding Senior Debt, as such term is defined under the Indenture for the notes, was $0.4 million of outstanding, undrawn, standby letters of credit. On June 30, 2004, the consolidated accounts payable and accrued liabilities of our subsidiaries totaled $38.9 million.

We may be unable to repurchase the notes upon a Change in Control.

Upon a Change in Control, as described under Description of the Notes Repurchase at Option of Holders upon a Change in Control, you and the other holders may require us to repurchase all or a portion of your notes. In addition to the repurchasing the notes, some of the events constituting a Change in Control could cause an event of default or be prohibited or limited by the terms of our credit facility or any other agreements that we may enter into relating to our indebtedness. As a result, any repurchase of the notes in cash could be prohibited until such indebtedness is paid in full. Further, we may not have the financial resources, or may be unable to arrange financing, to pay the repurchase price for all the notes that holders seeking to exercise their repurchase rights deliver to us. Our failure to repurchase tendered notes would constitute an event of default under the Indenture, which might constitute a default under the terms of our other indebtedness. In these circumstances, or if a Change in Control would constitute an event of default under our Senior Debt, the subordination provisions of the Indenture would restrict our ability to make payments to the holders of the notes. Our obligation to offer to repurchase the notes upon a Change in Control would not necessarily afford you protection in the event of a highly leveraged transaction, reorganization, merger or similar transaction.

There may be no liquid market for the notes.

Although the notes are eligible for trading in the PORTAL Market, there is no public market for the notes. We cannot assure you as to:

the liquidity of the trading market for the notes;

your ability to sell your notes; or

the price at which you would be able to sell your notes.

If a public market for the notes develops, the notes may trade at prices that may be higher or lower than the principal amount or purchase price, depending on many factors, including prevailing interest rates, the market for similar notes, the market value of our common stock, and our financial performance. We do not intend to apply for the listing of the notes on any securities exchange or for inclusion of the notes in the automated quotation system of the National Association of Securities Dealers, Inc.

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Our share price may be volatile, which might adversely affect the trading price of the notes.

Fluctuations in the market price of our common stock affect the trading price of the notes. In addition, if you convert any notes, the value of the common stock you receive may fluctuate. The market price of our common stock has fluctuated in the past. For example, the sales price of our common stock during the last three years has ranged from a low of $9.28 on July 23, 2002 to a high of $32.95 on April 6, 2004, and the closing price of our common stock was $21.07 on September 2, 2004, as reported on the NYSE. The market price of our common stock will continue to be subject to fluctuations in response to a variety of factors, including the risk factors discussed above and the following:

future announcements concerning our business or that of our competitors or customers;

the introduction of new products or changes in product pricing policies by us or our competitors;

litigation regarding proprietary rights or other matters;

changes in analysts earnings estimates;

developments in the financial markets;

quarterly fluctuations in operating results; and

general conditions in the gaming industry.

We may not be able to refinance the notes if required or if we so desire.

We may need or desire to refinance all or a portion of the notes at maturity. We cannot assure you that we will be able to refinance the notes on commercially reasonable terms, if at all. If we are not able to refinance the notes on terms favorable to us, we may not have sufficient funds to pay the principal amount in cash when due.

We conduct our business through our subsidiaries, and we may not have access to the cash that is needed to make payment on the notes.

We conduct our business through our subsidiaries. We are dependent upon the cash generated by our subsidiaries to make payments of principal and interest on the notes. The notes are effectively subordinated in right of payment to all of the liabilities and obligations of our subsidiaries. None of our subsidiaries is obligated to make funds available to us for payment on the notes. Accordingly, our ability to make payments on the notes is dependent on the distribution of earnings from our subsidiaries. Regulatory or other restrictions on our subsidiaries ability to pay dividends or to make other cash payments to us may adversely affect our ability to pay principal and interest on our indebtedness, including the notes.

Our subsidiaries may incur additional indebtedness that may severely restrict or prohibit the making of distributions, the payment of dividends or the making of loans by our subsidiaries to us. We cannot assure you that the agreements governing the current and future indebtedness of our subsidiaries will permit our subsidiaries to provide us with sufficient dividends, distributions or loans to fund payments on the notes when due.

Our debt service obligations may adversely affect our cash flow.

While the notes are outstanding, we have debt service obligations on the notes of up to $3.2 million per year in interest payments. If we issue other debt securities in the future, our debt service obligations will increase. If we are

unable to generate sufficient cash to meet these obligations and must instead use our existing cash or investments, we may have to reduce, curtail or terminate other activities of our business.

We intend to fulfill our debt service obligations from cash generated by our operations and from our existing cash and investments. If necessary, among other alternatives, we may add lines of credit to finance capital expenditures and obtain other long-term debt, lines of credit and mortgage financing.

Our indebtedness could have significant negative consequences to you. For example, it could:

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increase our vulnerability to general adverse economic and industry conditions;

limit our ability to obtain additional financing;

require the dedication of a substantial portion of any cash flow from operations to the payment of principal of, and interest on, our indebtedness, thereby reducing the availability of such cash flow to fund our operations, working capital, capital expenditures and other general corporate purposes;

limit our flexibility in planning for, or reacting to, changes in our business and our industry; and

place us at a competitive disadvantage relative to our competitors with less debt.

RATIO OF EARNINGS TO FIXED CHARGES

The following table displays our ratio of earnings to fixed charges for the periods indicated:

	Fiscal Year Ended				
	2000	**2001**	**2002**	**2003**	**2004**
Ratio of Earnings to Fixed Charges (1)	160.1x	83.6x	27.2x	(2)	(2)

(1) The ratio of earnings to fixed charges is computed by dividing income from continuing operations before income taxes plus fixed charges by fixed charges, which consist of interest expense, including expense amortization and the interest component of rent expense.

(2) Our pre-tax income (loss) was inadequate to cover fixed charges for the year ended June 30, 2003 by approximately $15.0 million and for the year ended June 30, 2004 by approximately $3.0 million.

USE OF PROCEEDS

We will not receive any proceeds from the sale by any selling securityholder of the notes or the shares of common stock issuable upon conversion of the notes.

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DESCRIPTION OF THE NOTES

Overview

The 2.75% Convertible Subordinated Notes due July 15, 2010 were issued under, and are governed by, the Indenture between us and BNY Midwest Trust Company, as trustee. The Indenture and the notes are governed by New York law. Because this section is a summary, it does not describe every aspect of the notes and the Indenture. Therefore, this summary is qualified by reference to all the provisions of the Indenture, including definitions of terms used in the Indenture. Wherever we refer to particular defined terms, those terms are incorporated herein by reference. In this section, references to WMS, we, our or us refer only to WMS Industries Inc. and not to any of our subsidiari

The notes are our general, unsecured obligations. The notes are subordinated in right of payment, which means that they will rank in right of payment behind other indebtedness of ours as described below. Except as set forth below, the notes are limited to $115,000,000 aggregate principal amount. We will be required to repay the full principal amount of the notes on July 15, 2010 unless they are required to be repurchased on an earlier date.

The notes bear interest at the annual rate shown on the front cover of this prospectus from the date of issuance of the notes. We will pay interest twice a year, on each January 15 and July 15 (each of these dates is referred to as an interest payment date), beginning January 15, 2004 until the principal is paid or made available for payment or the notes have been converted. We will pay interest to the persons in whose name the note is registered at the close of business on the immediately preceding January 1 and July 1, as the case may be (each of these dates is referred to as a regular record date). Interest payable per $1,000 principal amount of notes for the period from June 25, 2003 to January 15, 2004, was $15.28. Interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

You may convert the notes into shares of our common stock at any time before the close of business on July 15, 2010, unless the notes have been previously repurchased. The initial conversion rate is stated on the front cover of this prospectus. The conversion rate may be adjusted as described below. Holders of notes submitted for repurchase are entitled to convert the notes up to and including the business day immediately preceding the date fixed for repurchase.

No sinking fund is provided for the notes, which means that the Indenture does not require us to redeem or retire the notes periodically.

Form, Denomination, Transfer, Exchange and Book-Entry Procedures

The notes are issued:

only in fully registered form,

without interest coupons, and

in denominations of $1,000 and integral multiples of $1,000.

Principal of and interest on the notes will be payable, and the notes may be presented for registration or exchange, at the office or agency we maintain for such purpose in the Borough of Manhattan, City of New York. Until we designate otherwise, our office or agency will be the trustee s corporate trust office presently located in the Borough of Manhattan, City of New York.

The notes are evidenced by one or more global notes that have been deposited with the trustee as custodian for DTC and registered in the name of Cede & Co. (Cede), as nominee of DTC. The global note and any notes issued in

exchange for the global note are subject to restrictions on transfer and will bear the legend regarding those restrictions substantially as set forth in Notice to Investors. Except as set forth below, record ownership of the global note may be transferred, in whole or in part, only to another nominee of DTC or to a successor of DTC or its nominee.

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No global note will be registered in the name of any person, or exchanged for notes that are registered in the name of any person, other than DTC or its nominee, unless either of the following occurs:

DTC has notified us that it is unwilling or unable to continue as depository for the global note or has ceased to be a clearing agency registered as such under the Exchange Act or announces an intention permanently to cease business or does in fact do so, or

an event of default (as described under Events of Default below) with respect to the notes represented by the global note has occurred and is continuing.

In those circumstances, DTC will determine in whose names any notes issued in exchange for the global note will be registered.

As long as the notes are registered in the name of Cede as nominee for DTC, DTC or its nominee will be considered the sole owner and holder of the global note for all purposes, and as a result:

you cannot receive notes registered in your name if they are represented by the global notes

you cannot receive certificated (physical) notes in exchange for your beneficial interest in the global notes

you will not be considered to be the owner or holder of the global note or any note it represents for any purpose, and

all payments on the global note will be made to DTC or its nominee.

The laws of some jurisdictions require that some kinds of purchasers can only own securities in physical, certificated form. These laws may limit your ability to acquire an interest in the notes and to transfer or encumber your beneficial interests in the global note to these types of purchasers.

Only institutions, such as a securities broker or dealer, that have accounts with DTC or its nominee, called participants, and persons that may hold beneficial interests through participants can own a beneficial interest in the global note. The only place where the ownership of beneficial interests in the global note appears, and the only way the transfer of those interests can be made, is on the records kept by DTC (for its participants interests) and the records kept by those participants (for interests participants hold on behalf of other persons).

Beneficial interests in a global note usually trade in DTC s same day funds settlement system, and settle in immediately available funds. We cannot assure you what effect the settlement in immediately available funds will have on trading activity in those beneficial interests.

We will make cash payments of interest on, and the repurchase price of, the global note, as well as any payment of dividend protection payments or damage payments, only to Cede, the nominee for DTC, as the registered owner of the global notes. We will make these payments by wire transfer of immediately available funds on each payment date.

We have been informed that, with respect to any cash payment of interest on, principal of, or the repurchase price of, the global note, as well as any payment of interest protection payments or damage payments, DTC s practice is to credit participants accounts on the payment date with payments in amounts proportionate to their respective beneficial interests in the notes represented by the global note as shown on DTC s records, unless DTC has reason to believe that it will not receive payment on that payment date. Payments by participants to owners of beneficial interests in notes represented by the global notes held through participants are the responsibility of those participants, as is now the case with securities held for the accounts of customers registered in street name.

We also understand that neither DTC nor Cede will consent or vote with respect to the notes. We have been advised that under its usual procedures, DTC will mail an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns Cede s consenting or voting rights to those participants to whose accounts the notes are credited on the record date identified in a listing attached to the omnibus proxy.

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The ability of a person having a beneficial interest in the principal amount represented by the global note to pledge or otherwise encumber their interest in the note to persons or entities that do not participate in the DTC book entry system, or otherwise take actions in respect of that interest, may be adversely affected by the lack of a physical certificate evidencing its interest. This is because DTC can act only on behalf of participants, who in turn act on behalf of indirect participants.

DTC has advised us that it will take any action permitted to be taken by a holder of notes (including the presentation of notes for exchange) only at the direction of one or more participants to whose account with DTC interests in the global note are credited. Further, DTC has advised us that it will take action only in respect of the portion of the principal amount of the notes represented by the global note as to which such participant has, or participants have, given DTC direction.

DTC has also advised us as follows: DTC is a limited purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a clearing corporation within the meaning of the Uniform Commercial Code, as amended, and a clearing agency registered pursuant to the provisions of Section 17A of the Exchange Act. DTC was created to hold securities for its participants and to facilitate the clearance and settlement of securities transactions between participants through electronic book-entry changes in accounts of its participants. Participants include securities brokers and dealers, banks, trust companies and clearing corporations and may include other organizations. Some of these participants (or their representatives), together with other entities, own DTC. Indirect access to the DTC system is available to other entities such as banks, brokers, dealers and trust companies that clear through, or maintain a custodial relationship with, a participant, either directly or indirectly.

DTC s policies and procedures, which may change periodically, will apply to payments, transfers, exchanges and other matters relating to beneficial interests in the global note. The trustee and we have no responsibility or liability for any aspect of DTC s or any participant s records relating to beneficial interests in the global note, including for payments made on the global note, and we and the trustee are not responsible for maintaining, supervising or reviewing any of those records.

Dividend Protection

We will make additional payments of interest, referred to in this prospectus as dividend protection payments, on the notes in an amount equal to any per share cash dividends on our common stock that would have been payable to the holders of the notes if such holders had converted their notes into shares of our common stock at the conversion rate in effect on the record date for such dividend. The record date and payment date for such dividend protection payment shall be the same as the corresponding record date and payment date of our common stock to which the payment relates. Holders of the notes will not be entitled to any dividend protection payment if the dividend that would otherwise trigger the payment causes an adjustment to the conversion rate. See Conversion Rights. We have never paid cash dividends on our common stock. We plan to retain any earnings to fund the operation of our business and we have no plan to pay cash dividends during the term of the notes.

Conversion Rights

You may, at your option, convert the principal amount of any note that is an integral multiple of $1,000 into shares of our common stock at any time prior to the close of business on the maturity date, unless the note has been previously repurchased. Each share of common stock issuable upon conversion of a note is issued together with stock purchase rights described in this prospectus. See Description of Share Capital Rights Agreement. If the notes are subject to repurchase, you may convert your notes at any time before the close of business on the business day immediately preceding the date fixed for repurchase, unless we default in making the payment due upon repurchase. The initial conversion rate is equal to 50.5561 shares per $1,000 principal amount of notes, which is equivalent to an

initial conversion price of approximately $19.78 per share. The conversion rate is subject to adjustment as described below.

The holder of a note can convert the note by delivering the note to the trustee s corporate trust office, accompanied by a signed and completed notice of conversion, a copy of which may be obtained from the trustee. In the case of a global note, we have been informed that DTC will effect the conversion upon notice from the holder of

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a beneficial interest in the global note in accordance with DTC s rules and procedures. The conversion date will be the date on which the note and the duly signed and completed notice of conversion are so delivered to the trustee. As promptly as practicable on or after the conversion date, we will issue and deliver to the trustee a certificate or certificates for the number of full shares of common stock issuable upon conversion, together with payment in lieu of any fractional shares, and the trustee shall deliver the certificate(s) to the conversion agent for delivery to the holder of the note being converted. The common stock issuable upon conversion of the notes will be fully paid and nonassessable.

If you surrender a note for conversion on a date that is not an interest payment date, you will not be entitled to receive any interest for the period from the preceding interest payment date to the date of conversion, except as described below. However, if you are a holder of a note on a regular record date, including a note that is subsequently surrendered for conversion after the regular record date, you will receive the interest payable on such note on the next interest payment date. To correct for this resulting overpayment of interest, we will require that any note surrendered for conversion during the period from the close of business on a regular record date to the opening of business on the next interest payment date be accompanied by payment of the interest payable on the interest payment date on the principal amount of notes being surrendered for conversion. However, you will not be required to make that payment if you are converting a note, or a portion of a note, that you are entitled to require us to repurchase from you, if your conversion right would terminate because of the repurchase between the regular record date and the close of business on the next interest payment date.

If, after the date of this prospectus, we distribute rights or warrants (other than those referred to in clause (2) below) pro rata to holders of our common stock, so long as any such rights or warrants have not expired or been redeemed by us, the holder of any note surrendered for conversion will be entitled to receive upon such conversion, in addition to the shares of common stock issuable upon such conversion (the Conversion Shares), a number of rights or warrants to be determined as follows:

if such conversion occurs on or prior to the date for the distribution to the holders of rights or warrants of separate certificates evidencing such rights or warrants, the Distribution Date, the same number of rights or warrants to which a holder of a number of shares of common stock equal to the number of Conversion Shares is entitled at the time of such conversion in accordance with the terms and provisions of, and applicable to, the rights or warrants, and

if such conversion occurs after such Distribution Date, the same number of rights or warrants to which a holder of the number of shares of common stock into which such note was convertible immediately prior to such Distribution Date would have been entitled on such Distribution Date in accordance with the terms and provisions of, and applicable to, the rights or warrants.

No other payment or adjustment for interest, or for any dividends on our common stock, will be made upon conversion. If you receive common stock upon conversion of a note, you will not be entitled to receive any dividends payable to holders of common stock as of any record date before the close of business on the conversion date. We will not issue fractional shares upon conversion of notes. Instead, we will pay an amount in cash based on the closing sales price of our common stock on The New York Stock Exchange on the conversion date.

If you deliver a note for conversion, you will not be required to pay any taxes or duties in respect of the issuance or delivery of common stock on conversion. However, you will be required to pay any tax or duty that may be payable in respect of any transfer involved in the issuance or delivery of our common stock in a name other than yours. We will not issue or deliver certificates representing common stock unless the person requesting the issuance or delivery has paid to us the amount of any such tax or duty or has established to our satisfaction that no such tax or duty is payable.

The conversion rate is subject to adjustment if, among other things:

1. there is a dividend or other distribution payable in common stock on any class of our capital stock,

2. we issue to all holders of common stock rights, options or warrants entitling them to subscribe for or purchase common stock at less than the then current market price, calculated as described in the Indenture, of our common stock; however, if those rights, options or warrants are only exercisable

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upon the occurrence of specified triggering events, then the conversion rate will not be adjusted until the triggering events occur,

3. we subdivide, reclassify or combine our common stock,

4. we distribute to all holders of our common stock evidences of our indebtedness, shares of capital stock, cash or assets, including securities, but excluding:

   those dividends, rights, options, warrants and distributions referred to in paragraphs (1) and (2) above

   dividends and distributions paid in cash (except as set forth in paragraphs (5) and (6) below), and

   distributions upon a merger or consolidation as discussed below,

5. we make a distribution consisting exclusively of cash (excluding portions of distributions referred to in clause (4) above and cash distributed upon a merger or consolidation as discussed below) to all holders of our common stock if the aggregate amount of the distribution combined together with (A) other such all cash distributions made within the preceding 365-day period in respect of which no adjustment has been made and (B) any cash and the fair market value of other consideration payable in respect of any tender offer by us or any of our subsidiaries for our common stock concluded within the preceding 365-day period in respect of which no adjustment has been made, exceeds 10% of our market capitalization, being the product of the current market price per share of our common stock on the record date for such distribution and the number of shares of common stock then outstanding, or

6. a tender offer is successfully completed by us or any of our subsidiaries for our common stock that involves aggregate consideration that, together with (A) any cash and the fair market value of other consideration payable in a tender offer by us or any of our subsidiaries for our common stock concluded within the 365-day period preceding the completion of such tender offer in respect of which no adjustment has been made and (B) the aggregate amount of any such all cash distributions referred to in paragraph (5) above to all holders of common stock within the 365-day period preceding the expiration of such tender offer in respect of which no adjustments have been made, exceeds 10% of our market capitalization on the expiration of such tender offer.

We reserve the right to make such increases in the conversion rate in addition to those required by the provisions described above as we may consider to be advisable so that any event treated for United States federal income tax purposes as a dividend of stock or stock rights will not be taxable to the recipients. We will not be required to make any adjustment to the conversion rate until the cumulative required adjustments amount to 1.0% or more of the conversion rate. We will compute any adjustments to the conversion rate and give notice to the holders of the notes of any such adjustments.

If we merge with or into or consolidate with another person or sell or transfer all or substantially all of our assets, each note then outstanding will, without the consent of the holder of any note, become convertible only into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer by a holder of the number of shares of our common stock into which the note was convertible immediately prior to the merger, consolidation, sale or transfer. This calculation will be made based on the assumption that the holder of our common stock failed to exercise any rights of election that the holder may have had to select a particular type of consideration. The adjustment will not be made for a merger that does not result in any reclassification, conversion, exchange or cancellation of our common stock.

We may, from time to time, increase the conversion rate by any amount for any period of at least 20 days if our board of directors has determined that such increase would be in our best interests. Any such determination will be

conclusive. We will give holders of notes at least 15 days notice of this increase in the conversion rate. No such increase will be taken into account for purposes of determining whether the closing price of the common stock exceeds the conversion price by 105% in connection with an event which otherwise would be a Change in Control as discussed below.

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If at any time we make a distribution of property to our stockholders that would be taxable to them as a dividend for United States federal income tax purposes (for example, distributions of evidences of indebtedness or assets by us, but generally not stock dividends on common stock or rights to subscribe for common stock) and, pursuant to the anti-dilution provisions of the Indenture, the number of shares into which notes are convertible is increased, that increase may be deemed for United States federal income tax purposes to be the payment of a taxable dividend to holders of notes. For more details, see Summary of United States Federal Income Tax Considerations.

Subordination

The payment of the principal and interest on the notes, including any dividend protection payments or Liquidated Damages (as defined in the Registration Rights Agreement), and any amounts payable upon the repurchase of the notes, is subordinated in right of payment to the extent set forth in the Indenture to the prior payment in full of all of our Senior Debt. The notes are also effectively subordinated in right of payment to any debt or other liabilities of our subsidiaries. On June 30, 2004, our outstanding Senior Debt, as such term is defined under the Indenture for the notes, was $0.4 million of outstanding, undrawn, standby letters of credit. On June 30, 2004, the consolidated accounts payable and accrued liabilities of our subsidiaries totaled $38.9 million.

Senior Debt means the principal and interest, including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding, on, and rent payable on or in connection with and all fees, costs, claims, expenses and other amounts payable in connection with, the following, whether absolute or contingent, secured or unsecured, due or to become due, outstanding on the date of the Indenture or thereafter created, incurred or assumed:

- all our indebtedness evidenced by a credit or loan agreement, note, bond, debenture or other similar instrument whether or not the recourse of the lender is to all of our assets or to only a portion
- all of our indebtedness, obligations and other liabilities, contingent or otherwise, for borrowed money, including, without limitation, overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements and any loans or advances from banks, whether or not evidenced by notes or similar instruments, or bonds, debentures, notes or similar instruments, whether or not the recourse of the lender is to all of our assets or to only a portion thereof
- all our obligations as lessee under leases required to be capitalized on the balance sheet of the lessee under generally accepted accounting principles
- all our obligations under leases for facilities, equipment or other assets entered into for financing purposes, whether or not capitalized
- all our obligations and other liabilities, contingent or otherwise, under any lease or related document, including a purchase agreement, in connection with the lease of real property or improvements, or any personal property included as part of any such lease, which provides that we are contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a residual value of leased property to the lessor and all of our obligations under such lease or related document to purchase or to cause a third party to purchase the leased property, whether or not such lease transaction is characterized as an operating lease or capitalized lease in accordance with generally accepted accounting principles
- all our obligations under interest rate and currency swaps, caps, floors, collars, hedge agreements, forward contracts or similar agreements or arrangements

all our obligations with respect to letters of credit, bank guarantees, bankers acceptances and similar facilities, including related reimbursement obligations

all our obligations issued or assumed as the deferred purchase price of property or services, but excluding trade accounts payable and accrued liabilities arising in the ordinary course of business

all our obligations of the type referred to above of another person and all dividends of another person, the payment of which, in either case, we have assumed or guaranteed, or for which we are

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responsible or liable, directly or indirectly, jointly or severally, as obligor, guarantor or otherwise, or which are secured by a lien on our property, and

renewals, extensions, modifications, replacements, restatements and refundings of, or any indebtedness or obligation issued in exchange for any indebtedness or obligation described in the bullets above.

Senior Debt will not include:

the notes

any liability for federal, state, local or other taxes owed or owing by us

any indebtedness or obligation if the terms of the indebtedness or obligation, or the terms of the instrument under which the indebtedness or obligation is issued, expressly provide that the indebtedness or obligation is not superior in right of payment to the notes

accounts payable or other accrued liability or obligation incurred in the ordinary course of business in connection with the obtaining of materials or services, or

any indebtedness or obligation that we may owe to any of our direct or indirect subsidiaries.

We will not make any payment on account of the notes if any of the following occurs:

we default in our obligations to pay principal, premium, interest or other amounts on or in connection with our Senior Debt, including a default under any redemption or repurchase obligation (a Payment Default), and the default continues beyond any grace period that we may have to make those payments, or

a default (other than a Payment Default) occurs and is continuing on any Designated Senior Debt that permits the holders of the Designated Senior Debt to accelerate its maturity and the trustee has received a payment blockage notice from us, the holder of such debt or such other person permitted to give such notice under the Indenture.

If payments of the notes have been blocked by a Payment Default, payments on the notes will resume (including missed payments, if any) when the Payment Default has been cured or waived. If payments on the notes have been blocked by a default other than a Payment Default, payments on the notes will resume (including missed payments, if any) on the earlier of (1) the date on which such default is cured or waived and (2) 179 days after the date on which the trustee receives the payment blockage notice if the maturity of the Designated Senior Debt has not been accelerated such that such debt is then presently payable, unless the Indenture otherwise prohibits payment at that time.

No default (other than a Payment Default) that existed on the day a payment blockage notice was delivered to the trustee can be used as the basis for any subsequent payment blockage notice unless that existing non-Payment Default has been cured for a period of at least 90 days. In addition, once a holder of Designated Senior Debt has blocked payment on the notes by giving a payment blockage notice, no new period of payment blockage can be commenced until both of the following are satisfied:

365 days have elapsed since the effectiveness of the immediately prior payment blockage notice, and

all scheduled payments of principal, any premium and interest (and Liquidated Damages, if any) on the notes that have come due have been paid in full in cash.

Designated Senior Debt means (i) any indebtedness outstanding under our existing credit facility and (ii) our obligations under any particular Senior Debt in which the instrument creating or evidencing the debt, or the

assumption or guarantee of the debt, or related agreements or documents to which we are a party, expressly provides that the indebtedness will be Designated Senior Debt for purposes of the Indenture. That instrument, agreement or other document may place limitations and conditions on the right of that Senior Debt to exercise the rights of Designated Senior Debt.

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In addition, upon any acceleration of the principal due on the notes as a result of an Event of Default or payment or distribution of our assets to creditors upon any dissolution, winding up, total or partial liquidation or reorganization, whether voluntary or involuntary, or in bankruptcy, insolvency, receivership or other similar proceedings, all principal, premium, interest and other amounts due or to become due on or in connection with all Senior Debt must be paid in full in cash or cash equivalents before you will be entitled to receive any payment with respect to the notes (except that holders of notes may receive and retain payments or distributions in the form of junior securities). Due to the subordination provisions of the notes and the Indenture, in the event of insolvency, our creditors who are holders of Senior Debt may recover more, ratably, than you would, and this subordination may reduce or eliminate payments to you.

The term junior securities means (i) equity interests in us or (ii) our securities that are subordinated to all Senior Debt that may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the notes are subordinated to Senior Debt under the Indenture.

The notes are effectively subordinated to all indebtedness and other liabilities of our subsidiaries, including trade payables and lease obligations. This occurs because any right we have to receive any assets of our subsidiaries upon their liquidation or reorganization, and the consequent right of the holders of the notes to participate in those assets, are effectively subordinated to the claims of that subsidiary s creditors, including trade creditors, except to the extent that we are recognized as a creditor of the subsidiary, in which case our claims would still be subordinate to any security interest in the subsidiary s assets and any indebtedness of the subsidiary senior to that which we hold, at least to the extent of the collateral for such indebtedness.

The Indenture does not limit our ability to incur indebtedness, including Senior Debt, or the ability of any of our subsidiaries to incur indebtedness.

Repurchase at Option of Holders Upon a Change in Control

If a Change in Control occurs, you have the right, at your option, to require us to repurchase all of your notes, or any portion of the principal amount of your notes that is equal to $1,000 or any greater integral multiple of $1,000. The price we are required to pay is 100% of the principal amount of the notes to be repurchased, together with interest accrued to the repurchase date.

At our option, instead of paying the repurchase price in cash, we, or the successor entity in the Change in Control transaction, may pay the repurchase price in shares of our common stock, or in a combination of cash and our common stock, such common stock to be valued at 95% of the average of the high and low sales prices of our common stock on The New York Stock Exchange for each of the five consecutive trading days ending with the third trading day prior to the repurchase date. We may only pay the repurchase price in common stock if the conditions provided in the Indenture designed to ensure that such shares will be freely transferable are satisfied. Because the number of shares of common stock to be delivered to holders of notes in payment of the repurchase price (should we elect such payment option) is determined on the basis of the market price of our common stock after we have given notice of the occurrence of the Change in Control and prior to the repurchase date, the value of the common stock on the date of delivery thereof to such holders may be more or less than the repurchase price had we elected to pay such price in cash.

Within 30 days after the occurrence of a Change in Control, we will mail you notice of the Change in Control and of your repurchase right arising as a result of the Change in Control. We will also deliver a copy of this notice to the trustee. To exercise the repurchase right, you must deliver, on or before the 30th day (or such greater period as may be required by applicable law) after the date of our notice, irrevocable written notice to the trustee of your exercise of your repurchase right, together with the notes with respect to which that right is being exercised. We are required to

make the repurchase on a date that is no later than 45 days after your notice to the trustee.

A Change in Control is deemed to have occurred at such time any of the following occurs:

1. any person, including any syndicate or group deemed to be a person under Section 13(d)(3) of the Exchange Act, (A) acquires beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of our capital stock entitling that person

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to exercise more than 50% of the total voting power of all shares of our capital stock entitled to vote generally in elections of directors; however, any acquisition by us, any of our subsidiaries or any of our employee benefit plans, will not trigger this provision or (B) succeeds in having sufficient of its nominees (who are not supported by a majority of the then current board of directors) elected to the board of directors such that such nominees, when added to any existing directors remaining on the board of directors after such election who are affiliates of or acting in concert with such person, shall constitute a majority of the board of directors,

2. we consolidate with or merge with or into any other person or another person merges into us, except if the transaction satisfies any of the following:

   the transaction is a merger (A) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of our capital stock and (B) pursuant to which holders of our common stock immediately prior to the transaction have, directly or indirectly, 50% or more of the total voting power of all shares of capital stock or other ownership interest in the continuing or surviving person entitled to vote generally in elections of directors of the continuing or surviving person immediately after the transaction, or

   the transaction is a merger effected only to change our jurisdiction of incorporation and it results in a reclassification, conversion or exchange of outstanding shares of our common stock only into shares of common stock of us or another corporation, or

3. we convey, transfer, sell, lease or otherwise dispose of all or substantially all of our assets to another person.

However, a Change in Control is not deemed to have occurred if the average of the high and low sales price per share of our common stock for any five trading days within (1) the period of 10 consecutive trading days ending immediately after the later of the Change in Control and the public announcement of the Change in Control, in the case of a Change in Control under clause (1)(A) above relating to an acquisition of capital stock not involving a merger or consolidation covered by clause (2) above, or (2) the period of 10 consecutive trading days ending immediately before the Change in Control, in the case of a Change in Control under clause (1)(B), (2) or (3) above, in each case, equals or exceeds 105% of the conversion price of the notes in effect on each of those trading days.

For purposes of these provisions:

the conversion price is equal to $1,000 divided by the conversion rate, and

whether a person is beneficial owner will be determined in accordance with Rule 13d-3 under the Exchange Act.

Any repurchase of notes arising as a result of the Change in Control will be made in compliance with all applicable laws, rules and regulations, including, if applicable, Regulation 14E under the Exchange Act and the rules thereunder and all other applicable federal and state securities laws. To the extent the provisions of any securities laws or regulations conflict with the provisions of this covenant, our compliance with such laws and regulations shall not be deemed to cause a breach of our obligations under the Indenture.

We may, to the extent permitted by applicable law, at any time purchase notes in the open market or by tender or by private agreement. Any note that we so purchase may, to the extent permitted by applicable law, be reissued or resold or may, at our option, be surrendered to the trustee for cancellation. Any notes surrendered may not be reissued or resold and will be canceled promptly.

The definition of Change in Control includes a phrase relating to the conveyance, transfer, sale, lease or disposition of all or subsequently all of our assets. There is no precise, established definition of the phrase substantially all under applicable law. Accordingly, your ability to require us to repurchase your notes as a result of conveyance, transfer, sale, lease or other disposition of less than all of our assets may be uncertain.

The foregoing provisions would not necessarily provide you with protection if we are involved in a highly leveraged or other transaction that may adversely affect you.

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Our ability to repurchase notes upon the occurrence of a Change in Control is subject to important limitations. Some of the events constituting a Change in Control in addition to the act of repurchasing the notes could cause an event of default or be prohibited or limited by the terms of our Senior Debt. As a result, any repurchase of the notes could, absent a waiver, be prohibited under the Indenture s subordination provisions until the Senior Debt is paid in full. Further, we may not have the financial resources, or be unable to arrange financing, to pay the repurchase price for all the notes that holders seeking to exercise their repurchase right deliver to us. If we were to fail to repurchase the notes when required following a Change in Control, an Event of Default would occur, whether or not such repurchase is permitted by the Indenture s subordination provisions. Any such default may, in turn, cause a default under our Senior Debt. For more details, see Subordination.

Mergers and Sales of Assets

Without the consent of the holders of the notes, we may not consolidate with or merge with or into any other person or convey, transfer, sell or lease our properties and assets substantially as an entirety to any person, and we may not permit any person to consolidate with or merge with or into us or convey, transfer, sell or lease such person s properties and assets substantially as an entirety to us, unless each of the following requirements is met:

- the person formed by the consolidation or into or with which we merge or the person to which our properties and assets are conveyed, transferred, sold or leased, is a corporation, limited liability company, partnership or trust organized and existing under the laws of the United States, any State or the District of Columbia and, if other than us, expressly assumes the due and punctual payment of the principal of, any premium, and interest (and Liquidated Damages, if any) on the notes and the performance of our other covenants under the Indenture;

- immediately after giving effect to that transaction, no Event of Default, and no event that, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing, and other specific conditions are met; and

- an officer s certificate and legal opinion relating to these conditions is delivered to the trustee.

Upon any consolidation or merger or any transfer or lease of all or substantially all of our assets, the successor corporation formed by such consolidation or into which we are merged or to which such transfer or lease is made, shall succeed to, and be substituted for, and may exercise every right and power of, us under the Indenture with the same effect as if such successor corporation had been named in the Indenture as our company, and we shall be released from the obligations under the notes and the Indenture except in the case of a lease or with respect to any obligations that arise from, or are related to, such transaction.

Events of Default

The following are Events of Default under the Indenture:

- we fail to pay principal of or any premium, if any, on any note when due, whether or not the payment is prohibited by the Indenture s subordination provisions;

- we fail to pay any interest (including Liquidated Damages, if any) on any note when due and that default continues for 30 days, whether or not the payment is prohibited by the Indenture s subordination provisions;

- we fail to give the notice that we are required to give if there is a Change in Control, whether or not the notice is prohibited by the Indenture s subordination provisions;

we fail to perform or observe any other term, covenant or agreement contained in the notes or the Indenture and that failure continues for 60 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of outstanding notes;

we fail to pay by the end of any applicable grace period or after maturity of the principal of any indebtedness for money borrowed by us or any of our significant subsidiaries, if any, in excess of $5 million if the indebtedness is not discharged, or, if such indebtedness has been accelerated,

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such acceleration is not rescinded or annulled, within 30 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of the outstanding notes;

we fail to deliver shares of common stock, together with cash instead of fractional shares, when those shares of common stock or cash instead of fractional shares are required to be delivered upon conversion of a note, and such failure continues for 10 days after such delivery date; or

events of bankruptcy, insolvency or reorganization with respect to us and our significant subsidiaries specified in the Indenture.

Subject to the provisions of the Indenture relating to the trustee s duties, if an Event of Default exists, the trustee will not be obligated to exercise any of its rights or powers under the Indenture at the request or direction of any of the holders, unless they have offered to the trustee reasonable indemnity. Subject to such trustee indemnification provisions, the holders of a majority in aggregate principal amount of the outstanding notes will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee, provided that such direction does not conflict with any rule of law or with the Indenture, and the trustee may take any other action the trustee deems proper which is not inconsistent with such direction.

If an Event of Default, other than an Event of Default arising from events of bankruptcy, insolvency or reorganization, occurs and is continuing, either the trustee or the holders of at least 25% in principal amount of the outstanding notes may accelerate the maturity of all notes. After acceleration, but before a judgment or decree based on acceleration, the holders of a majority in aggregate principal amount of outstanding notes may, under circumstances set forth in the Indenture, rescind the acceleration if all Events of Default, other than the non-payment of principal of the notes which have become due solely because of the acceleration, have been cured or waived as provided in the Indenture. If an Event of Default arising from events of bankruptcy, insolvency or reorganization occurs and is continuing, then the principal of, and accrued interest on, all of the notes will automatically become immediately due and payable without any declaration or other act on the part of the holders of the notes or the trustee.

You do not have any right to institute any proceeding relating to the Indenture, or to appoint a receiver or a trustee, or for any other remedy under the Indenture, unless:

you have given the trustee written notice of a continuing Event of Default;

the registered holders of at least 25% of the aggregate principal amount of all outstanding notes have made a written request of the trustee to take action because of the default and have furnished reasonable indemnification to the trustee against the cost, liabilities and expenses of taking such action;

the trustee shall not have taken action for 60 days after receiving such notice and offer of indemnification; and

the trustee has not received any direction inconsistent with such written request from the holders of a majority of the aggregate principal amount of all outstanding notes during such 60-day period.

These limitations do not apply to a suit for the enforcement of payment of the principal of, or any premium or interest (and Liquidated Damages, if any) on, a note, or the repurchase price payable for a note on or after the due dates for such payments, or of the right to convert the note in accordance with the Indenture.

We will furnish to the trustee annually a statement as to our performance of our obligations under the Indenture and as to any default in performance.

Modification and Waiver

The Indenture contains provisions permitting us and the trustee to enter into a supplemental indenture for some limited purposes without the consent of the holders of the notes. With the consent of the holders of at least a majority in aggregate principal amount of the notes at the time outstanding, we and the trustee are permitted to

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amend or supplement the Indenture or any supplemental indenture or modify the rights of the holders, provided, that no such modification may, without the consent of each holder affected:

- change the stated maturity of the principal or interest of any note;
- reduce the principal amount, any premium or interest on any note;
- amend or modify our obligation to make or consummate a repurchase offer upon a Change in Control in a manner adverse to the holders of the notes after our obligation to make a Change in Control repurchase offer arises;
- change the place or currency of payment on any note;
- impair the right to institute suit for the enforcement of any payment on or conversion of any note;
- modify the subordination provisions in a manner that is adverse to the holder of any notes;
- adversely affect the right of any holder of notes to convert its notes;
- reduce the percentage in principal amount of the outstanding notes whose holders consent is needed to modify, amend or waive any provision in the Indenture; or
- modify the provisions dealing with modification and waiver of the Indenture, except to increase any required percentage or to provide that other provisions of the Indenture cannot be modified or waived without the consent of the holder of each outstanding note affected.

The holders of a majority in principal amount of the outstanding notes may waive our compliance with some restrictive provisions of the Indenture. The holders of a majority in principal amount of the outstanding notes may waive any past default, except a default in the payment of principal, any premium, interest (or Liquidated Damages, if any) or the repurchase price.

Registration Rights

The following summarizes some, but not all, of the registration rights provided in the registration rights agreement (the Registration Rights Agreement) between us and CIBC World Markets Corp., the initial purchaser of the notes. You should refer to the Registration Rights Agreement, a copy of which we will make available to beneficial holders of the notes upon request, for a full description of the registration rights that apply to the notes.

In the Registration Rights Agreement we agreed, for the benefit of the holders of the notes and the shares of common stock issuable upon conversion of the notes, but excluding securities that are eligible for disposition under Rule 144 of the Securities Act, that we will, at our expense:

- file with the SEC, on or prior to 90 days following the date the notes are originally issued, a shelf registration statement covering resales of the Registrable Securities (as defined in the Registration Rights Agreement),
- use our reasonable best efforts to cause the shelf registration statement to be declared effective under the Securities Act on or prior to 180 days following the date the notes are originally issued, subject to our right to postpone having the shelf registration statement declared effective for an additional 60 days in limited circumstances, and

use our reasonable best efforts to keep effective the shelf registration statement until, subject to exceptions set forth in the Registration Rights Agreement, the earlier of:

1. the date on which there are no outstanding Registrable Securities, or

2. the expiration of the holding period applicable to such Registrable Securities held by persons who are not affiliates of WMS under Rule 144(k) under the Securities Act or any successor previously subject to specific permitted exceptions.

The above obligations have been complied with as of the date of this prospectus.

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We agreed to provide to each holder of Registrable Securities copies of the prospectus included in the shelf registration statement, notify each holder when the shelf registration statement has become effective and take other actions required to permit public resales of the Registrable Securities.

Upon written notice to all the holders of notes, we will be permitted to suspend the use of the prospectus that is part of the shelf registration statement in connection with sales of Registrable Securities during prescribed periods of time if we possess material non-public information, the disclosure of which would have a material adverse effect on us. The periods during which we can suspend the use of the prospectus may not exceed a total of 60 consecutive days. Upon receipt of such notice, the holders of notes will be required to cease disposing of securities under the prospectus and to keep the notice confidential.

Liquidated Damages will accrue on any of the notes that are transfer restricted securities under the Registration Rights Agreement if any of the following default events occurs:

on or prior to 90 days following the date the notes were originally issued, a shelf registration statement has not been filed with the SEC;

on or prior to 180 days following the date the notes were originally issued, the SEC does not declare the shelf registration statement effective; or

the shelf registration statement ceases to be effective, or we otherwise prevent or restrict holders of Registrable Securities from making sales under the shelf registration statement, for more than 60 consecutive days.

In these events, damages will accrue on the notes that are transfer restricted securities at an annual rate of 0.5% of the principal amount from the day following any of the above default events until the day on which the default is cured. These damages will be paid semi-annually in arrears, with the first semi-annual payment due on the first interest payment date following the date on which the damages begin to accrue.

A holder who elects to sell any Registrable Securities pursuant to the shelf registration statement will be required to be named as a selling securityholder in the related prospectus, may be required to deliver a prospectus to purchasers, may be subject to civil liability under the securities laws in connection with those sales and will be bound by the provisions of the Registration Rights Agreement that apply to a holder making such an election, including indemnification provisions.

No holder of Registrable Securities is entitled to be named as a selling securityholder in the shelf registration statement as of the date on which the Registration Statement becomes effective, and no holder of Registrable Securities is entitled to use the prospectus that is part of the shelf registration statement for offers and resales of Registrable Securities at any time, unless the holder has returned a completed and signed notice and questionnaire to us by the deadline for response set forth in the notice and questionnaire. Holders of Registrable Securities will, however, have at least 20 calendar days from the date on which the notice and questionnaire was first mailed to them to return a completed and signed notice and questionnaire to us.

Beneficial owners of Registrable Securities who had not returned a notice and questionnaire by the questionnaire deadline described above may receive another notice and questionnaire from us upon request. When we receive a completed and signed notice and questionnaire prior to the Registration Statement s effectiveness date, we will include the Registrable Securities in the shelf registration statement, subject to limitations on the timing and number of supplements to the shelf registration statement provided in the Registration Rights Agreement.

If for any reason the common stock is not then listed on The New York Stock Exchange, we will use our reasonable efforts to cause the shares of common stock issuable upon conversion of the notes to be quoted or listed on

whichever market or exchange the common stock is then quoted or listed on or prior to the effectiveness of the shelf registration statement.

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Replacement of Notes

If the notes become certificated, we will replace, at the holders expense, notes that become mutilated, destroyed, stolen or lost upon delivery to the trustee of the mutilated notes or evidence of the loss, theft or destruction thereof satisfactory to us and the trustee. In the case of a lost, stolen or destroyed note, indemnity satisfactory to the trustee and us may be required at the expense of the holder of the note before a replacement note will be issued.

No Personal Liability of Stockholders, Officers, Directors and Employees

No direct or indirect stockholder, officer, director or employee, whether past, present or future of WMS, or any successor entity, shall have any personal liability in respect of our obligations under the Indenture or the notes solely by reason of his or its status as a stockholder, officer, director or employee.

The Trustee

The trustee for the holders of notes is BNY Midwest Trust Company. If an Event of Default occurs and is continuing, the trustee is required to use the degree of care of a prudent person in the conduct of his own affairs in the exercise of its powers. Subject to these provisions, the trustee is under no obligation to exercise any of its rights or powers under the Indenture at the request of any holders of notes, unless they have offered the trustee reasonable security or indemnity.

DESCRIPTION OF SHARE CAPITAL

Set forth below is a description of our share capital and a summary of some relevant provisions of Delaware law in effect at the date of this prospectus.

Our authorized capital stock consists of 105,000,000 shares, of which 100,000,000 are shares of common stock, par value $0.50, and 5,000,000 are shares of preferred stock, par value $0.50. As of September 2, 2004, there were 30.4 million shares of common stock outstanding and no shares of preferred stock outstanding.

Common Stock

Holders of shares of common stock vote as a single class on all matters submitted to a vote of the stockholders, including the election of directors, with each share of common stock entitled to one vote. There is no cumulative voting with respect to the election of directors, with the result that the holders of more than 50% of the shares voting for the election of directors can elect all of the directors.

Holders of common stock are entitled to share ratably in any dividends that may be declared at any time by the board of directors out of funds legally available therefor, subject to the rights of the holders of any series of our preferred stock. Upon the liquidation, dissolution or winding up of WMS, each holder of common stock will be entitled to share ratably in any distribution of our assets, after the payment of all debts and any liabilities, subject to any superior rights of the holders of any outstanding shares of preferred stock.

Other than the Rights Agreement, as discussed below, holders of the shares of our common stock do not have preemptive or other subscription rights, and there are no conversion rights or redemption or sinking fund provisions with respect to those shares.

Preferred Stock

Our certificate of incorporation authorizes the issuance of five million shares of preferred stock with designations, rights and preferences that may be determined by the board of directors. Accordingly, our board has broad power, without stockholder approval, to issue up to 5,000,000 shares of preferred stock with dividend, liquidation, conversion, voting or other rights that could adversely affect the voting power or other rights of the holders of our common stock. Our board has no current plans, agreements or commitments to issue any shares of

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preferred stock. The existence of the blank check preferred stock, however, could adversely affect the market price of our common stock.

Our board of directors could, without further vote of the stockholders, use preferred stock to discourage, delay or prevent a change in control or to make the removal of management more difficult by diluting the public ownership of WMS. The authorized preferred stock could be used in this way even if a proposed change in control or other transaction or occurrence may be favorable to the interests of some or all of our stockholders. The preferred stock can be used by the board to issue shares having special privileges or rights to third parties, which may have the effect of delaying or discouraging an attempt to acquire control of WMS. For example, the board has the ability to adopt a stockholder rights plan pursuant to which it might issue shares of preferred stock having the same economic value and voting rights as shares of common stock upon the occurrence of specified triggering events. In November 1997, the board adopted such a rights plan. See Rights Agreement below. None of the preferred stock has been issued to date.

Other than the existence of authorized but unissued common stock and preferred stock, our certificate of incorporation and by-laws do not currently contain any other anti-takeover provisions, and no such other provisions are currently contemplated.

Rights Agreement

In November 1997, the board adopted a Rights Agreement. The Rights Agreement provides that one right (a Right) will be issued with each share of the common stock issued (whether originally issued or from our treasury) prior to the Rights Distribution Date (as defined). The Rights will not be exercisable until the Rights Distribution Date and will expire at the close of business on November 30, 2007 unless we previously redeemed the Rights as described below. When exercisable, each Right will entitle the owner to purchase from us one one-hundredth (1/100) of a share of our Series A Preferred Stock at an exercise price of $100.00, subject to specified antidilution adjustments. The Rights will not, however, be exercisable, transferable or trade separately from the shares of common stock, until (a) the tenth business day after the Stock Acquisition Date (the date of a public announcement that a person or group is an Acquiring Person) or (b) the tenth business day, or such later day as the board, with the concurrence of a majority of Continuing Directors (as defined) determines, after a person or group announces a tender or exchange offer, which, if consummated, would result in such person or group beneficially owning 15% or more of the common stock (the earlier of such dates being the Rights Distribution Date).

In general, any person or group of affiliated persons (other than us, any of our subsidiaries, any person who as of the effective date of the Rights Agreement beneficially owns 15% or more of the common stock, certain of our benefit plans and any person or group of affiliated persons whose acquisition of 15% or more is approved by the board in advance) who, after the date of adoption of the Rights Agreement, acquires beneficial ownership of 15% or more of the common stock will be considered an Acquiring Person.

If a person or group of affiliated persons becomes an Acquiring Person, then each Right (other than Rights owned by the Acquiring Person and its affiliates and its associates) will entitle the holder thereof to purchase, for the exercise price, a number of shares of the common stock having a then current market value of twice the exercise price. Accordingly, at the original exercise price, each Right would entitle its registered holder to purchase $200.00 worth of our common stock for $100.00.

If at any time after the Stock Acquisition Date, (a) we merge into another entity, (b) an acquiring entity merges into us and our common stock is changed into or exchanged for other securities or assets of the acquiring entity or (c) we sell more than 50% of our assets or earning power, then each Right will entitle the holder to purchase, for the exercise price, the number of shares of common stock of such other entity having a current market value of twice the exercise price. The above will not apply to (i) a transaction approved by a majority of the board of directors (or, after the Stock

Acquisition Date, a majority of the Continuing Directors) or (ii) a merger which follows a cash tender offer approved by the board of directors (or, after the Stock Acquisition Date, a majority of Continuing Directors) for all outstanding shares of common stock so long as the consideration payable in the merger is the same in form and not less than the amount that was paid in the tender offer. A Continuing Director is a director in office prior to the distribution of the Rights and any director recommended or approved for election by those directors but does not include any representative of an Acquiring Person.

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Subject to the limitations summarized below, the Rights will be redeemable at our option, at any time prior to the earlier of the Stock Acquisition Date or November 30, 2007, for $.01 per Right, payable in cash or shares of common stock. Under specified circumstances, the decision to redeem requires the concurrence of a majority of the Continuing Directors. In the event a majority of the board is changed by a vote of our stockholders, the Rights shall not be redeemable for a period of ten business days after the date that the new directors take office, and the redemption can only occur if that any tender or exchange offer then outstanding is kept open within that ten business-day period. At any time after any person becomes an Acquiring Person, the board may exchange the Rights (other than Rights owned by the Acquiring Person and its associates) for common stock in a ratio of one share of common stock for each Right.

As long as the Rights are attached to the common stock, each share of common stock also evidences one Right. Until the Rights Distribution Date, the Rights are represented by the common stock certificates and are transferred with the common stock certificates. Separate certificates representing the Rights will be mailed to holders of the common stock as of the Rights Distribution Date. The holders of Rights will not have any voting rights or be entitled to dividends until the Rights are exercised. The purchase price payable, and the number of shares of preferred stock or other securities or property issuable, upon exercise of the Rights are subject to adjustments to prevent dilution in the event of stock dividends on, or subdivisions, combinations or reclassification of, the shares of common stock prior to the Rights Distribution Date, and in other specified events. The board will be able to amend the Rights Agreement in any manner prior to the Rights Distribution Date. After the Rights Distribution Date, the board will be able to amend the Rights Agreement only to shorten or lengthen any time period, subject to limitations, or if the amendment does not adversely affect the interest of the Rights holders and does not relate to any important economic term of the Rights.

Section 203

Section 203 of the Delaware General Corporation Law prohibits a publicly-held Delaware corporation from engaging in a broad range of business combinations with an interested stockholder (defined generally as a person owning 15% of more of a corporation s outstanding voting stock) for three years following the time that the person became an interested stockholder unless: (i) before the person becomes an interested stockholder, the transaction resulting in such person becoming an interested stockholder or the business combination is approved by the board of directors of the corporation; (ii) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owns at least 85% of the outstanding voting stock of the corporation (excluding shares owned by directors who are also officers of the corporation or shares held by employee stock plans that do not provide employees with the right to determine confidentially whether shares held subject to the plan will be tendered in a tender offer or exchange offer); or (iii) at or after such time, the business combination is approved by the board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting stock excluding shares owned by the interested stockholder. Section 203 may discourage persons from making a tender offer for or acquisitions of substantial amounts of our common stock, which could have the effect of inhibiting changes in management and may also prevent temporary fluctuations in the common stock that often result from takeover attempts.

Stock Option Plans

We currently have the following stock option plans in effect: our 1991, 1993, 1994, 2000 and 2002 Stock Option Plans, each of which was approved by our stockholders, and our 1998 and 2000 Non-Qualified Stock Option Plans, which were not approved by our stockholders. The plans permit us to grant options to purchase shares of our common stock. These options may be granted as incentive stock options, designed to meet the requirements of Section 422 of the Internal Revenue Code, except for options granted under the 1998 and 2000 Non-Qualified Stock Option Plans, or they may be non-qualified options that do not meet the requirements of that section.

The purpose of each of the plans is to encourage our employees and, under some of the plans, non-employee directors, consultants and advisors, to acquire a proprietary interest in our common stock and to enable these individuals to realize benefits from an increase in the value of our common stock. We believe that this benefit provides these individuals with greater incentive and encourages their continued provision of services to us and, generally, promotes our interests and those of our stockholders. Our Stock Option Committee determines which of the eligible directors, officers, employees, consultants and advisors receive stock options, the terms, including

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vesting dates, of the options, and the number of shares for which options may be exercised. The option price per share with respect to each option is determined by the Stock Option Committee and generally is not less than the fair market value of our common stock of the date that the option is granted. The plans each have a term of ten years, unless terminated earlier.

Our plans are described in further detail in our proxy statement, which is incorporated by reference in this prospectus. See Documents Incorporated by Reference .

Transfer Agent and Registrar

Our transfer agent and registrar for our common stock is The Bank of New York.

SUMMARY OF UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

The following is a summary of anticipated United States federal income tax consequences relating to the purchase, ownership and disposition of the notes or shares of our common stock into which the notes may be converted, and is for general information purposes only. This summary is based on the Internal Revenue Code of 1986, as amended (the Code), Treasury regulations promulgated under the Code and administrative and judicial interpretations of the Code, all as of the date of this prospectus, and all of which are subject to change and subject to differing interpretations, possibly with retroactive effect. We have not sought any ruling from the Internal Revenue Service (the IRS) with respect to the statements made and conclusions reached in the following summary. Therefore, we cannot assure you that the IRS will not successfully challenge one or more of the statements or conclusions described in this prospectus.

This summary does not discuss all aspects of United States federal income taxation which may be important to particular holders in light of their individual circumstances or to some types of holders subject to special tax rules, such as financial institutions, real estate investment trusts, regulated investment companies, broker-dealers, dealers in securities or currencies, insurance companies, tax-exempt investors, partnerships or other passthrough entities, persons holding notes in connection with a hedging straddle, conversion, synthetic security or other integrated transaction for United States federal income tax purposes, or U.S. holders whose functional currency is not the U.S. dollar. Further, this summary does not include any description of any alternative minimum tax consequences, United States federal estate or gift tax laws or the tax laws of any state, local or foreign government that may be applicable to the notes, our common stock acquired upon conversion of a note, and holders. This summary assumes that holders will hold the notes and the shares of our common stock into which the notes are convertible as capital assets (generally, for investment). Except as otherwise indicated, this discussion does not address any tax consequences that may be applicable to holders other than original purchasers acquiring notes pursuant to this offer.

Each prospective purchaser of the notes should consult its tax advisor with respect to the tax consequences to it of the purchase, ownership and disposition of the notes or our common stock acquired upon conversion of a note in light of the purchaser s particular circumstances, including tax consequences under state, local, foreign, United States federal estate or gift and other tax laws and the possible effects of changes in the United States federal income and other tax laws.

For purposes of this summary, a U.S. holder is a beneficial owner of notes or shares of our common stock into which the notes may be converted that is, for United States federal income tax purposes, (i) an individual who is a citizen or resident of the United States, (ii) a corporation created in or organized under the laws of the United States or any State or political subdivision thereof, (iii) an estate, the income of which is includible in gross income for United States federal income tax purposes regardless of its source or (iv) a trust, the administration of which is subject to the primary supervision of a United States court and which has one or more United States persons who have authority to

control all substantial decisions of the trust or, if the trust was in existence on August 20, 1996, has elected to continue to be treated as a United States person. A Non-U.S. holder is a beneficial owner of notes or shares of our common stock into which the notes may be converted that is not a U.S. holder. All references in this summary to holders are to both U.S. and Non-U.S. holders.

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If a partnership (including for this purpose any entity treated as a partnership for United States federal income tax purposes) is a beneficial owner of a note (or our common shares acquired upon conversion of a note), the tax treatment of a partner in the partnership will generally depend upon the status of the partner and activities of the partnership. A beneficial owner that is a partnership and partners in such a partnership should consult their tax advisors about the United States federal income tax consequences of the purchase, ownership and disposition of the notes or shares of common stock acquired upon conversion of a note.

U.S. Holders

Payments of Interest on Notes

U.S. holders generally will be required to recognize any stated interest as ordinary income at the time it is paid or accrued on the notes in accordance with such U.S. holders method of accounting for United States federal income tax purposes. In certain circumstances, we may be obligated to pay holders of the notes amounts in excess of stated interest. As more fully described under Description of the Notes Registration Rights, the interest rate on the notes is subject to increase by the payment of damages for a default under the Registration Rights Agreement if, among other things, the notes are not registered with the SEC within prescribed time periods. As more fully described under Description of the Notes Dividend Protection, we are obligated to pay dividend protection payments to holders of the notes upon payment of cash dividends on our common stock that do not otherwise trigger an adjustment to the conversion rate of the notes. Applicable Treasury regulations generally allow prospective payments of such damages and dividend protection payments to be disregarded in computing a holder s interest income if the possibility of paying such amounts is treated as a remote or incidental contingency. We have treated, and intend to continue to treat, the possibility that we will pay any such damages or dividend protection payments as remote or incidental contingencies within the meaning of such regulations and, therefore, in the unlikely event an additional amount becomes due on the notes, we believe U.S. holders should be taxable on such amount at the time it accrues or is received in accordance with each such U.S. holder s method of accounting for United States federal income tax purposes.

Our determination that the possibility that such additional amounts will have to be paid is a remote or incidental contingency is binding on each U.S. holder unless the U.S. holder explicitly discloses in the manner required by applicable Treasury regulations that its determination is different from ours. Our determinations, as discussed above, are not, however, binding on the IRS. If the IRS asserts successfully that the notes constitute contingent payment debt instruments as a result of the possibility that damages for a default under the Registration Rights Agreement or dividend protection payments could be paid, U.S. holders would be required to report interest income at the issuer s normal borrowing rate, and therefore will have significantly greater interest income than the amount of interest actually paid. In addition, the treatment of the U.S. holders on a disposition of the note (including a conversion into common stock) could materially differ from the treatment described below.

Market Discount

A U.S. holder that purchases, subsequent to its original issuance, a note for a price that is less than the principal amount will be subject to the rules relating to market discount. Subject to a de minimis exception, any gain recognized by the U.S. holder upon a sale or other disposition of the note will be treated as ordinary income rather than capital gain to the extent of that portion of the market discount that accrued prior to the disposition. Market discount generally accrues on a straight line basis over the remaining term of the note, but the holder can elect to compute accrued market discount based on the economic yield of the note. The holder of a note with market discount might be required to recognize gains to the extent of accrued market discount event if the disposition takes a form (such as a gift) in which the holder would not normally be required to recognize gain. The market discount rules will not affect the tax consequences to the holder upon conversion of the note, which will generally be tax-free under the rules more fully described below under Conversion of Notes into Common Stock. The market discount that accrued prior to

conversion, however, will be carried over to the stock received on conversion, and to that extent, any gain recognized by a U.S. holder upon disposition of the stock will be treated as ordinary income. Finally, if the U.S. holder s purchase of the notes is debt-financed, the U.S. holder will not be entitled to deduct interest expense allocable to accrued market discount until it recognizes the corresponding income. The U.S. holder of a note with market discount may elect to include the market discount in income as it accrues. If this election is

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made, any gain recognized on a disposition of the note would be entirely capital gain, and the rules deferring the deduction of interest from related loans would not apply.

Premium

If a U.S. holder purchases a note for an amount in excess of the sum of all amounts payable on the note after the date of acquisition (other than payments of qualified stated interest), the holder will be considered to have purchased the note with amortizable bond premium. Generally, a U.S. holder may elect to amortize the premium as an offset to qualified stated interest income in respect of the note, using a constant yield method prescribed under applicable Treasury regulations, over the remaining term of the note. Any such premium is not amortizable, however, to the extent it reflects the value of the conversion privilege of the note. A U.S. holder who elects to amortize bond premium must reduce the holder s tax basis in the note by the amount of the premium used to offset qualified stated interest income as set forth above. An election to amortize bond premium applies to all taxable debt obligations then owed and thereafter acquired by the holder and may be revoked only with the consent of the IRS.

Sale or Repurchase of the Notes

Except as set forth below under Conversion of the Notes into Common Stock, a U.S. holder generally will recognize capital gain or loss upon the sale or other taxable disposition of the notes in an amount equal to the difference between the amount realized on the disposition, other than amounts attributable to accrued but unpaid interest on the notes not previously included in income or, in the case of a subsequent purchase of notes, amounts attributable to market discount on the note that accrued prior to the disposition (which will be taxable as ordinary interest income), and the U.S. holder s adjusted tax basis in such notes. A U.S. holder s tax basis in a note generally will be equal to the cost of the note to such U.S. holder, increased, in the case of a subsequent purchaser, by any market discount previously included in income in respect thereof, and reduced (but not below zero) by any payments on the note other than payments of qualified stated interest and, in the case of a subsequent purchaser, by any premium that the U.S. holder has taken into account. Any such capital gain or loss will be long-term capital gain or loss if the U.S. holder s holding period for the notes exceeds one year at the time of disposition.

Adjustment of the Conversion Price

Adjustments to, or failure to adjust, the conversion price of the notes may cause U.S. holders of notes or shares of our common stock to be treated as having received a distribution on such notes or stock, to the extent such adjustments or failure to adjust result in an increase in the proportionate interest of such U.S. holders in our company. Such a distribution may be taxable to U.S. holders as a dividend, return of capital or capital gain in accordance with the earnings and profits rules discussed below under Distributions on the Common Stock.

Conversion of the Notes into Common Stock

Subject to the discussion under Market Discount above, a U.S. holder generally will not recognize income, gain or loss upon conversion of the notes into our common stock, except with respect to the receipt of cash in lieu of fractional shares, as described below. A U.S. holder s tax basis in such common stock will be the same as the U.S. holder s adjusted tax basis in the corresponding notes converted at the time of conversion (reduced by any tax basis allocable to a fractional share, as described below), and the U.S. holder s holding period for such common stock will include the U.S. holder s holding period for the notes that were converted.

Cash received in lieu of a fractional share of common stock upon conversion of the notes into our common stock will be treated as a payment in exchange for such fractional share (deemed to be received by the U.S. holder on conversion), and generally should result in capital gain or loss measured by the difference between the cash received

for such fractional share and the U.S. holder s adjusted tax basis allocable to the fractional share.

Distributions on the Common Stock

Distributions on our common stock received upon conversion of the notes will constitute dividends, taxable to U.S. holders as ordinary income, to the extent of our current and accumulated earnings and profits as determined under United States federal income tax principles. To the extent that a U.S. holder receives distributions on shares

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of our common stock but that exceed our current and accumulated earnings and profits, such distributions will be treated first as a non-taxable return of capital, reducing the U.S. holder s tax basis in the shares of our common stock. Any such non-dividend distributions in excess of the U.S. holder s tax basis in the shares of our common stock will generally be treated as capital gain. Subject to the applicable limitations, dividends paid to U.S. holders that are corporations may qualify for the dividends-received deduction, and dividends paid to U.S. holders who are individuals will be taxed at the same rate as net capital gains at a maximum 15% United States federal income tax rate through 2008 (unless extended).

Disposition of the Common Stock

Subject to the discussion under Market Discount above, a U.S. holder generally will recognize capital gain or loss upon the disposition of shares of our common stock in an amount equal to the difference between the amount realized on such disposition and the U.S. holder s adjusted tax basis in such common stock. Any such gain or loss will generally be long-term capital gain or loss if the U.S. holder s holding period for our common stock exceeds one year at the time of such sale or exchange.

Non-U.S. Holders

Payments of Interest on the Notes

Payments of interest, on a note other than dividend protection payments generally will not be subject to United Stations federal withholding tax, provided that (i) the Non-U.S. holder does not own, actually or constructively (pursuant to the conversion feature of the notes or otherwise), 10% or more of the total combined voting power of all our voting stock, (ii) the Non-U.S. holder is not a controlled foreign corporation related, directly or indirectly, to us through stock ownership within the meaning of United States federal income tax laws and (iii) the Non-U.S. holder either (A) provides to us or our paying agent a statement signed under penalties of perjury on the applicable IRS form that includes its name and address and certifies that it is not a United States person in compliance with applicable requirements and satisfies all documentary evidence requirements for establishing that it is not a United States person or (B) holds its notes through certain foreign intermediaries or certain foreign partnerships and such Non-U.S. holder and entities satisfy certain certification and other documentary evidence requirements.

If a Non-U.S. holder receives a dividend protection payment, or receives any other interest payment without satisfying the requirements described above, such payments on a note will be subject to a 30% United States federal withholding tax unless such Non-U.S. holder provides to us or our paying agent the applicable IRS form in which the Non-U.S. holder either (i) claims an exemption from or reduction in withholding under an applicable income tax treaty or (ii) states that interest paid on the note is not subject to United States federal withholding tax because such interest is effectively connected with such Non-U.S. holder s conduct of a trade or business in the United States.

Dividends on the Common Stock

Dividends paid on our common stock to a Non-U.S. holder, and any deemed dividends resulting from an adjustment to or a failure to adjust the conversion price of the notes (see U.S. Holders Adjustment of the Conversion Price, above), generally will be subject to 30% United States federal withholding tax, unless (i) such Non-U.S. holder is eligible for an exemption from or reduction in withholding under an applicable treaty or (ii) the dividends are effectively connected with such Non-U.S. holder s conduct of a trade or business in the United States. A Non-U.S. holder will be required to file the applicable IRS form to claim tax treaty benefits or to claim an exemption for effectively connected income.

Gain on Disposition of the Notes and Common Stock

A Non-U.S. holder generally will not be subject to United States federal income or withholding tax with respect to gain realized on the disposition (as defined under U.S. Holders Sale or Repurchase of the Notes, above) of a note (except with respect to accrued and unpaid interest, which may be subject to United States federal withholding tax as described above under Payments of Interest on the Notes) or our common stock unless (i) such

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Non-U.S. holder is an individual present in the United States for 183 days or more in the taxable year of such disposition and certain other requirements are met; (ii) the gain is effectively connected with such Non-U.S. holder s conduct of a trade of business in the United States or, if such Non-U.S. holder is a treaty resident, such gain is attributable to the Non-U.S. holder s permanent establishment or a fixed base in the United States; or (iii) such Non-U.S. holder is subject to provisions of United States tax law applicable to certain United States expatriates.

Conversion of the Notes into Common Stock

A Non-U.S. holder generally will not be subject to United States federal income tax on the conversion of a note into common stock. Cash received in lieu of a fractional share of common stock upon conversion of a note into our common stock, as discussed above under U.S. Holders Conversion of Notes into Common Stock may be subject to the rules described above under Gain on Disposition of the Notes and Common Stock.

Effectively Connected Income

A Non-U.S. holder generally will be taxed in the same manner as a U.S. holder on interest, including any dividend protection payments, paid on a note, dividends paid (or deemed paid) on our common stock or gain realized on the disposition of a note or our common stock if such items of income or gain are effectively connected with such Non-U.S. holder s conduct of a trade or business in the United States or, if such Non-U.S. holder is a treaty resident, such items of income or gain are attributable to the Non-U.S. holder s permanent establishment or a fixed base in the United States. Non-U.S. holders that are engaged in a trade or business within, or have a permanent establishment or a fixed base in the United States should consult their tax advisors as to the treatment of the items of income or gain discussed in the proceeding sentence. In addition, a Non-U.S. holder that is a corporation may be subject to a branch profits tax at a rate of 30%, or such lower rate provided by an applicable income tax treaty, with respect to income or gain that is effectively connected with such Non-U.S. holder s conduct of a trade or business in the United States.

Backup Withholding and Information Reporting

Payments of interest or principal on the notes or dividends on our common stock, or the proceeds of the disposition of either, may be subject to information reporting and United States federal backup withholding tax at a 28% applicable rate if the recipient of such payment fails to supply to us or our paying agent a taxpayer identification number, certified under penalties of perjury, as well as certain other information or otherwise establishes an exemption from backup withholding. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against that U.S. holder s United States federal income tax liability, provided the required information is furnished to the IRS. A Non-U.S. holder may be required to comply with certification procedures to establish that the holder is not a United States person in order to avoid backup withholding tax with respect to our payments of principal and interest on the notes or dividends on our common stock, or the proceeds of the disposition of either. In addition, we must report annually to the IRS and to each holder the amount of any interest and dividends paid to and the tax withheld (if any) with respect to such holder. Copies of these information returns may also be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which a Non-U.S. holder resides.

SELLING SECURITYHOLDERS

In June and July 2003, we sold the notes in a private placement to qualified institutional buyers under Rule 144A under the Securities Act. Selling securityholders may offer or sell the notes and the underlying common stock under this prospectus and any supplements thereto. See Plan of Distribution.

The following table sets forth information we have received from the selling securityholders relating to the beneficial ownership of the principal amount of the notes and underlying common stock beneficially owned by each of the selling securityholders that may be offered using this prospectus. In no instance will the amount of notes or underlying common stock sold pursuant to the registration statement exceed the aggregate amount of such securities initially registered. Except as otherwise indicated, to our knowledge, all persons listed below have sole voting and dispositive power with respect to their securities.

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Selling securityholders listed in the table below may have sold or transferred some or all of their notes or the underlying common stock since the date on which we received such information pertaining to the selling securityholder. Additional selling securityholders will be added by a post-effective amendment to the registration statement.

Name of Selling Securityholder (1)	Principal Amount of Notes Beneficially Owned that May be Sold	Percentage of Notes Outstanding	Number of Shares of Common Stock that May be Sold (2)	Percentage of Common Stock Outstanding (3)
Arkansas PERS (7)	$ 980,000	*	49,544	*
B.G.I. Global Investors c/o Forest Investment Management, LLC	$ 114,000	*	5,763	*
Bank of New York	$ 90,000	*	4,550	*
Boilermakers Blacksmith Pension Trust (7)	$ 1,250,000	1.1%	63,195	*
Coastal Convertibles Ltd.	$ 2,000,000	1.7%	101,112	*
Delaware PERS (7)	$ 1,400,000	1.2%	70,778	*
Delta Airlines Master Trust (7)	$ 575,000	*	29,069	*
Duke Endowment (7)	$ 245,000	*	12,386	*
Forest Fulcrum Fund LLP (7)	$ 255,000	*	12,891	*
Forest Global Convertible Fund Series A-5	$ 1,344,000	1.2%	67,947	*
Forest Multi-Strategy Master Fund SPC, on behalf of Series F, Multi-Strategy Segregated Portfolio	$ 237,000	*	11,981	*
Froley Revy Investment Convertible Securities Fund (7)	$ 140,000	*	7,077	*
ICI American Holdings Trust (7)	$ 315,000	*	15,925	*
Lyxor Master Fund c/o Forest Investment Management, LLC	$ 618,000	*	31,243	*
PFPC Trust Company	$ 620,000	*	31,344	*
Prudential Insurance Co. of America (7)	$ 85,000	*	4,297	*
Relay 11 Holdings c/o Forest Investment Management, LLC	$ 75,000	*	3,791	*
Sphinx Convertible Arbitrage c/o Forest Investment Management, LLC	$ 36,000	*	1,820	*
State of Oregon/Equity (7)	$ 4,425,000	3.8%	223,710	*
Syngenta AG (7)	$ 240,000	*	12,133	*
Topanga XI (7)	$ 975,000	*	49,292	*
U.S. Bancorp	$ 3,140,000	2.7%	158,746	*
UMB Bank (United Missouri Bank)	$ 150,000	*	7,583	*
Wolverine Asset Management, LLC	$ 2,025,000	1.8%	102,376	*
Xavex-Convertible Arbitrage 4 Fund c/o Forest Investment Management, LLC	$ 42,000	*	2,123	*
Zeneca Holdings Trust (7)	$ 345,000	*	17,441	*
Zurich Master Hedge Fund c/o Forest Investment Management, LLC	$ 174,000	*	8,796	*

Alexandra Global Master Fund, Ltd.	$4,000,000	3.5%	202,224	*

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Name of Selling Securityholder (1)	Principal Amount of Notes Beneficially Owned that May be Sold	Percentage of Notes Outstanding	Number of Shares of Common Stock that May be Sold (2)	Percentage of Common Stock Outstanding (3)
DBAG-London (7)	$ 7,653,000	6.7%	386,905	1.3%
Grace Convertible Arbitrage Fund, Ltd.	$ 4,000,000	3.5%	202,224	*
San Diego County Employee Retirement Association	$ 1,000,000	*	50,556	*
Zazove Convertible Arbitrage Fund, L.P.	$ 4,000,000	3.5%	202,224	*
Zazove Hedged Convertible Fund, L.P.	$ 2,000,000	1.7%	101,112	*
Ramius Capital Group	$ 750,000	*	37,917	*
Ramius, LP	$ 100,000	*	5,055	*
Ramius Master Fund, Ltd.	$ 2,450,000	2.1%	123,862	*
RCG Baldwin, LP	$ 500,000	*	25,278	*
RCG Latitude Master Fund, Ltd.	$ 2,450,000	2.1%	123,862	*
RCG Multi-Strategy Master Fund, Ltd.	$ 1,000,000	*	50,556	*
Xavex Convertible Arbitrage 5 Fund	$ 750,000	*	37,917	*
Goldman Sachs International (4) (7)	$ 6,000,000	5.2%	303,336	*
Fidelity Advisor Series I: Fidelity Advisor Value Strategies Fund (5) (8)	$ 7,500,000	6.5%	379,170	1.2%
Fidelity Financial Trust: Fidelity Convertible Securities Fund (8)	$ 4,000,000	3.5%	202,224	*
Man Convertible Bond Master Fund, Ltd.	$ 2,440,000	2.1%	123,356	*
St. Thomas Trading, Ltd.	$ 6,060,000	5.3%	306,369	1.0%
Variable Insurance Products Fund III: Value Strategies Portfolio (6) (8)	$ 780,000	*	39,433	*
LLT Limited	$ 70,000	*	3,538	*
Total principal amount of Notes held by known holders	$ 79,398,000	69%	4,014,031	13%
Total principal amount of Notes held by unknown holders	$ 35,602,000	31%	1,799,921	6%
Total Principal Amount of Notes	$115,000,000	100%	5,813,952	

*Less than 1%.

(1) The selling securityholders listed above reported no beneficial ownership of WMS securities, except as noted. The selling securityholders listed above reported no material relationships with WMS within the past three years, unless otherwise noted.

(2) Assumes conversion of all of the holders notes at a conversion price of $19.78 per share of common stock. However, this conversion is subject to adjustment as described under Description of Notes Conversion rights. As a result, the number of shares of common stock issuable upon

conversion of the notes may increase or decrease in the future.

(3) Calculated under Rule 13d-3(d)(1)(i) of the Securities Exchange Act based on 30.4 million shares of common stock outstanding as of September 2, 2004. In calculating this amount for each holder, we treated as outstanding the number of shares of common stock issuable upon conversion of all of that particular holder s

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notes, but none of any other holders notes. Assumes that holders do not beneficially own any common stock other than the common stock issuable upon conversion of the notes.

(4) Goldman Sachs & Co., an affiliate of Goldman Sachs International, notified us that as of September 19, 2003 it also owned 50,081 shares of WMS common stock.

(5) Fidelity Advisor Series I: Fidelity Advisor Value Strategies Fund notified us that as of September 29, 2003 it also owned 2,301,300 shares of WMS common stock.

(6) Variable Insurance Products Fund III: Value Strategies Portfolio notified us that as of September 29, 2003 it also owned 306,800 shares of WMS common stock.

(7) This selling securityholder is an underwriter.

(8) This selling securityholder has informed us that it is an affiliate of a broker-dealer. This selling securityholder has also represented to us that it purchased the Notes in the ordinary course of business and that at the time of such purchase, the selling securityholder had no agreements or understandings, directly or indirectly, with any person to distribute the securities.

Because the selling securityholders may offer all or some of their notes or the underlying common stock at various times, we cannot estimate the amount of the notes or underlying common stock that will be held by the selling securityholders upon the termination of any particular offering. See Plan of Distribution.

PLAN OF DISTRIBUTION

We will not receive any of the proceeds of the sale of the notes and the underlying common stock offered by this prospectus. The notes and the underlying common stock may be sold from time to time to purchasers:

directly by the selling securityholders; and

through underwriters, broker-dealers or agents who may receive compensation in the form of discounts, concessions or commissions from the selling securityholders or the purchasers of the notes and the underlying common stock.

The selling securityholders and any broker-dealers or agents who participate in the distribution of the notes and the underlying common stock may be deemed to be underwriters. As a result, any profits on the sale of the notes and underlying common stock by selling securityholders and any discounts, commissions or concessions received by any such broker-dealers or agents might be deemed to be underwriting discounts and commissions under the securities laws. If the selling securityholders were to be deemed underwriters, the selling securityholders may be subject to liabilities including, but not limited to those under the securities laws. We have identified in the Selling Securityholders Table those selling securityholders who are underwriters. We have also identified in the Selling Securityholders Table those selling securityholders who are affiliates of a broker-dealer, but who are not deemed underwriters because they have represented to us that they purchased the notes in the ordinary course of business and that at the time of purchase of the notes, the selling securityholder had no agreements or understandings, directly or indirectly, with any person to distribute the securities.

If the notes and underlying common stock are sold through underwriters or broker-dealers, the selling securityholders will be responsible for underwriting discounts or commissions or agent s commissions.

The notes and underlying common stock may be sold in one or more transactions at:

fixed prices;

prevailing market prices at the time of sale;

varying prices determined at the time of sale; or

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negotiated prices.

The sales may be effected in transactions:

on any national securities exchange or quotation service on which the notes and underlying common stock may be listed or quoted at the time of the sale;

in the over-the-counter market;

in transactions otherwise than on such exchanges or services or in the over-the-counter market;

through the writing of options; or

through the settlement of short sales.

In connection with the sales of the notes and underlying common stock or otherwise, the selling securityholders may enter into hedging transactions with broker-dealers. These broker-dealer may in turn engage in short sales of the notes and underlying common stock in the course of hedging their positions. The selling securityholders may also sell the notes and underlying common stock short and deliver notes and underlying common stock to close out short positions, or loan or pledge notes and underlying common stock to broker-dealers that, in turn, may sell the notes and underlying common stock. To our knowledge, there are currently no plans, arrangements or understandings between any selling securityholders and any underwriter, broker-dealer or agent regarding the sale of the notes and the underlying common stock by the selling securityholders.

Our common stock trades on the New York Stock Exchange under the symbol WMS. We cannot assure you as to the development of liquidity or any trading market for the notes. See Risk Factors There may be no liquid market for the notes.

We do not know when or whether any selling securityholder will sell any or all of the notes or underlying common stock pursuant to this prospectus. In addition, any notes or underlying common stock covered by this prospectus that qualify for sale under Rule 144 or Rule 144A of the Securities Act of 1933 may be sold under Rule 144 or Rule 144A rather than under this prospectus.

The selling securityholders and other persons participating in any distribution will be subject to the securities laws and rules, including Regulation M, which may limit the timing of purchases and sales of any of the note and the underlying common stock by the selling securityholders and any other persons. In addition, Regulation M of the Exchange Act may restrict the ability of any person engaged in the distribution of the notes and the underlying common stock to engage in market-making activities with respect to the particular notes and the underlying common stock being distributed for a period of up to five business days prior to the commencement of the distribution. This may affect the marketability of the notes and the underlying common stock and the ability of any person or entity to engage in market-making activities with respect to the notes and the underlying common stock.

Under the Registration Rights Agreement, we and the selling securityholders will be indemnified by one another against liabilities, including some liabilities under the Securities Act of 1933, or will be entitled to contribution in connection with these liabilities.

We have agreed to pay substantially all of the expenses incidental to the registration of the notes and the underlying common stock other than commissions, fees and discounts of underwriters, brokers, dealers and agents. We estimate that our total expenses of the registration statement and this post-effective amendment, excluding underwriting discounts and commissions, will be approximately $137,304.

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INTERESTS OF NAMED EXPERTS AND COUNSEL

Legal Matters

Shack Siegel Katz & Flaherty P.C., New York, New York are opining upon the validity of the securities being registered. Shareholders of Shack Siegel Katz & Flaherty P.C. own options to purchase an aggregate of 10,000 shares of our common stock.

Experts

Ernst & Young LLP, independent registered public accounting firm, have audited our consolidated financial statements and schedule included in our Annual Report on Form 10-K for the year ended June 30, 2004, as set forth in their report, which is incorporated by reference in this prospectus and elsewhere in the registration statement. Our financial statements and schedule are incorporated by reference in reliance on Ernst & Young LLP s report, given on their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any documents we have filed with the SEC at the SEC s Public Reference Room at 450 Fifth Street, N.W., Washington, DC 20549. You may call the SEC at 1-800-SEC-0330 for information on the operation of the Public Reference Room. Our SEC filings are also available to the public at the SEC s Internet website found at http://www.sec.gov and can be inspected at the offices of the NYSE, 20 Broad Street, New York, NY 10005. The SEC s Internet site contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. We maintain an Internet website at www.wmsgaming.com. The materials on our website are not part of this prospectus.

DOCUMENTS INCORPORATED BY REFERENCE

The SEC allows us to incorporate by reference into this prospectus the information that we file with the SEC. This means that we are disclosing important information to you without setting forth that information again in this document. Instead, we are referring you to the documents listed below, and you should consider those documents to be part of this prospectus. Information that we file with the SEC after the date of this prospectus will update and supersede the information in this prospectus and the documents listed below.

We incorporate by reference into this prospectus the documents listed below, all documents that we file under the Securities Exchange Act of 1934 after the date of this amendment and prior to effectiveness of this amendment and all documents that we file in the future with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, including exhibits, until this offering is terminated:

- our annual report on Form 10-K for the year ended June 30, 2004;
- our proxy statement for the annual stockholders meeting held on December 11, 2003;
- our current report on Form 8-K filed on August 13, 2004;

the description of our common stock and accompanying rights contained in our registration statement on Form 8-A filed on January 22, 1982 and Form 8-A filed on March 25, 1998 (File No. 1-08300).

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We will provide to each person, including any beneficial owner, to whom a copy of this prospectus is delivered, a copy of any or all of the information that we have incorporated by reference in this prospectus. You may request copies of this information in writing or orally, and we will provide it at no cost. You may contact us at:

WMS Industries Inc.
800 South Northpoint Boulevard
Waukegan, Illinois 60085
Attention: Kathleen McJohn, General Counsel
Telephone: (847) 785-3000

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$115,000,000

2.75% Convertible Subordinated Notes due July 15, 2010
and the Common Stock, par value $.50 per share, issuable upon conversion of the Notes

Prospectus

September ___, 2004

You should rely only on the information contained in or incorporated by reference in this prospectus. We have not authorized any dealer, salesperson or other person to give you different information. This prospectus is not an offer to sell nor is it seeking an offer to buy the securities referred to in this prospectus in any jurisdiction where the offer or sale is not permitted. The information contained in this prospectus is correct only as of the date of this prospectus, regardless of the time of the delivery of this prospectus or any sale of the securities referred to in this prospectus.

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The table below itemizes the expenses payable by the Registrant in connection with the registration and issuance of the securities being registered hereunder, other than underwriting discounts and commissions. The Registrant will bear all expenses of this offering. All amounts shown are estimates, except for the SEC registration fee.

Registration Fee	$ 9,304
Accounting Fees and Expenses	56,000
Legal Fees and Expenses	55,000
Trustee s fees and expenses	9,500
NYSE Listing Fees	2,500
Miscellaneous	5,000
Total	$137,304

Item 15. Indemnification of Directors and Officers.

The Registrant s authority to indemnify its officers and directors is governed by the provisions of Section 145 of the General Corporation Law of the State of Delaware (the DGCL), by the Amended and Restated Bylaws of the Registrant, as amended (the Bylaws), by the Restated Certificate of Incorporation, as amended, of the Registrant (the Certificate of Incorporation) and by indemnification agreements entered into with each of its directors (the Indemnity Agreements).

Under Section 145 of the DGCL, directors and officers as well as other employees and individuals may be indemnified against expenses (including attorneys fees), judgments, fines and amounts paid in settlement in connection with specified actions, suits or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation (a derivative action)) if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the Registrant, and with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. A similar standard of care is applicable in the case of derivative actions, except that indemnification only extends to expenses (including attorneys fees) incurred in connection with defense or settlement of such an action and the DGCL requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the Registrant.

The Certificate of Incorporation and Bylaws provide that the Registrant shall, to the fullest extent permitted by Section 145 of the DGCL, (i) indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section, and (ii) advance expenses related thereto to any and all said persons. The indemnification and advancement of expenses provided for therein shall not be deemed to be exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in their official capacities and as to action in another capacity while holding such offices, and shall continue as to

persons who have ceased to be directors, officers, employees or agents and shall inure to the benefit of the heirs, executors and administrators of such persons. In addition, the Certificate of Incorporation provides for the elimination of personal liability of directors of the Registrant to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director, to the fullest extent permitted by the DGCL, as amended and supplemented.

The Indemnity Agreements provide for the indemnification of officers and directors to the fullest extent permitted by the laws of the State of Delaware, and obligate the Registrant to provide the maximum protection allowed under Delaware law. In addition, the Indemnity Agreements supplement and increase such protection in certain respects.

The Registration Rights Agreement, filed as Exhibit 99.2 hereto, provides for the indemnification of the Registrant and its affiliates against civil liabilities, including liabilities under the Securities Act, that may arise from

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any written information furnished to the Registrant by the selling securityholders for use in the prospectus included in this registration statement.

The Registrant has purchased insurance policies that provide coverage for losses of up to an annual aggregate amount of $40 million arising from claims made against the directors or officers for any actual or alleged wrongful act in their capacities as directors or officers of the Registrant. Of this $40 million, $20 million is available only for claims for which indemnity is not available as described in this Item 15. The remaining $20 million under the policies also covers losses of the Registrant for securities claims made against the Registrant and for the amount of any indemnification paid to directors and officers.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 16. Exhibits.

The following exhibits are being furnished herewith or incorporated by reference herein:

Exhibit Number	Description
4.1	Restated Certificate of Incorporation of the Registrant dated February 17, 1987; Certificate of Amendment dated January 28, 1993; and Certificate of Correction dated May 4, 1994, all incorporated by reference to Exhibit 3(a) to the Registrant s Annual Report on Form 10-K for the year ended June 30, 1994 (File No. 1-8300).
4.2	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant, as filed with the Secretary of State of the State of Delaware on February 25, 1998, incorporated by reference to Exhibit 3.1 to the Registrant s Quarterly Report on Form 10-Q for the quarter ended March 31, 1998 (File No. 1-8300).
4.3	Rights Agreement, dated March 5, 1998 between the Registrant and The Bank of New York, as Rights Agent, incorporated by reference to the Registrant s Registration Statement on Form 8-A, filed with the Commission on March 25, 1998 (File No. 1-8300).
4.4	By-Laws of the Registrant, as amended and restated through March 10, 2004, incorporated by reference to the Registrant s Quarterly Report on Form 10-Q for the quarter ended March 31, 2004.
4.5	Indenture, dated as of June 25, 2003, by and between the Registrant, as Issuer, and BNY Midwest Trust Company, as Trustee, incorporated by reference to an exhibit to the Registrant s Current Report on Form 8-K dated June 25, 2003 (the June 2003 Form 8-K).
4.6	Form of Note, incorporated by reference to Exhibit A to the Indenture filed as an exhibit to the June 2003 Form 8-K.
5	Opinion of Shack Siegel Katz & Flaherty P.C., counsel for Registrant, incorporated by reference to Exhibit 5 to the Registrant s Registration Statement on Form S-3, File No. 333-107321, filed with the

Commission on July 25, 2003.

12 Computation of Ratio of Earnings to Fixed Charges.

23.1 Consent of Shack Siegel Katz & Flaherty P.C. (contained in the Opinion filed as Exhibit 5).

23.2 Consent of Ernst & Young LLP.

24 Power of Attorney (contained on the signature page of this Registration Statement on Form S-3, File No. 333-107321, filed with the Commission on July 25, 2003 and on Post-Effective Amendment No. 1 to this Registration Statement filed with the Commission on July 1, 2004).

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Exhibit Number	Description
25	Form T-1 Statement of Eligibility of Trustee under Trust Indenture Act of 1939, incorporated by reference to Exhibit 25 to the Registrant s Registration Statement on Form S-3, File No. 333-107321, filed with the Commission on July 25, 2003.
99.1	Purchase Agreement, dated June 20, 2003, by and between the Registrant and CIBC World Markets Corp., incorporated by reference to an exhibit to the June 2003 Form 8-K
99.2	Registration Rights Agreement, dated June 25, 2003, by and between the Registrant and CIBC World Markets Corp., incorporated by reference to an exhibit to the June 2003 Form 8-K.

Item 17. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

(2) That, for the purpose of determining liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof;

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant s annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan s annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer of controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Amendment to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Waukegan, State of Illinois on this 3rd day of September, 2004.

WMS INDUSTRIES INC.

By: /s/ Brian R. Gamache
Brian R. Gamache,
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Date	Title
/s/ Brian R. Gamache Brian R. Gamache	September 3, 2004	President and Chief Executive Officer (Principal Executive Officer) and Director
/s/ Scott D. Schweinfurth Scott D. Schweinfurth	September 3, 2004	Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)
* Louis J. Nicastro	September 3, 2004	Chairman of the Board of Directors
* Norman J. Menell	September 3, 2004	Vice Chairman of the Board of Directors
* William C. Bartholomay	September 3, 2004	Director
* William E. McKenna	September 3, 2004	Director
* Donna B. More	September 3, 2004	Director

Neil D. Nicastro		
*	September 3, 2004	Director
Harvey Reich		
*	September 3, 2004	Director
David M. Satz, Jr.		
*	September 3, 2004	Director
Ira Sheinfeld		
*	September 3, 2004	Director
Harold H. Bach, Jr.		

* By: /s/ Kathleen J. McJohn

Kathleen J. McJohn,
Attorney- In-Fact

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99.2 Registration Rights Agreement, dated June 25, 2003, by and between the Registrant and CIBC World Markets Corp., incorporated by reference to an exhibit to the June 2003 Form 8-K.

MARGIN-LEFT: 0pt; MARGIN-RIGHT: 0pt" align="left">U.S. Holders that Receive Solely Cash due to Exercise of Dissenters' Rights

Upon the proper exercise of dissenters' rights, the exchange of Bay Bank shares solely for cash generally will result in recognition of gain or loss by the U.S. holder in an amount equal to the difference between the amount of cash received and the U.S. holder's tax basis in the Bay Bank shares surrendered. The gain or loss recognized will be long-term capital gain or loss if, as of the effective date of the merger, the U.S. holder's holding period for the Bay Bank shares surrendered exceeds one year. The deductibility of capital losses is subject to limitations. In some cases, if a U.S. holder actually or constructively owns Trustmark common stock after the merger, the cash received could be treated as having the effect of the distribution of a dividend under the tests set forth in Section 302 of the Code, in which case such U.S. holder may have dividend income up to the amount of the cash received. In such cases, U.S. holders that are corporations should consult their tax advisors regarding the potential applicability of the "extraordinary dividend" provisions of the Code.

Cash Instead of a Fractional Share

If a U.S. holder receives cash in lieu of a fractional share of Trustmark common stock, the U.S. holder will be treated as having received a fractional share of Trustmark common stock pursuant to the merger and then as having exchanged the fractional share of Trustmark common stock for cash in a redemption by Trustmark. As a result, the U.S. holder generally will recognize gain or loss equal to the difference between the amount of cash received and the U.S. holder's basis in the fractional share of Trustmark common stock as set forth above. This gain or loss generally will be capital gain or loss, and will be long-term capital gain or loss if, as of the effective date of the merger, the U.S. holder's holding period with respect to the fractional share (including the holding period of the Bay Bank common stock surrendered therefore) exceeds one year.

Material United States Federal Income Tax Consequences if the Merger Fails to Qualify as a Reorganization

If the merger does not qualify as a "merger" within the meaning of Section 368(a) of the Code, then each U.S. holder of Bay Bank common stock will recognize capital gain or loss equal to the difference between (i) the sum of the fair market value of the shares of Trustmark common stock, as of the effective date of the merger, received by such U.S. holder pursuant to the merger and the amount of any cash received by such U.S. holder pursuant to the merger, and (ii) its adjusted tax basis in the shares of Bay Bank common stock surrendered in exchange therefore. Gain or loss will be computed separately with respect to each identified block of Bay Bank common stock exchanged in the merger.

Backup Withholding

If a U.S. holder is a non-corporate holder of Bay Bank common stock, the U.S. holder may be subject, under certain circumstances, to information reporting and backup withholding (currently at a rate of 28%) on any cash payments that the U.S. holder receives. A U.S. holder generally will not be subject to backup withholding, however, if the U.S. holder:

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furnishes a correct taxpayer identification number, certifies that it is not subject to backup withholding on the substitute Form W-9 or successor form included in the election form/letter of transmittal that the U.S. holder will receive, and otherwise complies with all the applicable requirements of the backup withholding rules; or

provides proof that it is otherwise exempt from backup withholding.

Any amounts withheld under the backup withholding rules are not an additional tax and will generally be allowed as a refund or credit against the U.S. holder's United States federal income tax liability, provided that the U.S. holder timely furnishes the required information to the Internal Revenue Service.

Certain Reporting Requirements

If a U.S. holder that receives Trustmark common stock in the merger is considered a "significant holder," such U.S. holder will be required to (i) file a statement with its U.S. federal income tax return providing certain facts pertinent to the merger, including such U.S. holder's tax basis in, and the fair market value of, the Bay Bank common stock surrendered by such U.S. holder, and (ii) retain permanent records of these facts relating to the merger. A "significant holder" is any Bay Bank shareholder that, immediately before the merger, (i) owned at least 1% (by vote or value) of the outstanding common stock of Bay Bank, or (ii) owned Bay Bank securities with a tax basis of $1 million or more.

This discussion of certain material United States federal income tax consequences is for general information only and is not tax advice. Holders of Bay Bank common stock are urged to consult their tax advisors with respect to the application of United States federal income tax laws to their particular situations as well as any tax consequences arising under the United States federal estate or gift tax rules, or under the laws of any state, local, foreign or other taxing jurisdiction or under any applicable tax treaty.

Accounting Treatment

The merger will be accounted for under the purchase method of accounting under accounting principles generally accepted in the United States of America. Under this method, Bay Bank's assets and liabilities as of the date of the merger will be recorded at their respective fair values. If the purchase price for Bay Bank exceeds the fair value of identifiable net assets acquired, including core deposit intangibles, the difference will be recorded as goodwill, however, if the fair value of the identifiable net assets acquired exceeds the purchase price, the difference is considered a bargain purchase and the acquirer will recognize the resulting gain in earnings on the acquisition date. In accordance with ASC Topic 805, "Business Combinations," issued in July 2001, the goodwill resulting from the merger will not be amortized to expense, but instead will be reviewed for impairment at least annually and to the extent goodwill is impaired, its carrying value will be written down to its implied fair value and a charge will be made to earnings. Core deposit and other intangibles with definite useful lives recorded by Trustmark Bank in connection with the merger will be amortized to expense in accordance with such rules. The consolidated financial statements of Trustmark issued after the merger will reflect the results attributable to the acquired operations of Bay Bank beginning on the date of completion of the merger.

Financial Interests of Directors and Officers of Bay Bank in the Merger

In considering the recommendation of the board of directors of Bay Bank to vote for the proposal to approve the merger agreement, you should be aware that the directors of Bay Bank have interests in the merger that are in addition to, or different from, their interests as shareholders of Bay Bank. The board of directors of Bay Bank was aware of these interests and considered them in approving the merger agreement. These interests include:

Insurance. Trustmark has agreed to provide an indemnity to Bay Bank's directors, officers, and employees for a period of three (3) years following the merger to the same extent these persons were entitled to indemnification by Bay Bank and applicable law (including any director liability arising out of the recommendation of the Bay Bank board of directors to the Bay Bank shareholders to vote in favor of the merger agreement and the approval of the merger agreement by the Bay Bank board of directors), and Trustmark has agreed to exercise commercially reasonable efforts to maintain its policy of directors and officers liability insurance (or comparable coverage) on a "claims made" basis to cover Bay Bank's directors and officers for a period of three (3) years after the effective time of the merger for acts and omissions occurring prior to the merger.

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Employment of Certain Officers. Certain officers of Bay Bank will become employees of Trustmark Bank upon the completion of the merger.

Restrictions on Resales of Trustmark Common Stock Received in the Merger

The shares of Trustmark common stock issued in the merger will not be subject to any restrictions on transfer arising under the Securities Act of 1933, as amended, except for shares of Trustmark common stock issued to any Bay Bank shareholder who may be deemed to be an "affiliate" of Trustmark after completion of the merger. "Affiliates" generally are defined as persons or entities who control, are controlled by, or are under common control with Trustmark at or after the effective time of the merger and generally include executive officers, directors, and beneficial owners of 10% or more of the common stock of Trustmark. Former Bay Bank shareholders who are not affiliates of Trustmark after the completion of the merger may sell their shares of Trustmark common stock received in the merger at any time. Any former Bay Bank shareholder who becomes an affiliate of Trustmark after completion of the merger will be subject to the volume and sale limitations of Rule 144 under the Securities Act of 1933, as amended, until they are no longer affiliates of Trustmark. This proxy statement/prospectus does not cover resales of Trustmark common stock received by any person upon completion of the merger, and no person is authorized to make any use of this proxy statement/prospectus in connection with any resale.

Dissenters' Rights of Appraisal in the Merger

General. If you hold one or more shares of Bay Bank common stock, you are entitled to dissenters' rights under Section 607.1302 of the Florida Business Corporation Act, and you have the right to dissent from the merger and have the appraised fair value of your shares of Bay Bank common stock paid to you in cash. The appraised fair value may be more or less than the value of the combination of shares of Trustmark common stock and cash being paid in the merger. If you are contemplating exercising your right to dissent, we urge you to read carefully the provisions of the Florida Business Corporation Act, which are attached to this proxy statement/prospectus as Appendix B, and consult with your legal counsel before electing or attempting to exercise these rights. The following discussion summarizes the steps you must take if you want to exercise your right to dissent. You should read this summary and the full text of the law carefully. You must strictly comply with the statutory procedures of Sections 607.1301 through 607.1333 of the Florida Business Corporation Act, and the failure to so comply in any regard will cause a forfeiture of your appraisal rights.

How to Exercise and Perfect Your Right to Dissent. To be eligible to exercise your right to dissent to the merger:

You must, prior to the taking of the vote on the merger at the Bay Bank special meeting, deliver a written notice to Bay Bank of your intent to demand payment for your shares of Bay Bank common stock if the merger is effectuated. A vote against the merger will not alone be deemed to be the written notice of intent to demand payment and will not be deemed to satisfy the notice requirements under the Florida Business Corporation Act. The notice of intent to demand payment must be signed in the same manner as the shares of Bay Bank common stock are registered on the books of Bay Bank.

A dissenting shareholder does not have to vote against the merger, but a dissenting shareholder cannot vote, or allow any nominee who holds such shares for the dissenting shareholder to vote, any of such shareholder's Bay Bank common stock in favor of the merger. A vote in favor of the merger will constitute a waiver of the shareholder's appraisal rights. Also, any properly executed proxy on which voting instructions are not specified will be voted FOR the proposal to approve the merger agreement and will constitute a waiver of the shareholder's appraisal rights, unless the shareholder has timely delivered to Bay Bank the written notice regarding a shareholder's dissenter's rights as required by the Florida Business Corporation Act.

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Your Demand for Payment. If you intend to dissent from the merger, you should deliver, in person or by mail (certified mail, return receipt requested, being the recommended form of delivery), the written notice of intent to demand payment notice to:

Bay Bank & Trust Co.
509 Harrison Avenue
Panama City, Florida 32401
Attention: Secretary

Trustmark's Actions In Response to Your Demand for Payment. Within ten (10) days after, but no earlier than, the completion of the merger, Section 607.1322 of the Florida Business Corporation Act requires Trustmark to send to each Bay Bank shareholder who filed a notice of intent to demand payment for his or her shares with a written appraisal notice and an appraisal election form, which election form will specify the date the merger became effective and provide space for the shareholder to state:

the shareholder's name and address;

the number of shares as to which the shareholder is asserting appraisal rights;

that the shareholder did not vote for the merger;

whether the shareholder accepts the offer of Trustmark to pay its estimate of the fair value of the shares of Bay Bank common stock to the shareholder; and

if the shareholder does not accept the offer of Trustmark, the shareholder's estimated fair value of the shares of Bay Bank common stock and a demand for payment of the shareholder's estimated value plus interest.

Trustmark's appraisal notice to you will state:

where to return the completed appraisal election form and the shareholder's stock certificate(s), and the date by which they must be received by Trustmark or its agent, which date may not be fewer than forty (40) days nor more than sixty (60) days after the date Trustmark sent the appraisal notice and appraisal election form to the shareholder;

that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by Trustmark or its agent by such specified date;

Trustmark's estimated fair value of Bay Bank common stock;

an offer by Trustmark to the dissenting shareholder who is entitled to appraisal rights to pay Trustmark's estimate of fair value set forth in the appraisal notice;

that, if requested in writing, Trustmark will provide to the shareholder so requesting, within ten (10) days after the date specified in the appraisal notice for receipt of the appraisal election form, the number of shareholders who return the appraisal election forms by such date and the total number of shares owned by such shareholders; and

the date by which a notice to withdraw from the appraisal process must be received, which date must be within twenty (20) days after the date specified in the appraisal notice for receipt of the appraisal election form.

In addition to the appraisal election form, Trustmark's appraisal notice to you will also be accompanied by:

financial statements of Bay Bank, consisting of a balance sheet as of the end of the fiscal year ending not more than fifteen (15) months prior to the date of Trustmark's appraisal notice, an income statement for that year, a cash flow statement for that year, and the latest available interim financial statements, if any; and

a copy of the appraisal rights statutes under the Florida Business Corporation Act.

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Bay Bank Stock Certificates. A dissenting shareholder must send the certificate(s) representing the shareholder's shares of Bay Bank common stock with the appraisal election form by the date specified in the appraisal notice. Any dissenting shareholder failing to return a properly completed appraisal election form and the shareholder's Bay Bank stock certificates within the period stated in the form will lose such shareholder's appraisal rights and be bound by the terms of the merger agreement.

Payment of Fair Value for Your Bay Bank Common Stock. If the dissenting shareholder accepts the offer of Trustmark in the appraisal election form to pay Trustmark's estimate of the fair value of the Bay Bank shares, payment for the shares of the dissenting shareholder is to be made within ninety (90) days after the receipt of the appraisal election form by Trustmark or its agent. Upon payment of the agreed value, the dissenting shareholder will cease to have any interest in such shares.

A shareholder must assert appraisal rights with respect to all of the shares registered in such shareholder's name, except that a record shareholder may assert appraisal rights as to fewer than all of the shares registered in the record shareholder's name but which are owned by a beneficial shareholder, if the record shareholder objects with respect to all shares owned by the beneficial shareholder. A record shareholder must notify Bay Bank in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. A beneficial shareholder may assert appraisal rights as to any shares held on behalf of the shareholder only if the shareholder submits to Bay Bank the record shareholder's written consent to the assertion of such rights before the date specified in the appraisal notice for receipt of the appraisal election form, and does so with respect to all shares that are beneficially owned by the beneficial shareholder.

Rights as a Shareholder. Upon returning the appraisal election form, a dissenting shareholder shall be entitled only to payment pursuant to the procedure set forth in the applicable sections of the Florida Business Corporation Act and shall not be entitled to vote or to exercise any other rights of a shareholder, unless the dissenting shareholder withdraws such shareholder's demand for appraisal within the time period specified in the appraisal election form.

Withdrawal of Demand. A dissenting shareholder who has delivered the appraisal election form and such shareholder's Bay Bank stock certificates may decline to exercise appraisal rights and withdraw from the appraisal process by giving written notice to Trustmark within the time period specified in the appraisal election form for withdrawal. Thereafter, a dissenting shareholder may not withdraw from the appraisal process without the written consent of Trustmark. Upon a withdrawal, the right of the dissenting shareholder to be paid the fair value of such shareholder's shares will cease, and the shareholder will be reinstated as a shareholder of Trustmark.

Commencement of Legal Proceedings if a Demand for Payment Remains Unsettled. Section 607.1330 of the Florida Business Corporation Act addresses what should occur if a dissenting shareholder fails to accept the offer of Trustmark to pay the value of the shares as estimated by Trustmark, and Trustmark fails to comply with the demand of the dissenting shareholder to pay the value of the shares as estimated by the dissenting shareholder, plus interest.

If a dissenting shareholder refuses to accept the offer of Trustmark to pay the value of the shares as estimated by Trustmark, and Trustmark fails to comply with the demand of the dissenting shareholder to pay the value of the shares as estimated by the dissenting shareholder, plus interest, then within sixty (60) days after receipt of a written demand from any dissenting shareholder given by the date specified in the appraisal notice for receipt of the appraisal election form, Trustmark shall file an action in any court of competent jurisdiction in Bay County, Florida, requesting that the fair value of such shares be determined by the court.

If Trustmark fails to institute a proceeding within the above-prescribed period, any dissenting shareholder that has made a demand under Section 607.1326 of the Florida Business Corporation Act may do so in the name of Trustmark. A copy of the initial pleading will be served on each dissenting shareholder who has made such a demand. Trustmark

is required to pay each dissenting shareholder the amount found to be due within ten (10) days after final determination of the proceedings, which amount may, in the discretion of the court, include interest, which will also be determined by the court. Upon payment of the judgment, the dissenting shareholder ceases to have any interest in such shares.

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Section 607.1331 of the Florida Statutes provides that the costs of a court appraisal proceeding, including reasonable compensation for, and expenses of, appraisers appointed by the court, shall be determined by the court and assessed against Trustmark, except that the court may assess costs against all or some of the dissenting shareholders demanding appraisal, in amounts the court finds equitable, to the extent that the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to their appraisal rights. The court also may assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable, against (i) Trustmark and in favor of any or all dissenting shareholders if the court finds that Trustmark did not substantially comply with the notification provisions set forth in Sections 607.1320 and 607.1322, or (ii) either Trustmark or a dissenting shareholder, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the appraisal rights. If the court in an appraisal proceeding finds that the services of counsel for any dissenting shareholder were of substantial benefit to other dissenting shareholders, and that the fees for those services should not be assessed against Trustmark, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the dissenting shareholders who were benefited. To the extent that Trustmark fails to make a required payment when a dissenting shareholder accepts Trustmark's offer to pay the value of the shares as estimated by Trustmark, the dissenting shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from Trustmark all costs and expenses of the suit, including counsel fees.

Income Tax Consequences. See "PROPOSAL TO APPROVE THE MERGER AGREEMENT — Material U.S. Federal Income Tax Consequences of the Merger" beginning on page 31 for a discussion on how the federal income tax consequences of your action will change if you elect to dissent from the merger.

BECAUSE OF THE COMPLEXITY OF THE PROVISIONS OF THE FLORIDA LAW RELATING TO DISSENTERS' APPRAISAL RIGHTS, BAY BANK SHAREHOLDERS WHO ARE CONSIDERING EXERCISING APPRAISAL RIGHTS ARE URGED TO CONSULT THEIR OWN LEGAL ADVISERS.

THE BOARD OF DIRECTORS OF BAY BANK UNANIMOUSLY RECOMMENDS THAT ITS SHAREHOLDERS VOTE "FOR" THE PROPOSAL TO APPROVE THE MERGER AGREEMENT AND THE TRANSACTIONS CONTEMPLATED THEREBY.

PROPOSAL FOR ADJOURNMENT OR POSTPONEMENT OF THE SPECIAL MEETING

If Bay Bank does not receive a sufficient number of votes to approve the merger agreement and the merger, Bay Bank may propose to adjourn or postpone the special meeting of shareholders, if a quorum is present, for the purpose of soliciting additional proxies to approve the merger agreement and the merger. Bay Bank does not currently intend to propose adjournment or postponement at the special meeting of shareholders if there are sufficient votes to approve the merger agreement and the merger. If approval of the proposal to adjourn or postpone the special meeting of shareholders for the purpose of soliciting additional proxies is submitted to the Bay Bank shareholders for approval, the approval requires the affirmative vote of the holders of a majority of the votes cast at the special meeting of shareholders in person or by proxy and entitled to vote on such matter. The board of directors of Bay Bank unanimously recommends that the Bay Bank shareholders vote FOR the proposal to adjourn or postpone the special meeting of shareholders, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the special meeting of shareholders to approve the merger agreement and the merger.

COMPARISON OF RIGHTS OF SHAREHOLDERS OF BAY BANK AND TRUSTMARK

The rights of shareholders of Bay Bank under the articles of incorporation and bylaws of Bay Bank will differ in some respects from the rights that shareholders of Bay Bank will have as shareholders of Trustmark under the articles of incorporation and bylaws of Trustmark. Copies of Trustmark's articles of incorporation and bylaws have been

previously filed by Trustmark with the SEC. Copies of Bay Bank's articles of incorporation and bylaws are available from Bay Bank upon written request.

The summary set forth below reflects certain differences between the provisions contained in the articles of incorporation and bylaws of Bay Bank and the articles of incorporation and bylaws of Trustmark. The summary below is not intended to be complete and is qualified by reference to Florida law in the case of Bay Bank and Mississippi law in the case of Trustmark, the articles of incorporation and bylaws of Bay Bank, and the articles of incorporation and bylaws of Trustmark.

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	Bay Bank	Trustmark
Capitalization:	The articles of incorporation of Bay Bank authorize the issuance of up to 3,000,000 shares of common stock, par value $5.00 per share.	The articles of incorporation of Trustmark authorize the issuance of up to 250,000,000 shares of common stock, no par value per share, and up to 20,000,000 shares of preferred stock, no par value.
Corporate Governance:	The rights of Bay Bank shareholders are currently governed by Florida law and the articles of incorporation and bylaws of Bay Bank. Following the completion of the merger, Bay Bank shareholders will become Trustmark shareholders, and the rights of Bay Bank shareholders will be governed by Mississippi law and the articles of incorporation and bylaws of Trustmark.	The rights of Trustmark shareholders are governed by Mississippi law and the articles of incorporation and bylaws of Trustmark.
Board of Directors:	Minimum size is 5.	Minimum size is 5.
	Maximum size is 25.	Maximum size is 25.
	Current size is 11.	Current size is 10.
	The number of directors is fixed, from time to time, by a majority vote of the Bay Bank board of directors. The size of the board of directors may not be increased by more than two (2) directors during a year. At least three-fifths (3/5) of the directors must have been continuous residents of Florida for a one year period preceding their election as a director.	The number of directors is fixed, from time to time, by a majority vote of the board of directors or by resolution of the shareholders.
Election of Directors:	Under Florida law, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting of shareholders at which a quorum is present, unless otherwise provided in the articles of incorporation.	Under Mississippi law, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting of shareholders at which a quorum is present, unless otherwise provided in the articles of incorporation.
	Each shareholder of Bay Bank common stock has the right to vote the number of shares so owned for the election of directors. Shareholders of Bay Bank are not permitted to	Trustmark’s bylaws permit its shareholders to cumulate their votes for directors. Each shareholder is entitled to multiply the number of votes they are entitled to cast by the number of

cumulate their votes in the election of directors.	directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

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	Bay Bank	Trustmark
Election of Directors (cont.):	Directors of Bay Bank are elected at each annual meeting and hold office until the next annual meeting and until their successor is elected and qualified. This means that the entire board is elected at each annual meeting of shareholders.	Each director of Trustmark is elected for a one-year term or until his successor shall have been elected and qualified. This means that the entire board is elected at each annual meeting of the shareholders.
Removal of Directors:	Florida law provides that the shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that a director may only be removed for cause.	Mississippi law provides that the shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that a director may only be removed for cause. A director may be removed by the majority vote of the shareholders at the shareholders meeting expressly called for the purpose of removing the director or directors, unless the number of votes sufficient to elect the director is cast against removal.
	Bay Bank's bylaws permit the shareholders to remove one or more directors with or without cause. The Bay Bank bylaws allow the board of directors to remove a director only for cause.	Trustmark's bylaws provide that the shareholders may remove one or more directors with or without cause.
	A director may be removed by the shareholders or directors only at a meeting called for which one purpose is for removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is the removal of the director.	The executive committee of the board of directors shall have the authority to recommend the removal of a director for cause to the shareholders. "Cause" shall be defined as: (i) embezzlement or fraud; (ii) failure to pay any obligation owed to the corporation or an affiliate of the corporation; (iii) breaching a fiduciary duty or deliberately disregarding any rule of the corporation or its affiliates; (iv) conviction of a felony; (v) declaration of unsound mind by court order; (vi) adjudication of bankruptcy; (vii) nonacceptance of office or intentional failure to perform stated duties; (viii) willful violation of any final cease and desist order; or (ix) any conduct prejudicial to the interests of the corporation, including the disclosure of confidential information of the

corporation or its affiliates.

A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is the removal of the director.

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	Bay Bank	Trustmark
Board Vacancies:	Under Florida law, any vacancies existing in the board of directors (including a vacancy resulting from an increase in the number of directors) may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, or by the shareholders, unless the articles of incorporation provide otherwise.	Under Mississippi law, any vacancies existing in the board of directors may be filled by: (a) the shareholders entitled to vote thereon; (b) the board of directors; or (c) if the directors remaining in office constitute less than a quorum, then the remaining directors may fill the vacancy by the vote of the majority of the directors remaining in office. A director elected to fill a vacancy will hold office for the remainder of the term of his or her predecessor in office.
	Bay Bank's bylaws provide that vacancies resulting from an increase in the number of directors and vacancies occurring for any other reason except without cause may be filled by a majority vote of the directors then in office, although less than a quorum exists. Any vacancies existing in the board of directors by reason of removal without cause shall be filled by a vote of the Bay Bank shareholders. A director filling a vacancy caused by resignation, death, or removal shall be hold office for the unexpired term of such predecessor.	Trustmark's bylaws state that unless otherwise provided in the articles of incorporation (in which there is currently not such a provision), all vacancies in the board of directors, whether caused by resignation, removal, death, increase in the number of directors or otherwise, may be filled through appointment by a majority of the remaining directors then in office at an annual or special meeting called for that purpose; provided, however, should a vacancy cause the number of directors to be less than the number required for a quorum, then the majority of the remaining directors then in office shall appoint at least the number of directors necessary to constitute a quorum at an annual or special meeting called for that purpose. A director thus appointed to fill any vacancy shall hold office until the next annual meeting of the shareholders or until his successor is elected and qualified.
Vote Required for Certain Shareholder Actions:	Florida law provides that on matters other than the election of directors, the affirmative vote of the holders of a majority of the shares entitled to vote and represented at the shareholders' meeting shall be the act of the shareholders, unless the vote of a greater number is required by law or the articles of incorporation.	Mississippi law provides that on matters other than the election of directors, the affirmative vote of the holders of a majority of the shares entitled to vote and represented at the shareholders' meeting shall be the act of the shareholders, unless the vote of a greater number is required by law or the articles of incorporation.

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	Bay Bank	Trustmark
Vote Required for Certain Shareholder Actions (cont.):	Bay Bank's bylaws provide that the affirmative vote of the holders of a majority of the shares of Bay Bank common stock represented at a meeting at which a quorum is present and who are entitled to vote on a matter shall be the act of the shareholders, with each shareholder having one vote per share of common stock.	Trustmark's bylaws provide that other than a vote on directors, the affirmative vote of the holders of a majority of the shares of Trustmark common stock represented at a meeting at which a quorum is present and who are entitled to vote on a matter shall be the act of the shareholders, with each shareholder having one vote per share of common stock.
Amendment of Articles of Incorporation:	Under Florida law, a corporation's articles of incorporation may be amended by the board of directors without shareholder approval, unless otherwise provided in the articles of incorporation, to: (a) delete the authorization for a class or series of shares if no shares of such class or series are issued, (b) change the par value for a class or series of shares, (c) make any other change expressly permitted by Florida law to be made without shareholder action, or (d) accomplish certain ministerial tasks.	Mississippi law provides that a corporation's articles of incorporation may be amended by the board of directors without shareholder approval to: (a) change each issued and unissued authorized share of an outstanding class into a greater number of whole shares of that class; (b) increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend, or (c) accomplish certain ministerial tasks.
	Florida law requires that all other amendments to the articles of incorporation be first recommended by the board of directors who may condition its submission on any basis, except for conflict of interest or special circumstances communicated to the shareholders, and the shareholders entitled to vote on the amendment must approve the amendment by the affirmative vote of majority of the shares entitled to be cast at the meeting, unless Florida law, the articles of incorporation, or the board of directors requires a greater vote.	Mississippi law requires all other amendments to the articles of incorporation must be: (a) approved by the board of directors and recommended to the shareholders, and (b) approved by the majority of the votes of the shareholders entitled to be cast on the amendment.
	Unless otherwise provided in the articles of incorporation, the shareholders of a corporation having thirty-five (35) or fewer shareholders may amend the articles of	

incorporation without an act of the directors at a meeting for which notice of the changes to be made is given.

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	Bay Bank	Trustmark
Amendment of Articles of Incorporation (cont.):	The articles of incorporation may provide for a greater voting requirement or greater or lesser quorum requirement for shareholders to amend the articles of incorporation than is provided by Florida law, but in no event shall a quorum consist of less than one-third of the shares entitled to vote. An amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater. Bay Bank's articles of incorporation state that they may be amended at any shareholders' meeting by the affirmative vote of the majority of the outstanding shares of Bay Bank, unless a greater vote is required by law.	
Amendment of Bylaws:	Florida law provides that a board of directors may amend or repeal the corporation's bylaws unless: (a) the articles of incorporation or the law reserves the power to amend the bylaws generally or a particular bylaw provision exclusively to the shareholders, (b) the shareholders, in amending or repealing the bylaws generally or a particular bylaw provision, provide expressly that the board of directors may not amend or repeal the bylaws or that bylaw provision. The shareholders may amend or repeal the bylaws even though the bylaws may also be amended or repealed by the board of directors. If authorized by the articles of incorporation, the shareholders may	Mississippi law provides that a corporation's shareholders may amend or repeal the corporation's bylaws, and that a board of directors may amend or repeal the corporation's bylaws, unless the articles of incorporation reserves that power exclusively to the corporation's shareholders in whole or in part or as described below. A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed: (a) if adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides, or (b) if adopted by the board of directors, either by the shareholders or by the board of directors. A bylaw adopted or amended by the shareholders that increases a quorum or

adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is required by the law. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater. A bylaw that fixes a greater quorum or voting requirement for shareholders may not be adopted, amended, or repealed by the board of directors.

voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors. In amending, repealing, or adopting a bylaw, the corporation's shareholders may expressly prevent the board of directors from amending, repealing, or reinstating such bylaw.

Trustmark's bylaws provide that the bylaws may be altered, amended, or repealed or new bylaws adopted by the board of directors. Such provision does not limit shareholders' rights as described above.

	Bay Bank	Trustmark
Amendment of Bylaws (cont.):	A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed (a) if originally adopted by the shareholders, only by the shareholders, (b) if originally adopted by the board of directors, either by the shareholders or by the board of directors. A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors. Action by the board of directors to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater. Bay Bank's bylaws provide that the bylaws may be altered, amended, or repealed, in whole or in part, by a majority vote of the shareholders or a majority vote of the directors.	
Special Meetings of Shareholders:	Under Florida law, special meetings of the shareholders of a corporation may be called by: (a) the board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws, or (b) unless the articles of incorporation provide otherwise, the holders of at least 10%, but not to exceed 50%, of all the votes entitled to be cast on any issue proposed to be considered at a proposed special meeting.	Mississippi law provides that a special meeting of the shareholders may be called by: (a) the board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws, or (b) unless the articles of incorporation provide otherwise, the holders of at least 10% of all the votes entitled to be cast on any issue proposed to be considered at a proposed special meeting.

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	Bay Bank	Trustmark
Special Meetings of Shareholders (cont.):	Bay Bank's articles of incorporation provide that special meetings of the shareholders may be called by the board of directors or three or more shareholders owning in the aggregate not less than twenty-five (25%) of the outstanding shares of the corporation. Bay Bank's bylaws provide that special meetings of the shareholders may be called for any purpose, unless otherwise prescribed by statute, by the President or the board of directors, and shall be called by the President at the written request of shareholders owning not less than 40% of all the shares entitled to vote at the meeting.	Trustmark's bylaws provide that special meetings of shareholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by a majority of the board of directors and shall be called at any time by the President or the board of directors upon the request of shareholders owning ten percent (10%) of the outstanding shares of the corporation entitled to vote at such meetings. Business transacted at all special meetings shall be confined to the objects stated in the call.
Nomination of Directors:	Neither Bay Bank's articles of incorporation, nor its bylaws contain express provisions regarding the nomination of directors.	Trustmark's bylaws state that nominations for election to the board of directors may be made by the board of directors or by any shareholder of any outstanding class of capital stock of the corporation entitled to vote for election of directors. Nominations, other than those made by or on behalf of the existing management of the corporation, shall be made in writing and shall be delivered or mailed to the Chairman of the Board of the corporation not less than fourteen (14) days nor more than fifty (50) days prior to any meeting of shareholders called for the election of directors; provided, however, that if less than twenty-one (21) days' notice of the meeting is given to shareholders, such nomination shall be mailed or delivered to the Chairman of the Board of the corporation not later than the close of business on the seventh (7th) day following the day on which the notice of the meeting was mailed.

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	Bay Bank	Trustmark
Nomination of Directors (cont.):		Shareholder nominations shall contain the following information to the extent known to the notifying stockholder: (a) the name and address of each proposed nominee; (b) the principal occupation of each proposed nominee; (c) the total number of shares of capital stock of the corporation that will be voted for each proposed nominee; (d) the name and residence address of the notifying stockholder; and (e) the number of shares of capital stock of the corporation owned by the notifying stockholder. Nominations not made in accordance the foregoing may, in his discretion, be disregarded by the chairman of the meeting, and upon his instructions the vote tellers may disregard all votes cast for each such nominee.
Shareholder Proposal of Business:	Neither Bay Bank's articles of incorporation, nor its bylaws contain express provisions regarding shareholder proposals of business.	Shareholders may submit proposals to be considered at an annual meeting of shareholders if they do so in accordance with applicable regulations of the SEC. Any shareholder intending to propose a matter for consideration at an annual meeting of shareholders must submit such proposal in writing to the Secretary of Trustmark not less than 120 calendar days before the date that the corporation's proxy statement is released to shareholders in connection with the previous year's annual meeting. A proposal for a meeting of shareholders other than a regularly scheduled annual meeting must be submitted in writing to the Secretary of Trustmark a reasonable time period before the corporation begins to print and send its proxy materials. All proposals must meet the requirements of SEC Rule 14a-8. Trustmark generally has the burden to demonstrate to the SEC that the corporation is entitled to exclude a shareholder proposal.

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	Bay Bank	Trustmark
Indemnification; Limitation of Director Liability:	Florida law provides that a corporation may indemnify a director: (a) if the director acted in good faith and (b) he or she reasonably believed his or her conduct was in, or not opposed to, the best interests of the corporation; and (c) in the case of any criminal action or proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding for any reason does not create a presumption that the director did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interest, of the corporation or with respect to any criminal action or proceeding had reasonable cause to believe his conduct was unlawful . Florida law allows a corporation to indemnify a director against expenses and settlement amounts not exceeding, in the judgment of the board of directors, the estimated actual and reasonable expense of litigating the proceeding to conclusion. The director must have acted in good faith and in a manner the director reasonably believed to be in, or not opposed to, the best interests of the corporation. However, the corporation shall not indemnify a director if the director is adjudged liable, unless and to the extent a court determines that in view of all circumstances of the case, the director is fairly and reasonably entitled to indemnity. To the extent that a director has been successful on the merits or otherwise in defense of any proceeding, or in defense of any claim, issue, or matter therein, the director shall be indemnified against expenses actually and reasonably incurred by the director in connection therewith.	Mississippi law provides that a corporation may indemnify a director: (a) if the director acted in good faith; and (b) he reasonably believed (i) that his conduct in an official capacity was in the best interests of the corporation; (ii) that his conduct in all other cases was at least not opposed to the best interests of the corporation; and (c) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful; or (d) the director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by law. However, in the absence of a court order, a corporation may not indemnify a director in connection with a proceeding: (a) by or in the right of the corporation; or (b) for which the director was adjudged liable on the basis that the director received a financial benefit to which he was not entitled. Mississippi law states that a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding. Trustmark’s bylaws provide that any person, his heirs, executors, or administrators, may be indemnified or reimbursed by the corporation for reasonable expenses actually incurred in connection with any action, suit, or proceeding, civil or criminal, to which he or they shall be made a party or potential party by reason of his being or having been a director, an honorary or advisory director, officer, or employee of the corporation or of any firm, corporation or

Unless determined by a court, any indemnification must be approved by (a) a vote of a majority of the board of directors at a meeting in which a quorum is present and who were not parties to the proceeding; (b) a majority of a committee of the board of directors appointed for such purpose, which committee must have at least two members who were not parties to the proceeding; (c) by independent legal counsel appointed by the board of directors or a committee of the board of directors; or (d) by the majority vote of a quorum of shareholders who were not parties to the proceeding.

organization which he served in any such capacity at the request of the corporation; provided, however, that no person shall be so indemnified or reimbursed in relation to any matter in such action, suit, or proceeding as to which he shall finally be adjudged to have been guilty of or liable for negligence or willful misconduct in the performance of his duties to the corporation; and provided further, that no person shall be so indemnified or reimbursed in relation to any administrative proceeding or action instituted by an appropriate bank regulatory agency which proceeding or action results in a final order assessing civil money penalties or requiring affirmative action by an individual or individuals in the form of payments to the corporation.

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	Bay Bank	Trustmark
Indemnification; Limitation of Director Liability (cont.):	Florida law permits a corporation to pay in advance expenses incurred by a director in defending a civil or criminal proceeding upon receipt of an undertaking by or on behalf of such director to repay such amount if the director is ultimately found not to be entitled to indemnification by the corporation under the law. Florida's laws of indemnification and advancement of expenses shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director and shall inure to the benefit of the heirs, executors, and administrators of the director, unless otherwise provided when authorized or ratified. In addition, such laws are not exclusive, and a corporation may make any other or further indemnification or advancement of expenses of any director. However, indemnification or advancement of expenses shall not be made to or on behalf of any director if a judgment or other final adjudication establishes that the director's actions, or omissions to act, were material to the cause of action so adjudicated and constitute: (a) a violation of the criminal law, unless the director had reasonable cause to believe the conduct was lawful or had no reasonable cause to believe the conduct was unlawful; (b) a transaction from which the director derived an improper personal benefit; (c) in the case of director liability for unlawful corporate distribution; or (d) willful misconduct or a conscious disregard for the best interests of the corporation in a proceeding.	

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	Bay Bank	Trustmark
Indemnification; Limitation of Director Liability (cont.):	Unless the articles of incorporation provide otherwise, notwithstanding the failure of a corporation to provide indemnification, and despite any contrary determination of the board or of the shareholders in the specific case, a director who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to a court of competent jurisdiction. The court may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that: (a) the director is entitled to mandatory indemnification under the law; (b) the director is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the corporation of its power to provide indemnification in addition to that provided by law; or (c) the director is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether the director met the applicable standard of conduct. The articles of incorporation of Bay Bank provide that a director, and his or her heirs, executors, or administrators, may be indemnified by Bay Bank for reasonable expenses actually incurred in connection with any proceeding as a result of being a director, except (a) if the director is adjudged to have been guilty of or liable for negligence or willful misconduct in performing the director's duties; or (b) any settlement unless approved by a court of competent jurisdiction or, a majority of the outstanding shares of the corporation, or by a majority vote of directors who are not a party to the	

proceeding.

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	Bay Bank	Trustmark
Shareholders' Rights of Dissent and Appraisal:	Florida law provides for dissenters' rights in Sections 607.1301 through 607.1333 of the Florida Business Corporation Act, as described in this proxy statement/prospectus under the heading "PROPOSAL TO APPROVE THE MERGER AGREEMENT – Dissenters' Rights of Appraisal in the Merger" on page 36.	Section 79-4-13.02(b)(2) of the Mississippi Code of 1972, as amended, provides that no dissenters' rights are available for corporations whose shares are publicly traded.

BUSINESS OF BAY BANK

General

Bay Bank is a Florida banking corporation that provides commercial and retail banking services from its seven (7) branches in and near Panama City, Florida. As of September 30, 2011, Bay Bank had total assets of approximately $247 million, total loans of approximately $122 million, total deposits of approximately $221 million and shareholders' equity of approximately $26 million.

Bay Bank Activities

Bay Bank is commercial bank that serves the needs of residents of Bay County and contiguous counties. Bay Bank operates as a community bank with directors, management and personnel known to and who live in the community.

Bay Bank focuses its marketing efforts on consumer banking products, commercial services to small businesses, and residential mortgage lending. Bay Bank offers traditional retail deposit products with a strong emphasis on relationships with customers, both individuals and businesses. Bay Bank focuses on the banking needs of the markets of Bay County and contiguous counties. As a community bank, Bay Bank believes that Bay Bank provides more personalized service than is generally available in the Bay County communities. Bay Bank offers the following types of products and services:

personal checking and or savings accounts;

money market accounts;

NOW accounts;

certificates of deposit;

individual retirement accounts;

bill pay;

stop payment;

telephone banking;

commercial checking or savings accounts;

commercial money market accounts;

Internet banking;

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ATM service;

safe deposit boxes;

money orders;

cashier’s checks;

travelers checks;

collection of monetary items;

bank-by-mail service;

night depository;

ATM cards;

credit cards (through another agency/correspondent bank);

automatic payroll deposit; and

automatic bill payment transfers (ACH).

Bay Bank offers the following types of loan commercial and consumer products and services:

real estate loans (residential loans, construction and land development loans, real estate investment loans and owner occupied commercial real estate loans);

equipment financing loans;

accounts receivable and inventory financing loans;

revolving lines of credit;

loans merchant services;

Internet cash management;

commercial loans;

personal loans;

automobile loans;

boat loans;

home equity loans; and

credit cards.

In addition, Bay Bank provides trust services which include trust services to custody and agency accounts, estate administration, guardianships, individual retirement accounts and personal trust.

Competition

The banking business is highly competitive, and Bay Bank's profitability is dependent on the ability to compete in its market area. Bay Bank competes with other commercial banks, savings banks, savings and loan associations, credit unions, finance companies, certain other non-financial entities, and certain governmental organizations which may offer more favorable financing than Bay Bank offers. Bay Bank expects competition from both financial and non-financial institutions to continue.

Bay Bank's competitive edge is built upon superior customer service and its long-term deposit and loan relationships.

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Facilities

Bay Bank operates from its main branch located at 509 Harrison Avenue, Panama City, Florida 32401. The following table sets forth specific information on Bay Bank's offices:

Banking Office	Real Estate Owned or Leased	Location	Deposits at June 30, 2011 (in thousands)
Downtown (Main) & Parking Lots	Owned	509 Harrison Avenue, Panama City, FL	$ 126,096
Downtown (Drive-In)	Owned & Leased	507 Jenks Avenue, Panama City, FL	--
Parker	Owned	114 S. Tyndall Parkway, Parker, FL	14,100
Lynn Haven	Owned	1912 S. Highway 77, Lynn Haven, FL	32,494
Beach 1	Owned	7915 PC Beach Parkway, Panama City Beach, FL	17,998
Beach Y	Owned	17255 PC Beach Parkway, Panama City Beach, FL	20,623
Thomas Drive	Owned	2305 Thomas Drive, Panama City Beach, FL	8,464
ATM Location Only	Leased	1347 W. 15th Street, Panama City, FL	--
			$ 219,775

All of Bay Bank's branches (other than the Downtown (Drive-In) branch) offer full banking operations provided by a full complement of lobby staff (including tellers, new account representatives, and lending professionals on site), safe-deposit boxes, an automated teller machine, and drive-through banking services.

Employees

As of September 30, 2011, Bay Bank had 85 full-time and 1 part-time employees. Management of Bay Bank considers its relations with its employees to be good. Bay Bank is not a party to any collective bargaining agreement.

Legal Proceedings

Bay Bank is from time-to-time involved in legal proceedings arising in the normal course of business. Other than proceedings incidental to its business, Bay Bank is not a party to, nor is any of its property the subject of, any material legal proceedings. Although the amount of any ultimate liability with respect to such matters cannot be determined, in the opinion of Bay Bank's management, any such liability will not have a material adverse effect upon Bay Bank's financial condition, results of operations, or cash flows.

Management's Discussion and Analysis of Financial Condition

General Information

Scope of Operations. Bay Bank provides community-banking services through six (6) full-service branches, a drive-in branch, and a standalone ATM in and around Panama City, Florida.

Critical Accounting Policies. Bay Bank's financial statements (copies of which may be obtained by Bay Bank shareholders upon request to Bay Bank) are prepared in conformity with GAAP. The financial information contained within these statements is, to a significant extent, based on approximate measures of the financial effects of transactions and events that have already occurred. Critical accounting policies are those that involve the most

complex and subjective decisions and assessments, and have the greatest potential impact on Bay Bank stated results of operations. The notes to the financial statements include a summary of the significant accounting policies and methods used in the preparation of Bay Bank's financial statements. Management believes that, of these significant accounting policies, the following involve a higher degree of judgment and complexity. Management has discussed these critical accounting assumptions and estimates with the Board of Directors' Audit Committee.

Allowance for Loan Losses. Bay Bank's allowance for loan losses is established as losses are estimated to have occurred through a provision for loan losses charged to operations. Loan losses are charged against the allowance when management believes the collectability of a loan balance is unlikely. Subsequent recoveries, if any, are credited to the allowance.

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The allowance for loan losses comprises (1) a component for individual loan impairment measured according to SFAS No. 114, "Accounting by Creditors for Impairment of a Loan," and (2) a measure of collective loan impairment according to SFAS No. 5, "Accounting for Contingencies". The allowance for loan losses is established and maintained at levels deemed adequate to cover losses inherent in the portfolio as of the balance sheet date. This estimate is based upon management's evaluation of the risks in the loan portfolio and changes in the nature and volume of loan activity. Estimates for loan losses are derived by analyzing historical loss experience, current trends in delinquencies and charge-offs, historical peer bank experience, changes in the size and composition of the loan portfolio, adverse situations that may affect the borrower's ability to repay, estimated value of any underlying collateral and prevailing economic conditions. This evaluation is inherently subjective, as it requires estimates that are susceptible to significant revision as more information becomes available.

Income Taxes. Bay Bank, by consent of its shareholders, has elected to be taxed as an S corporation under the provisions of Section 1362 of the Code. Under those provisions, the shareholders include the Bay Bank's income or loss in their individual federal income tax returns. Therefore, no provision for federal income taxes has been made in Bay Bank's financial statements.

Comparison of the Nine-Month Periods Ended September 30, 2011 and 2010.

General. At September 30, 2011, Bay Bank had total assets of $247 million, net loans of $119 million, total deposits of $221 million, and shareholders' equity of $25.8 million. At September 30, 2010, Bay Bank had total assets of $231 million, net loans of $123 million, total deposits of $201 million, and shareholders' equity of $29.2 million.

Earnings. Net losses for the period ended September 30, 2011 were $3.5 million compared to net earnings of $134,000 for the period ended September 30, 2010. This decrease in Bay Bank's net earnings was primarily due to an increase in the provision for loan losses of $2.8 million for the period ended September 30, 2011 compared to the period ended September 30, 2010.

Interest Income. Interest income increased to $6.25 million for the period ended September 30, 2011 from $6.18 million for the period ended September 30, 2010. Interest income on loans decreased to $5.2 million for the period ended September 30, 2011 from $5.4 million for the period ended September 30, 2010 due primarily to a decrease in the average loan portfolio balance. Interest on securities increased to $834,000 for the period ended September 30, 2011 from $645,000 for the same period in 2010. The increase was primarily due to the increase in average balances outstanding.

Interest Expense. Interest expense on deposit accounts decreased to $622,000 for the period ended September 30, 2011, from $870,000 for the period ended September 30, 2010. Interest expense decreased primarily because of a decrease in the average rate paid on deposits during the period.

Provision and the Allowance for Loan Losses. The provision for loan losses for the period ended September 30, 2011, was $3.4 million compared to $600,000 for the same period in 2010. The increase in the provision for loan losses was primarily due to an increase in loan charge-offs to $3.4 million for the period ended September 30, 2011 compared to $1.1 million for the period ended September 30, 2010. The allowance for loan losses at September 30, 2011 was $2.3 million compared to $2.6 million at September 30, 2010.

Noninterest Income. Total noninterest income decreased to $1.3 million for the period ended September 30, 2011 from $1.5 million for the period ended September 30, 2010 primarily due to decreases in gains on sale of securities.

Noninterest Expenses. Total noninterest expenses increased by $996,000 for the period ended September 30, 2011 from $6.1 million for the same period in 2010. This is attributable to increases in foreclosed real estate expenses,

outside services expenses and losses on sale of foreclosed real estate.

Comparison of the Twelve-Month Periods Ended December 31, 2010 and 2009

General. At December 31, 2010, Bay Bank had total assets of $236 million, net loans of $123 million, total deposits of $207 million, and shareholders' equity of $28.7 million. At December 31, 2009, Bay Bank had total assets of $236 million, net loans of $128 million, total deposits of $206 million, and shareholders' equity of $29.2 million.

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Earnings. Net earnings for the year ended December 31, 2010 were $59,000 compared to net losses of $1.9 million for the year ended December 31, 2009. This increase in Bay Bank's net earnings was primarily due to a decrease in the provision for loan losses of $1.5 million in 2010 compared to 2009.

Interest Income. Interest income decreased to $8.3 million for the year ended December 31, 2010 from $8.8 million for the year ended December 31, 2009. Interest income on loans decreased to $7.2 million in 2010 from $8.0 million in 2009 due primarily to a decrease in the average loan portfolio balance for the year ended December 31, 2010, and an decrease in the average yield earned from 6.23% for the year ended December 31, 2009 to 6.07% for the year ended December 31, 2010. Interest on securities increased to $899,000 in 2010 from $642,000 in 2009 due to an increase in the average balance during the year ended December 31, 2010.

Interest Expense. Interest expense on deposit accounts decreased to $1.1 million for the year ended December 31, 2010, from $1.9 million for the year ended December 31, 2009. Interest expense decreased primarily because of a decrease in the average rate paid on deposits during 2010.

Provision and Allowance for Loan Losses. The provision for loan losses is charged to earnings to bring the total allowance to a level deemed appropriate by management and the board and is based upon historical experience, the volume and type of lending conducted by Bay Bank, industry standards, the amount of nonperforming loans, general economic conditions, particularly as they relate to Bay Bank's market areas, and other factors related to the estimated collectability of its loan portfolio. Provision for loan losses decreased to $900,000 for the year ended December 31, 2010, from $2.4 million for the year ended December 31, 2009. The allowance for loan losses at December 31, 2010, was $2.3 million compared to $3.1 million at December 31, 2009.

Noninterest Income. Total noninterest income increased to $1.9 million for the year ended December 31, 2010 from $1.6 million for the year ended December 31, 2009, primarily due to gains on sales of securities of $267,000 in 2010.

Noninterest Expenses. Total noninterest expenses increased to $8.2 million for the year ended December 31, 2010 from $8.0 million for the year ended December 31, 2009, primarily due to an increase in foreclosed real estate expenses.

BENEFICIAL OWNERSHIP OF BAY BANK COMMON STOCK BY MANAGEMENT AND PRINCIPAL SHAREHOLDERS OF BAY BANK

The following table sets forth certain information regarding the beneficial ownership of Bay Bank common stock as of September 30, 2011, by (a) each director and executive officer of Bay Bank; (b) each person who is known by Bay Bank to own beneficially 5% or more of its common stock; and (3) all directors and executive officers as a group. Unless otherwise indicated, based on information furnished by such shareholders, management of Bay Bank believes that each person has sole voting and dispositive power over the shares indicated as owned by such person and the address of each shareholder is the same as the address of Bay Bank.

Name of Beneficial Owner	Number of Shares Beneficially Owned	Percentage Beneficially Owned(1)	
Directors and Executive Officers:			
Ivie R. Burch**	3,740	0.477840	%
Rebecca S. Daffin**	0	0.00	
Christopher Gladden*	0	0.00	
John G. Hindsman, III*	200	0.025553	
E. Clay Lewis, III***	12,135	1.550426	

Don E. McCormick**	9,321	1.190896	
James R. Moody, IV**	5,221	0.667060	
Donald F. Nations**	8,701	1.111682	
Jeffrey K. Padgett***	76,827	9.815789	
Kenneth E. Padgett***	248,359	31.731546	
John T. Patronis**	7,217	0.922079	
Kal G. Squires***	0	0.00	
Jay N. Trumbull**	0	0.00	
Directors and Executive Officers as a group (13)	371,721	47.492871	%

*	Indicates officer.
**	Indicates director.
***	Indicates officer and director.

(1) The percentage beneficially owned was calculated based on 782,688 shares of Bay Bank common stock issued and outstanding as of September 30, 2011.

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DESCRIPTION OF TRUSTMARK CAPITAL STOCK

General

Trustmark has authorized two classes of stock: (1) 250,000,000 authorized shares of Trustmark common stock, no par value, 69,119,235 shares of which were issued and outstanding as of September 30, 2011; and (2) 20,000,000 authorized shares of preferred stock, no par value, none of which are issued and outstanding. Trustmark's common stock is listed on the NASDAQ Global Select Market. The following summary is qualified in its entirety by reference to the articles of incorporation and bylaws of Trustmark.

Trustmark Common Stock

Except in the election of directors (in which shareholders have cumulative voting rights), the holders of Trustmark common stock are entitled to one vote for each share of Trustmark common stock owned. Except as expressly provided by law and except for any voting rights that may be conferred on any shares of preferred stock issued by the Trustmark board, all voting power is in Trustmark common stock. Holders of Trustmark common stock do not have preemptive rights to acquire any additional or unissued shares of Trustmark common stock, or securities of Trustmark convertible into or carrying a right to subscribe to or acquire shares of Trustmark common stock.

Holders of Trustmark common stock will be entitled to receive dividends out of funds legally available therefore, if and when properly declared by the Trustmark board of directors. However, if any of Trustmark's preferred stock is outstanding, there may be restrictions on the ability of the Trustmark board of directors to declare or pay cash dividends on Trustmark common stock, and the Trustmark board of directors may be prohibited from purchasing shares of Trustmark common stock, unless full dividends on outstanding preferred stock for all past dividend periods and for the current dividend period, if any, have been declared and paid.

On liquidation of Trustmark, the holders of Trustmark common stock are entitled to share pro rata in any distribution of the assets of Trustmark, after the holders of any shares of preferred stock have received the liquidation preference of their shares, plus any accumulated but unpaid dividends, whether or not earned or declared, if any, and after all other indebtedness of Trustmark has been retired.

Trustmark Preferred Stock

The Trustmark preferred stock is available for issuance from time to time for various purposes as determined by the Trustmark board of directors, including making future acquisitions, raising additional equity capital, and financing. Subject to certain limits set by the Trustmark articles and applicable bank holding company regulatory approval, the preferred stock may be issued on such terms and conditions, and at such times and in such situations, as the Trustmark board of directors in its sole discretion determines to be appropriate, without any further approval or action by the shareholders, unless otherwise required by laws, rules, regulations, or agreements applicable to Trustmark.

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INDEMNIFICATION PROVISIONS RELATING TO TRUSTMARK

Trustmark's Indemnification

Pursuant to Article VI, Section 2 of the bylaws of Trustmark, the corporation may indemnify or reimburse the expenses of any person against all reasonable expenses incurred in connection with any litigation or proceeding in which such person may have been involved because he is or was a director (including honorary or advisory directors), officer or employee of the corporation or of any other firm, corporation or organization which he served in any such capacity at the request of the corporation. Provided, such person shall have no right to indemnification or reimbursement in relation to any matters in which he is finally adjudged to have been guilty of or liable for negligence or willful misconduct in the performance of his duties; and, provided further, that no person shall be so indemnified or reimbursed in relation to any administrative proceeding or action instituted by any appropriate bank regulatory agency which proceeding or action results in a final order assessing civil monetary penalties or requiring affirmative action by an individual or individuals in the form of payments to the corporation.

In addition, pursuant to the Mississippi Business Corporation Act ("MBCA"), directors and officers are entitled to indemnification in certain events as summarized in this paragraph. Directors and officers are entitled to indemnification if they are wholly successful, on the merits or otherwise, in the defense of any proceeding to which such person is a party because he was a director or officer of the corporation against reasonable expenses incurred by him in connection with the proceeding. A corporation may indemnify an individual who is a party to a proceeding because he is or was a director or officer against a liability incurred in the proceeding if the person conducted himself in good faith and he reasonably believed, in the case of conduct in his official capacity, that his conduct was in the best interests of the corporation, and, in all other cases, that his conduct was not opposed to the best interests of the corporation, and, in the case of any criminal proceeding, that he had no reasonable cause to believe his conduct was unlawful or, he engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the corporation's articles of incorporation. Unless ordered by a court, a corporation may not indemnify a director or officer in connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct specified above, or, in connection with any proceeding with respect to conduct for which he was adjudged liable on the basis that he received a financial benefit to which he was not entitled, whether or not involving action in his official capacity.

A corporation may, additionally, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by the director or officer who is a party to a proceeding under certain circumstances.

Disclosure of the SEC's Position on Indemnification for Securities Act Liabilities

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

EXPERTS

The consolidated financial statements of Trustmark as of December 31, 2010 and 2009, and for each of the years in the three-year period ended December 31, 2010, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2010, have been incorporated by reference herein in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

LEGAL MATTERS

The validity of the shares of Trustmark common stock to be issued by Trustmark in connection with the merger and certain material tax consequences of the merger will be passed upon by counsel to Trustmark, Brunini, Grantham, Grower & Hewes, PLLC, Jackson, Mississippi. Certain legal matters with respect to the merger will be passed upon for Bay Bank by its counsel Haskell Slaughter Young & Rediker, LLC, Birmingham, Alabama.

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OTHER MATTERS

As of the date of this proxy statement/prospectus, the board of directors of Bay Bank knows of no matters that will be presented for consideration at the special meeting of shareholders other than as described in this proxy statement/prospectus. However, if any other matters are properly brought before the special meeting or any adjournment or postponement thereof, it is intended that the proxies will act in accordance with their best judgment unless otherwise indicated in the appropriate box on the proxy.

WHERE YOU CAN FIND MORE INFORMATION

Trustmark files reports, proxy statements, and other information with the SEC under the Securities Exchange Act of 1934. You may read and copy this information at the SEC's Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549.

You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet site that contains reports, proxy and information statements and other information about issuers, like Trustmark, who file electronically with the SEC. The address of that site is http://www.sec.gov.

The SEC allows Trustmark to "incorporate by reference," which means that Trustmark can disclose important business and financial information to you by referring you to another document filed separately with the SEC. The information that Trustmark incorporates by reference is considered to be part of this proxy statement/prospectus, and later information that Trustmark files with the SEC will automatically update and supersede the information Trustmark included in this proxy statement/prospectus. This document incorporates by reference the documents that are listed below that Trustmark has previously filed with the SEC:

Quarterly Report on Form 10-Q filed on November 8, 2011, for the quarter ended September 30, 2011; on August 8, 2011, for the quarter ended June 30, 2011; and on May 6, 2011, for the quarter ended March 31, 2011;

Annual Report on Form 10-K filed on February 25, 2011, for the year ended December 31, 2010; and

Current Reports on Form 8-K filed on January 26, 2011; March 1, 2011; March 7, 2011; April 18, 2011; April 26, 2011; May 10, 2011; May 13, 2011; August 10, 2011; September 29, 2011; November 10, 2011; and November 30, 2011.

Trustmark also incorporates by reference any future filings it makes with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this proxy statement/prospectus and before the meeting. Any statement contained in this proxy statement/prospectus or in a document incorporated or deemed to be incorporated by reference in this proxy statement/prospectus shall be deemed to be modified or superseded to the extent that a statement contained herein or in any subsequently filed document that also is, or is deemed to be, incorporated by reference herein modified or superseded such statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this proxy statement/prospectus.

Documents incorporated by reference are available from Trustmark without charge (except for exhibits to the documents unless the exhibits are specifically incorporated in the document by reference). You may obtain documents incorporated by reference in this document by requesting them in writing or by telephone from Trustmark at the following address:

Trustmark Corporation
Louis E. Greer

Treasurer and Principal Financial Officer
248 East Capitol Street
Jackson, Mississippi 39201
(601) 208-5111

To obtain timely delivery, you must make a written or oral request for a copy of such information by Friday, March 2, 2012.

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Trustmark has filed a registration statement on Form S-4 under the Securities Act of 1933 with the SEC with respect to the Trustmark common stock to be issued to shareholders of Bay Bank in the merger. This proxy statement/prospectus constitutes the prospectus of Trustmark filed as part of the registration statement. This proxy statement/prospectus does not contain all of the information set forth in the registration statement because certain parts of the registration statement are omitted in accordance with the rules and regulations of the SEC. The registration statement and its exhibits are available for inspection and copying as set forth above.

You should rely only on the information contained in this proxy statement/prospectus. Neither Trustmark nor Bay Bank has authorized anyone to provide you with different information. Therefore, if anyone gives you different or additional information, you should not rely on it. The information contained in this proxy statement/prospectus is correct as of its date. It may not continue to be correct after this date. Bay Bank has supplied all of the information about Bay Bank contained in this proxy statement/prospectus and Trustmark has supplied all of the information contained in this proxy statement/prospectus about Trustmark and its subsidiaries. Each of us is relying on the correctness of the information supplied by the other.

This proxy statement/prospectus does not constitute an offer to sell, or a solicitation of an offer to purchase, the securities offered by this proxy statement/prospectus, or the solicitation of a proxy, in any jurisdiction to or from any person to whom or from it is unlawful to make such offer, solicitation of an offer or proxy solicitation in such jurisdiction.

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Execution Copy

Appendix A

AGREEMENT AND PLAN OF MERGER

by and among

TRUSTMARK CORPORATION,

TRUSTMARK NATIONAL BANK

and

BAY BANK & TRUST CO.

Dated as of November 30, 2011

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER ("Agreement") dated as of November 30, 2011, is by and among Trustmark Corporation, a Mississippi corporation ("Trustmark"), Trustmark National Bank, a national banking association ("Trustmark Bank" or "Surviving Bank"), and Bay Bank & Trust Co., a Florida banking corporation ("Bay Bank").

WHEREAS, Bay Bank desires to affiliate with Trustmark and Trustmark desires to affiliate with Bay Bank in the manner provided in this Agreement;

WHEREAS, the respective Boards of Directors of Trustmark, Trustmark Bank, and Bay Bank believe that the acquisition of Bay Bank by Trustmark in the manner provided by, and subject to the terms and conditions set forth in, this Agreement and all exhibits, schedules and supplements hereto is desirable, consistent with, will further their respective business strategies and goals and is in the best interests of their respective shareholders;

WHEREAS, it is intended by the parties hereto that the Merger shall constitute a reorganization within the meaning of Section 368(a) of the Code, and the parties hereby adopt this Agreement as a "plan of reorganization" within the meaning of Sections 1.368-2(g) and 1.368-3(a) of the Treasury Regulations promulgated thereunder;

WHEREAS, the respective Boards of Directors of Trustmark, Trustmark Bank, and Bay Bank have approved this Agreement and the transactions proposed herein substantially on the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of such premises and the mutual representations, warranties, covenants and agreements contained herein, the parties agree as set forth below.

INTRODUCTION

This Agreement provides for the merger of Bay Bank with and into Trustmark Bank with Trustmark Bank as the survivor (the "Merger"), all pursuant to the terms and conditions set forth in this Agreement. In connection with the Merger, Trustmark will acquire all of the issued and outstanding shares of common stock, $5.00 par value, of Bay Bank ("Bay Bank Stock") for an aggregate consideration as set forth in this Agreement.

I. THE MERGER

Section 1.1. Merger. Upon the terms and subject to the conditions set forth in this Agreement and the Bank Merger Agreement in the form attached hereto as Exhibit A, at the Effective Time (as defined in Section 7.2), Bay Bank shall be merged with and into Trustmark Bank under the Articles of Association of Trustmark Bank. As a result of and as part of the Merger, at the Effective Time each of the issued and outstanding shares of Bay Bank Stock shall be cancelled and retired and shall cease to exist.

Section 1.2. Articles of Association, Bylaws and Facilities After Merger.

(a) At the Effective Time and until thereafter amended in accordance with applicable law, the Articles of Incorporation and Bylaws of Trustmark shall be the Articles of Incorporation and Bylaws of Trustmark (the "Trustmark Governance Documents").

(b) At the Effective Time and until thereafter amended in accordance with applicable law, the Articles of Association and Bylaws of Trustmark Bank shall be the Articles of Association and Bylaws of Surviving Bank (the

"Trustmark Bank Governance Documents").

(c) Unless and until changed by the Board of Directors of Trustmark Bank, the main office of Surviving Bank shall be the main office of Trustmark Bank as of the Effective Time. The established offices and facilities of Bay Bank immediately prior to the Merger shall become established offices and facilities of Surviving Bank.

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(d) Until thereafter changed in accordance with law or the Trustmark Bank Governance Documents, all corporate acts, plans, policies, contracts, approvals, and authorizations of Bay Bank and Trustmark Bank and their respective shareholders, Boards of Directors, committees elected or appointed thereby, officers, and agents, which were valid and effective immediately prior to the Effective Time, shall be taken for all purposes as the acts, plans, policies, contracts, approvals, and authorizations of Surviving Bank and shall be as effective and binding thereon as the same were with respect to Bay Bank and Trustmark Bank, respectively, as of the Effective Time.

Section 1.3. Effect of Merger.

(a) At the Effective Time, the corporate existence of Bay Bank and Trustmark Bank shall, as provided in the provisions of law heretofore mentioned, be consolidated and continued in Surviving Bank, and Surviving Bank shall be deemed to be a continuation in entity and identity of Bay Bank and Trustmark Bank. All assets, rights, franchises, and interests of Bay Bank, as they exist on the Effective Date, shall pass to and vest in Surviving Bank by virtue of the Merger without any conveyance or transfer. Surviving Bank, without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises, and interest, including appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, transfer agent, or registrar of stocks and bonds, guardian of estates, assignee, receiver, and committee of estates and lunatics, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by Bay Bank and Trustmark Bank, respectively, as of the Effective Time.

(b) The Board of Directors of Surviving Bank shall be the Board of Directors of Trustmark Bank at the Effective Time, each of whom shall serve until their successors are duly elected and qualified. The executive officers of Surviving Bank shall be the executive officers of Trustmark Bank at the Effective Time.

Section 1.4. Liabilities of Surviving Bank. At the Effective Time, Surviving Bank shall be liable for all liabilities of Bay Bank and Trustmark Bank. All deposits, debts, liabilities, obligations, and contracts of Bay Bank and of Trustmark Bank, respectively, matured or unmatured, whether accrued, absolute, contingent or otherwise, and whether or not reflected or reserved against on balance sheets, books of account, or records of Bay Bank or Trustmark Bank, as the case may be, shall be those of Surviving Bank and shall not be released or impaired by the Merger. All rights of creditors and other obligees and all liens on property of either Bay Bank or Trustmark Bank shall be preserved unimpaired subsequent to the Merger.

Section 1.5. Merger Consideration.

(a) Subject to the terms and conditions of this Agreement, as a result of and as part of the Merger and without any action on the part of the holder thereof, at the Effective Time all of the issued and outstanding Bay Bank Stock of the record holders thereof (each a “Record Holder”) as of the date of the Bay Bank special shareholders’ meeting called to vote on the Merger (the “Record Date”) shall be automatically converted into and represent the right to receive a combination of cash and newly issued, registered shares of common stock, no par value, of Trustmark (“Trustmark Common Stock”), other than Dissenting Shares (as defined in Section 1.6). The “Merger Consideration” for the Bay Bank Stock shall be a total of $10 million in cash (the “Cash Consideration”) and $12 million in Trustmark Common Stock (the “Stock Consideration”). The combination of the Cash Consideration and the Stock Consideration to be paid to each Record Holder shall be calculated as follows:

(i) cash in an amount equal to $12.78 per share of Bay Bank Stock owned by a Record Holder; and

(ii) shares of Trustmark Common Stock in an amount equal to the product of the Exchange Ratio multiplied by the number of shares of Bay Bank Stock owned by a Record Holder, subject to a maximum number of shares of Trustmark Common Stock that may be issued as described below in Section 1.5(b).

The “Exchange Ratio” shall be a floating exchange ratio determined by dividing the Stock Consideration by the Average Closing Price, and then dividing such quotient by the total number of issued and outstanding shares of Bay Bank Stock on the Closing Date. The “Average Closing Price” shall mean the average closing bid/asked market price (computed on the basis of the last trade of the day) of Trustmark Common Stock as reported on The NASDAQ Global Select Market for the ten (10) consecutive Trading Days preceding the three (3) Trading Days prior to the Closing Date (the “Determination Date”). A “Trading Day” means any day on which The NASDAQ Global Select Market is open for trading.

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(b) Notwithstanding the foregoing in this Section 1.5, if the Average Closing Price is less than $17.60, the Exchange Ratio shall be fixed at .8711 shares of Trustmark Common Stock for each share of Bay Bank Stock owned by each Record Holder for a maximum number of 681,818 shares of Trustmark Common Stock to be issued as the Stock Consideration and Trustmark shall supplement the payment due to each Record Holder in such amount of cash (the "Supplemental Cash Payment") whereby the sum of the (x) total Supplemental Cash Payments to all Record Holders and (y) Stock Consideration will equal $12 Million.

Section 1.6. Dissenting Shares. Each share of Bay Bank Stock issued and outstanding immediately prior to the Effective Time, the holder of which has not voted in favor of the Merger within the time and in the manner provided in, and which are defined as "dissenter shares" by, Title XXXVIII, Chapter 658, Section 658.44 of the Florida Financial Codes and, to the extent applicable, the Florida Business Corporation Act (the "Dissenter Statute"), is referred to herein as a "Dissenting Share". Dissenting Shares shall not be converted into or represent the right to receive the Merger Consideration pursuant to Section 1.5 and shall be entitled only to such rights as are available to such holder pursuant to the applicable provisions of the Dissenter Statute, unless and until such holder shall have failed to perfect or shall have effectively withdrawn or lost his right to appraisal and payment under the Dissenter Statute. If any such holder shall have so failed to perfect or shall have effectively withdrawn or lost such right, such holder's Dissenting Shares shall thereupon be deemed to have been converted into and to have become exchangeable for, at the Effective Time, the right to receive the Merger Consideration without any interest thereon.

Section 1.7. Distribution of Trustmark Common Stock and Cash.

(a) Promptly after the special shareholders' meeting to vote on the Merger, but in no event later than seven (7) days prior to the Closing Date, Bay Bank shall deliver to Trustmark a list of the Record Holders certified by the Secretary of Bay Bank, which list shall include each Record Holder's name, address, the number of shares of Bay Bank Stock owned, and whether the Record Holder voted to approve the Merger or dissented from the Merger. To the extent applicable, Bay Bank shall update such list of Record Holders as of the Closing Date (as defined in Section 7.1). Promptly following the Effective Time, Trustmark shall send to the Record Holders transmittal materials for use in exchanging their shares of Bay Bank Stock for the Merger Consideration. Bay Bank shall be entitled to review the transmittal materials before they are sent to the Bay Bank shareholders. Trustmark shall thereafter promptly pay the Merger Consideration to the Record Holders who have properly submitted transmittal materials and surrendered their Bay Bank Stock certificates to Trustmark. The Stock Consideration shall be issued in uncertificated shares of Trustmark Common Stock represented by book-entry form. Unless and until the Bay Bank Stock certificates are properly surrendered, a Record Holder shall not be entitled to receive his percentage share or the Merger Consideration to which he is entitled (or any dividends payable with respect to his Stock Consideration). Upon the proper surrender of Bay Bank Stock certificates, a Record Holder shall be paid his respective percentage of the Merger Consideration (and dividends without interest) to which he is entitled.

(b) A Record Holder shall be entitled to vote after the Effective Time at any meeting of Trustmark's shareholders the number of shares of Trustmark Common Stock into which his Bay Bank Stock is converted only after a Record Holder has surrendered his Bay Bank Stock certificates in exchange therefor.

(c) Fourteen calendar days prior to the Closing Date, the stock transfer ledger of Bay Bank shall be closed and there shall be no transfers on the stock transfer books of Bay Bank of the Bay Bank Stock which were outstanding immediately prior to the Closing Date. If, after the Closing Date, Bay Bank Stock certificates are presented to Trustmark, they shall be promptly exchanged as provided in this Section.

(d) If any certificate representing shares of Trustmark Common Stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of the issuance thereof that the certificate so surrendered shall be appropriately endorsed (or accompanied by an appropriate instrument of

transfer) and otherwise in proper form (reasonably satisfactory to Trustmark) for transfer, and that the person requesting such exchange shall pay to Trustmark in advance any transfer or other Taxes (as defined below in Section 2.12) required by reason of the issuance of a certificate representing shares of Trustmark Common Stock in any name other than that of the registered holder of the certificate surrendered, or required for any other reason, or shall establish to the satisfaction of Trustmark that such Tax has been paid or not payable.

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(e) Neither Trustmark, Trustmark Bank, Bay Bank, nor any other person shall be liable to any Record Holder for any Trustmark Common Stock (or dividends or distributions with respect thereto) or cash properly delivered to a public official pursuant to applicable abandoned property, escheat, or similar laws.

Section 1.8. Fractional Shares. No fractional shares of Trustmark Common Stock shall be issued upon the surrender for exchange of Bay Bank Stock certificates. In lieu of any such fractional share, each Record Holder who would otherwise be entitled to a fractional share of Trustmark Common Stock will be paid cash upon the proper surrender of all the Bay Bank Stock certificates held by such holder in the amount equal to the product of $15.33 multiplied by the fractional share amount.

Section 1.9. Calculations and Adjustments. If, between the date of this Agreement and the Effective Time, shares of Trustmark Common Stock shall be changed into a different number of shares or shares of a different class by reason of any reclassification, recapitalization, stock split, or stock dividend with a record date within said period, the number of shares of Trustmark Common Stock to be issued and delivered upon the consummation of the Merger as provided in this Agreement shall be appropriately and proportionately adjusted so that the number of such shares that will be issued and delivered as a result of the Merger will equal the number of shares of Trustmark Common Stock that holders of shares of Bay Bank Stock would have received had the record date for such reclassification, recapitalization, stock split, or stock dividend been immediately following the Effective Time.

Section 1.10. Lost or Destroyed Certificates. Any person whose Bay Bank Stock certificates shall have been lost or destroyed may nevertheless obtain the shares of Trustmark Common Stock and/or cash to which such Record Holder is entitled as a result of the Merger if such Record Holder provides Trustmark with a statement certifying such loss or destruction and an indemnity satisfactory to Trustmark sufficient to indemnify Trustmark against any loss or expense that may occur as a result of such lost or destroyed certificate being thereafter presented to Trustmark for exchange.

Section 1.11. Ratification by Shareholders. This Agreement shall be submitted to the shareholders of Bay Bank in accordance with applicable provisions of law and the respective Articles of Incorporation and Bylaws of Bay Bank (the “Bay Bank Governance Documents”). Bay Bank and Trustmark shall proceed expeditiously and cooperate fully in the procurement of any other consents and approvals and the taking of any other actions in satisfaction of all other requirements prescribed by law or otherwise necessary for consummation of the Merger on the terms herein provided, including, without limitation, the preparation and submission of all necessary filings, requests for waivers, and certificates with the Board of Governors of the Federal Reserve System (the “Federal Reserve Board”), the Office of the Comptroller of the Currency (the “OCC”), and the Florida Office of Financial Regulation, Division of Financial Institutions (the “Florida Division”).

Section 1.12. Tax Consequences. It is intended by the parties hereto that the Merger shall constitute a reorganization within the meaning of Section 368(a) of the Code, and the parties hereby adopt this Agreement as a “plan of reorganization” within the meaning of Sections 1.368-2(g) and 1.368-3(a) of the Treasury Regulations promulgated thereunder.

II. REPRESENTATIONS AND WARRANTIES OF BAY BANK

Bay Bank makes the following representations and warranties, each of which is being relied on by Trustmark and Trustmark Bank, which representations and warranties shall, individually and in the aggregate, be true and correct in all respects on the date of this Agreement and on the Closing Date (except that all representations and warranties made as of a specific date shall be true and correct as of such date).

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Prior to the date of this Agreement, Bay Bank has delivered to Trustmark a number of Schedules setting forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof, or as an exception to one or more representations or warranties or covenants contained herein; provided, that the mere inclusion of an item in a Schedule as an exception to a representation or warranty or covenant shall not be deemed an admission by either party that such item was required to be disclosed therein. Bay Bank agrees that, two (2) days prior to Closing (as defined in Section 7.1), it shall provide Trustmark with supplemental Schedules reflecting any changes in the information which has occurred in the period from the date of delivery of such Schedules to the date two (2) days prior to Closing.

2.1 Organization.

(a) Bay Bank is a Florida banking corporation duly organized, validly existing and in good standing under the laws of the State of Florida. Bay Bank has full power and authority (including all licenses, franchises, permits and other governmental authorizations which are legally required) to (i) conduct a general banking business, embracing all usual deposit functions of commercial banks as well as commercial, industrial, and real estate loans, installment credits, collections, trust powers and safe deposit facilities subject to the supervision of the Florida Division and the Federal Deposit Insurance Corporation ("FDIC"), and (ii) own, lease, and operate its properties.

(b) Schedule 2.1(b) contains true and complete copies of the Bay Bank Governance Documents, as amended to date.

(c) Except as disclosed on Schedule 2.1(c), Bay Bank (i) does not have any Subsidiaries or Affiliates, (ii) is not a general partner or material owner in any joint venture, general partnership, limited partnership, trust, or other non-corporate entity, and (iii) does not know of any arrangement pursuant to which the equity or ownership interests of any entity is or has been held in trust (whether express, constructive, resulting, or otherwise) for the benefit of all shareholders of Bay Bank.

(d) The deposit accounts of Bay Bank are insured by the FDIC through the Deposit Insurance Fund to the fullest extent permitted by law, and all premiums and assessments due and owning as of the date hereof required in connection therewith have been paid by Bay Bank.

Section 2.2. Capitalization. The authorized capital stock of Bay Bank consists of 3,000,000 shares of Bay Bank common stock, $5.00 par value, of which 782,688 shares are issued and outstanding. All of the issued and outstanding shares of Bay Bank Stock are validly issued, fully paid, and nonassessable, and they have not been issued in violation of the preemptive rights of any person or in violation of any applicable federal or state laws. There are no existing options, warrants, calls, convertible securities, or commitments of any kind obligating Bay Bank to issue any authorized and unissued Bay Bank Stock nor does Bay Bank have any outstanding commitment or obligation to repurchase, reacquire, or redeem any of its outstanding capital stock. To Bay Bank's best knowledge, there are no voting trusts, voting agreements, buy-sell agreements, or other similar arrangements affecting the Bay Bank Stock.

Section 2.3. Approvals; Authority.

(a) Bay Bank has full corporate power and authority to execute and deliver this Agreement (and any related documents), and Bay Bank has full legal capacity, power, and authority to perform its obligations hereunder and thereunder and to consummate the transactions contemplated herein.

(b) The Board of Directors of Bay Bank has approved this Agreement and the transactions contemplated herein, subject to the approval thereof by the shareholders of Bay Bank as required by law, and, other than such shareholder approval, no further corporate proceedings of Bay Bank are needed to execute and deliver this Agreement

and consummate the Merger. This Agreement has been duly executed and delivered by Bay Bank and is a duly authorized, valid, and legally binding agreement of Bay Bank enforceable against Bay Bank in accordance with its terms, subject to the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to creditors' rights generally and general equitable principles.

Section 2.4. Investments. Bay Bank has furnished to Trustmark a complete list, as of September 30, 2011, of all securities, including municipal bonds, owned by Bay Bank (the "Securities Portfolio"). Except as set forth in Schedule 2.4, all such securities are owned by Bay Bank (i) of record, except those held in bearer form, and (ii) beneficially, free and clear of all mortgages, liens, pledges, and encumbrances. Schedule 2.4 also discloses any entities in which the ownership interest in the Securities Portfolio of Bay Bank equals 5% or more of the issued and outstanding voting securities of the issuer thereof. There are no voting trusts or other agreements or understandings with respect to the voting of any of the securities in the Securities Portfolio.

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Section 2.5. Financial Statements.

(a) Bay Bank has furnished or made available to Trustmark true and complete copies of its audited financial statements as of December 31, 2010, 2009, and 2008, its unaudited financial statements for the quarters ended March 31, 2011, June 30, 2011, and September 30, 2011, and its call reports as of and for the year ended December 31, 2010, and as of and for the quarter ended September 30, 2011. The audited financial statements, unaudited financial statements, and call reports referred to in this Section 2.5 are collectively referred to in this Agreement as the "Bay Bank Financial Statements".

(b) Each of the Bay Bank Financial Statements fairly presents the financial position of Bay Bank and the results of its operations at the dates and for the periods indicated in conformity with generally accepted accounting principles ("GAAP") applied on a consistent basis.

(c) As of the dates of the Bay Bank Financial Statements referred to above, Bay Bank did not have any liabilities, fixed or contingent, which are material and are not fully shown or provided for in such Bay Bank Financial Statements or otherwise disclosed in this Agreement. Since December 31, 2010, there have been no material changes in the financial condition, assets, liabilities, or business of Bay Bank, other than changes fully shown and provided for in the Bay Bank Financial Statements or changes made in the ordinary course of business, which individually or in the aggregate have not had a Material Adverse Effect (as defined in Section 12.1(d)) on the Condition (as defined in Section 12.1(b)) of Bay Bank.

Section 2.6. Loan Portfolio. The following have been established in accordance with GAAP as applied to banking institutions and all applicable rules and regulations:

(a) all evidences of indebtedness reflected as assets in the Bay Bank Financial Statements as of and for the period ended September 30, 2011, were as of such date in all material respects the binding obligations of the respective obligors named therein in accordance with their respective terms;

(b) the allowance for loan losses shown on the Bay Bank Financial Statements as of and for the period ended September 30, 2011, was, and the allowance for loan losses to be shown on the Bay Bank Financial Statements as of any date subsequent to the execution of this Agreement will be, as of such dates, in the reasonable judgment of management of Bay Bank, adequate to provide for possible losses, net of recoveries relating to loans previously charged off, in respect of loans outstanding (including accrued interest receivable) of Bay Bank and other extensions of credit (including letters of credit or commitments to make loans or extend credit); and

(c) the allowance for loan losses described in clause (b) above;

provided, however, that Bay Bank makes no representation or warranty as to the sufficiency of collateral securing or the collectability of such loans.

Section 2.7. Certain Loans and Related Matters.

(a) Except as set forth in Schedule 2.7(a), Bay Bank is not a party to any written or oral loan agreement, note, or borrowing arrangement:

(i) under the terms of which the obligor is sixty (60) days delinquent in payment of principal or interest or in default of any other material provisions as of the date hereof;

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(ii) which has been classified or, in the exercise of reasonable diligence by Bay Bank, should have been classified as "substandard," "doubtful," "loss," "other loans especially mentioned," "other assets especially mentioned" or any comparable classifications by such persons;

(iii) including any loan guaranty, with any director or executive officer of Bay Bank, or any 10% or more shareholder of Bay Bank, or any person, corporation, or enterprise controlling, controlled by, or under common control with any of the foregoing; or

(iv) in violation of any law, regulation, or rule applicable to Bay Bank including, but not limited to, those promulgated, interpreted, or enforced by any regulatory agency with supervisory jurisdiction over Bay Bank and which violation could have a Material Adverse Effect on the Condition of Bay Bank.

(b) Schedule 2.7(b) contains the "watch list of loans" of Bay Bank (the "Watch List") as of September 30, 2011. Except as set forth in Schedule 2.7(b), to the knowledge of Bay Bank, there is no loan agreement, note, or borrowing arrangement which should be included on the Watch List in accordance with Bay Bank's current practices and prudent banking principles.

Section 2.8. Real Property Owned or Leased.

(a) Other than real property acquired through foreclosure or deed in lieu of foreclosure, Schedule 2.8(a) contains a true, correct, and complete list of all real property owned or leased by Bay Bank (the "Bay Bank Real Property"). True and complete copies of all deeds, leases, and title insurance policies for, or other documentation evidencing ownership of, the Bay Bank Real Property and all mortgages, deeds of trust, and security agreements to which the Bay Bank Real Property is subject have been furnished or made available to Trustmark.

(b) No lease with respect to any Bay Bank Real Property and no deed with respect to any Bay Bank Real Property contains any restrictive covenant that materially restricts the use, transferability, or value of such Bay Bank Real Property. Each of such leases is a legal, valid, and binding obligation enforceable in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the rights of creditors generally and the availability of equitable remedies), and is in full force and effect; there are no existing defaults by Bay Bank or, to Bay Bank's best knowledge, the other party thereunder and there are no allegations or assertions of such by any party under such agreement or any events that with notice, lapse of time, or the happening or occurrence of any other event would constitute a default thereunder.

(c) To the knowledge of Bay Bank, none of the buildings and structures located on any Bay Bank Real Property, nor any appurtenances thereto or equipment therein, nor the operation or maintenance thereof, violates in any material manner any restrictive covenants or encroaches on any property owned by others, nor does any building or structure of third parties encroach upon any Bay Bank Real Property, except for those violations and encroachments which in the aggregate could not reasonably be expected to cause a Material Adverse Effect on the Condition of Bay Bank. No condemnation proceeding is pending or, to Bay Bank's knowledge, threatened, which would preclude or materially impair the use of any Bay Bank Real Property in the manner in which it is currently being used.

(d) Except as set forth in Schedule 2.8(d), Bay Bank has good and indefeasible title to, or a valid and enforceable leasehold interest in, or a contract vendee's interest in, all Bay Bank Real Property, and such interest is free and clear of all liens, charges, or other encumbrances, except (i) statutory liens for amounts not yet delinquent or which are being contested in good faith through proper proceedings, and (ii) those liens related to real property taxes, local improvement district assessments, easements, covenants, restrictions, and other matters of record, which do not individually or in the aggregate materially adversely affect the use and enjoyment of the relevant real property.

(e) Except as set forth in Schedule 2.8(e), all buildings and other facilities used in the business of Bay Bank are adequately maintained and, to Bay Bank's knowledge, are free from defects which could materially interfere with the current or future use of such facilities.

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Section 2.9. Personal Property. Except as set forth in Schedule 2.9, Bay Bank has good title to, or a valid leasehold interest in, all personal property, whether tangible or intangible, used in the conduct of its business (the "Bay Bank Personalty"), free and clear of all liens, charges, or other encumbrances, except (a) statutory liens for amounts not yet delinquent or which are being contested in good faith through proper proceedings, and (b) such other liens, charges, encumbrances, and imperfections of title as do not individually or in the aggregate materially adversely affect the use and enjoyment of the relevant Bay Bank Personalty. Subject to ordinary wear and tear, the Bay Bank Personalty is in good operating condition and repair and is adequate for the uses to which it is being put.

Section 2.10. Environmental Laws.

(a) Except as set forth in Schedule 2.10(a), to the knowledge of Bay Bank, Bay Bank and any properties or business owned or operated by Bay Bank, whether or not held in a fiduciary or representative capacity, are in material compliance with all terms and conditions of all applicable federal and state Environmental Laws (as defined below in this Section) and permits thereunder.

(b) Bay Bank has not received notice of any violation of any Environmental Laws or generated, stored, or disposed of any materials designated as Hazardous Materials (as defined below in this Section) under the Environmental Laws, and they are not subject to any claim or lien under any Environmental Laws.

(c) During the term of ownership by Bay Bank, no real estate currently owned, operated, or leased (including any property acquired by foreclosure or deeded in lieu thereof) by Bay Bank, or owned, operated or leased by Bay Bank within the ten (10) years preceding the date of this Agreement, has been designated by applicable governmental authorities as requiring any environmental cleanup or response action to comply with Environmental Laws, or has been the site of release of any Hazardous Materials.

(d) To the knowledge of Bay Bank:

(i) no asbestos was used in the construction of any portion of Bay Bank's facilities; and

(ii) no real property currently owned by it is, or has been, an industrial site or landfill. Trustmark and its consultants, agents, and representatives shall have the right to inspect Bay Bank's assets for the purpose of conducting asbestos and other environmental surveys, provided that such inspection shall be at the expense of Trustmark and at such time as may be mutually agreed upon between Bay Bank and Trustmark.

(e) As used in this Agreement the following terms shall have the following meanings:

(i) "Environmental Laws" means any applicable federal, state, or local statute, law, rule, regulation, ordinance, code, policy, or rule of common law now in effect and in each case as amended to date, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, or judgment, relating to the environment, human health or safety, or Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Authorization Act, as amended, 49 U.S.C. § 5101, et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; and the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.

(ii) "Hazardous Materials" means and includes, but is not limited to, (A) any petroleum or petroleum products, natural gas, or natural gas products, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contains dielectric fluid containing levels of polychlorinated biphenyls (PCBs), mold, and

radon gas; (B) any chemicals, materials, waste, or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants,” or “pollutants,” or words of similar import, under any Environmental Laws; and (C) any other chemical, material, waste, or substance which is in any way regulated as hazardous or toxic by any federal, state, or local government authority, agency, or instrumentality, including mixtures thereof with other materials, and including any regulated building materials such as asbestos and lead.

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Section 2.11. Litigation and Other Proceedings. Except as set forth in Schedule 2.11, there are no legal, quasi-judicial, regulatory, or administrative proceedings of any kind or nature now pending or, to the knowledge of Bay Bank, threatened before any court or administrative body in any manner against Bay Bank, or any of its properties or capital stock, which might have a Material Adverse Effect on the Condition of Bay Bank or the transactions proposed by this Agreement. Bay Bank does not know of any basis on which any litigation or proceeding could be brought which could have a Material Adverse Effect on the Condition of Bay Bank or which could question the validity of any action taken or to be taken in connection with this Agreement and the transactions contemplated hereby. Bay Bank is not in default with respect to any judgment, order, writ, injunction, decree, award, rule, or regulation of any court, arbitrator, or governmental agency or instrumentality.

Section 2.12. Taxes.

(a) Bay Bank has filed with the appropriate federal, state, and local governmental agencies all Tax Returns (as defined below in this Section) and reports required to be filed, and has paid all Taxes (as defined below in this Section) and assessments shown or claimed to be due. The Tax Returns as filed were correct in all material respects. Bay Bank has not executed or filed with the Internal Revenue Service ("IRS") any agreement extending the period for assessment and collection of any federal income Tax.

(b) Bay Bank is not a party to any action or proceeding by any governmental authority for assessment or collection of Taxes, nor has any claim for assessment or collection of Taxes been asserted against Bay Bank.

(c) Bay Bank has not waived any statute of limitations with respect to any Tax or other assessment or levy, and all such Taxes and other assessments and levies which Bay Bank is required by law to withhold or to collect have been duly withheld and collected and have been paid over to the proper governmental authorities to the extent due and payable, or segregated and set aside for such payment and, if so segregated and set aside will be so paid by Bay Bank, as required by law.

(d) True and complete copies of the federal income tax returns of Bay Bank as filed with the IRS for the years ended December 31, 2010, 2009, and 2008 have been delivered or made available to Trustmark.

(e) For purposes of this Agreement:

(i) the terms "Tax" or "Taxes" shall mean any and all taxes, charges, fees, levies, or other assessments, including, without limitation, all net income, gross income, gross receipts, excise, stamp, real or personal property, ad valorem, withholding, social security (or similar), unemployment, occupation, use, production, service, service use, license, net worth, payroll, franchise, severance, transfer, recording, employment, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code (the "Code")), customs duties, capital stock, profits, disability, sales, registration, value added, alternative or add-on minimum, estimated, or other taxes, assessments, or charges imposed by any federal, state, local, or foreign governmental entity and any interest, penalties, or additions to tax attributable thereto; and

(ii) the term "Tax Return" shall mean any return, declaration, report, form, or similar statement required to be filed with respect to any Tax (including any attached schedules), including, without limitation, any information return, claim for refund, amended return, or declaration of estimated Tax.

Section 2.13. Contracts and Commitments.

(a) Schedule 2.13 contains a schedule of all contracts to which Bay Bank is a party that cannot be terminated by Bay Bank on less than sixty (60) days' notice without payment of any amount on account of such

termination. Except as set forth in Schedule 2.13, Bay Bank is not a party to or bound by any of the following (whether written or oral, express or implied):

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(i) employment contract or severance arrangement (including, without limitation, any collective bargaining contract or union agreement or agreement with an independent consultant) which is not terminable by Bay Bank on less than sixty (60) days' notice without payment of any amount on account of such termination;

(ii) bonus, stock option, or other employee benefit arrangement, other than any deferred compensation arrangement disclosed in Schedule 2.20 or any profit-sharing, pension, or retirement plan or welfare plan disclosed in Schedule 2.19(a);

(iii) material lease or license with respect to any property, real or personal, whether as landlord, tenant, licensor or licensee;

(iv) contract or commitment for capital expenditures;

(v) material contract or commitment made in the ordinary course of business for the purchase of materials or supplies or for the performance of services over a period of more than one hundred twenty (120) days' from the date of this Agreement;

(vi) contract or option to purchase or sell any real or personal property made in the ordinary course of business;

(vii) contract, agreement, or letter with respect to the management or operations of Bay Bank imposed by any bank regulatory authority having supervisory jurisdiction over Bay Bank;

(viii) agreement, contract, or indenture related to the borrowing by Bay Bank of money other than those entered into in the ordinary course of business;

(ix) guaranty of any obligation for the borrowing of money, excluding endorsements made for collection, repurchase, or resale agreements, letters of credit and guaranties made in the ordinary course of business;

(x) agreement with or extension of credit to any executive officer or director of Bay Bank or holder of more than ten percent (10%) of the issued and outstanding Bay Bank Stock, or any affiliate of such person, which is not on substantially the same terms (including, without limitation, in the case of lending transactions, interest rates and collateral) as, and following credit underwriting practices that are not less stringent than, those prevailing at the time for comparable transactions with unrelated parties or which involve more than the normal risk of collectability or other unfavorable features;

(xi) contract or commitment to sell all or substantially all of the assets of Bay Bank; or

(xii) contracts, other than the foregoing, with annual payments aggregating $25,000 or more not made in the ordinary course of business and not otherwise disclosed in this Agreement, in any schedule attached hereto, or in any document delivered, referred to or described in writing by Bay Bank to Trustmark.

(b) To its knowledge, Bay Bank has in all material respects performed all material obligations required to be performed by it to date and is not in default under, and no event has occurred which, with the lapse of time or action by a third party could result in default under, any material indenture, mortgage, contract, lease, or other agreement to which Bay Bank is a party or by which Bay Bank is bound or under any provision of the Bay Bank Governance Documents.

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Section 2.14. Insurance. A true and complete list of all insurance policies owned or held by or on behalf of Bay Bank (other than credit-life policies), including policy numbers, retention levels, insurance carriers, and effective and termination dates, is set forth in Schedule 2.14. Such policies are in full force and effect and contain only standard cancellation or termination clauses. In the judgment of the Board of Directors of Bay Bank, such insurance policies in respect of amounts, types, and risks insured are adequate to insure against risks to which Bay Bank and its assets are normally exposed in the operation of its business, subject to customary deductibles and policy limits.

Section 2.15. No Conflict With Other Instruments. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not:

(a) conflict with or violate any provision of the Bay Bank Governance Documents; or

(b) assuming all required shareholder and regulatory approvals and consents are duly obtained, will not:

(i) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree, or injunction applicable to Bay Bank or any of its properties or assets, or

(ii) violate, conflict with, result in a breach of any provision of, or constitute a default (or an event which, with or without notice or lapse of time, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, cause Trustmark (to the knowledge of Bay Bank) or Bay Bank to become subject to or liable for the payment of any Tax, or result in the creation of any lien, charge, or encumbrance upon any of the properties or assets of Bay Bank under, any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease agreement, instrument, or obligation to which Bay Bank is a party, or by which any of its properties or assets may be bound or affected, except for such violations, conflicts, breaches, or defaults, which, either individually or in the aggregate, will not have a Material Adverse Effect on the Condition of Bay Bank.

Section 2.16. Compliance with Laws and Regulatory Filings. Bay Bank is in material compliance with all applicable federal, state, and local laws, rules, regulations, and orders applicable to it. Except for shareholder approval and approvals or consents by regulatory authorities having jurisdiction over Bay Bank, no prior consent, approval, or authorization of, or declaration, filing or registration with, any person or regulatory authority is required of Bay Bank in connection with the execution, delivery, and performance by Bay Bank of this Agreement and the transactions contemplated hereby, or the resulting change of control of Bay Bank, except for certain instruments necessary to consummate the Merger contemplated hereby. To the date hereof, Bay Bank has filed all reports, registrations, and statements, together with any amendments required to be made thereto, that are required to be filed with the Florida Division or any other regulatory authority having jurisdiction over Bay Bank, and such reports, registrations, and statements are, to the knowledge of Bay Bank, true and correct in all material respects.

Section 2.17. Absence of Certain Changes. Except as set forth in Schedule 2.17, since December 31, 2010, Bay Bank has not:

(a) issued or sold any of its capital stock or corporate debt obligations;

(b) declared or set aside or paid any dividend or made any other distribution (whether in cash, stock or property) in respect of or, directly or indirectly, purchased, redeemed, or otherwise acquired any shares of Bay Bank Stock;

(c) incurred any obligations or liabilities (fixed or contingent), except obligations or liabilities incurred in the ordinary course of business, or mortgaged, pledged, or subjected any of its assets to a lien or encumbrance (other than

in the ordinary course of business and other than statutory liens not yet delinquent);

(d) discharged or satisfied any lien or encumbrance or paid any obligation or liability (fixed or contingent), other than accruals, accounts, and notes payable included in the Bay Bank Financial Statements, accruals, accounts, and notes payable incurred since December 31, 2010, in the ordinary course of business, and accruals, accounts, and notes payable incurred in connection with the transactions contemplated by this Agreement;

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(e) sold, exchanged, or otherwise disposed of any of its capital assets other than in the ordinary course of business;

(f) other than in accordance with past practices, made any general or individual wage or salary increase (including increases in directors' or consultants' fees), paid any bonus, granted or paid any perquisites such as automobile allowances, club memberships, or dues or other similar benefits, made any accrual or arrangement for or payment of bonuses or special compensation of any kind or severance or termination pay to any present or former officer or salaried employee, or instituted any employee welfare, retirement, or similar plan or arrangement;

(g) suffered any physical damage, destruction, or casualty loss, whether or not covered by insurance;

(h) made any or acquiesced with any change in accounting methods, principles, and practices, except as may be required by GAAP;

(i) excluding loan commitments made and certificates of deposit issued, entered into any contract, agreement, or commitment which obligates Bay Bank for an amount in excess of $25,000 over the term of any such contract, agreement, or commitment;

(j) except in the ordinary course of business, entered or agreed to enter into any agreement or arrangement granting any preferential rights to purchase any of its assets, properties, or rights or requiring the consent of any party to the transfer and assignment of any such assets, properties, or rights; or

(k) incurred any change or any event involving a prospective change in the Condition of Bay Bank which has had, or is reasonably likely to have, a Material Adverse Effect on the Condition of Bay Bank, including, without limitation, any change in the administrative or supervisory standing or rating of Bay Bank with any regulatory agency having jurisdiction over Bay Bank, and no fact or condition exists as of the date hereof which might reasonably be expected to cause any such event or change in the future.

Section 2.18. Employment Relations. The relations of Bay Bank with its employees are satisfactory, and Bay Bank has not received any notice of any controversies with, or organizational efforts or other pending actions by, representatives of its employees. Bay Bank has materially complied with all laws relating to the employment of labor with respect to its employees, including any provisions thereof relating to wages, hours, collective bargaining, and the payment of workers' compensation insurance and social security and similar taxes, and no person has asserted that Bay Bank is liable for any arrearages of wages, workers' compensation insurance premiums, or any taxes or penalties for failure to comply with any of the foregoing.

Section 2.19 Employee Benefit Plans.

(a) Schedule 2.19(a) lists all employee benefit plans or agreements providing benefits to any employees or former employees of Bay Bank that are sponsored or maintained by Bay Bank to which Bay Bank contributes or is obligated to contribute on behalf of employees or former employees of Bay Bank, including, without limitation, any employee benefit plan within the meaning of Section 3(3) of the Employment Retirement Income Security Act of 1974, as amended ("ERISA"), any employee pension benefit plan within the meaning of Section 3(2) of ERISA, or any collective bargaining, bonus, incentive, deferred compensation, stock purchase, stock option, severance, change of control, or fringe benefit plan. Except as set forth in Schedule 2.19(a), all employee benefit plans maintained by Bay Bank are in material compliance with the provisions of ERISA and the applicable provisions of the Code.

(b) No employee benefit plans of Bay Bank (the "Bay Bank Plans") are subject to Title IV of ERISA or are "multiemployer plans" within the meaning of Section 4001(a)(3) of ERISA ("Multiemployer Plans"). Bay Bank has not,

at any time during the last six (6) years, contributed to or been obligated to contribute to any Multiemployer Plan, and Bay Bank has not incurred any withdrawal liability under Part I of Subtitle E of Title IV of ERISA that has not been satisfied in full.

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(c) To the knowledge of Bay Bank, no "prohibited transaction," as defined in Section 406 of ERISA or Section 4975 of the Code, has occurred that could result in liability to Bay Bank. Bay Bank's 401(k) Plan has been determined to be "qualified" within the meaning of Section 401(a) of the Code and Bay Bank knows of no fact which would adversely affect the qualified status of such plan. Schedule 2.19(c) contains copies of the most recent determination letters issued by the IRS with respect to such Bay Bank Plans.

(d) There does not now exist, nor, to the best knowledge of Bay Bank, do any circumstances exist that could result in, any Controlled Group Liability that would be a material liability of Bay Bank now or following the Closing. "Controlled Group Liability" means (i) any and all liabilities (A) under Title IV of ERISA, (B) under Section 302 of ERISA, (C) under Sections 412 and 4971 of the Code, or (D) as a result of a failure to comply with the continuation coverage requirements of Section 601 et seq. of ERISA and Section 4980B of the Code, and (E) under corresponding or similar provisions of foreign laws or regulations; (ii) with respect to any Bay Bank Plan any other material liability under Title I of ERISA or Chapter 43 or 68 of the Code; and (iii) material unfunded liabilities under any non-qualified deferred compensation plan for the benefit of any employee or former employee of Bay Bank.

Section 2.20. Deferred Compensation Arrangements. Schedule 2.20 contains a list of all deferred compensation arrangements of Bay Bank, if any, including the terms under which the cash value of any life insurance purchased in connection with any such arrangement can be realized.

Section 2.21. Brokers, Finders and Financial Advisors. Neither Bay Bank, nor any of its officers, directors, or employees, have employed any broker, finder, or financial advisor or incurred any liability for any brokerage fees, commissions, or finders' fees in connection with this Agreement and the transactions contemplated herein.

Section 2.22. Derivative Contracts. Bay Bank is not a party to nor has it agreed to enter into an exchange-traded or over-the-counter swap, forward, future, option, cap, floor, or collar financial contract or agreement, or any other contract or agreement not included in the Bay Bank Financial Statements which is a financial derivative contract (including various combinations thereof) ("Derivative Contracts").

Section 2.23. Deposits. To the knowledge of Bay Bank, none of the deposits of Bay Bank is a "brokered" deposit (as such term is defined in 12 CFR 337.6(a)(2)) or is subject to any encumbrance, legal restraint, or other legal process (other than garnishments, pledges, set off rights, escrow limitations, and similar actions taken in the ordinary course of business).

Section 2.24. Accounting Controls. To its knowledge, Bay Bank has devised and maintained a system of internal accounting controls sufficient to provide reasonable assurances that:

(a) all material transactions are executed in accordance with general or specific authorization of the Board of Directors and the duly authorized executive officers of Bay Bank;

(b) all material transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP, consistently applied, with respect to institutions such as Bay Bank or other criteria applicable to such financial statements, and to maintain proper accountability for items therein; and

(c) access to the material properties and assets of Bay Bank is permitted only in accordance with general or specific authorization of the Board of Directors and the duly authorized executive officers of Bay Bank.

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Section 2.25. Community Reinvestment Act. Bay Bank is in material compliance with the Community Reinvestment Act (12 U.S.C. § 2901 et seq.) ("CRA") and all regulations promulgated thereunder, and Bay Bank has supplied Trustmark with copies of Bay Bank's current CRA Statement, all support papers therefor, all letters and written comments received by Bay Bank since January 1, 2008 pertaining thereto, and any responses by Bay Bank to such comments. Bay Bank has a rating of "satisfactory" as of its most recent CRA compliance examination and knows of no reason why it would not receive a rating of "satisfactory" or better pursuant to its next CRA compliance examination or why the OCC or any other governmental regulatory entity may seek to restrain, delay, or prohibit the transactions contemplated hereby as a result of any act or omission of Bay Bank under the CRA.

Section 2.26. Intellectual Property Rights. Schedule 2.26 contains a correct and complete list of all registered trademarks, registered service marks, trademark and service mark applications, trade names, and registered copyrights presently owned or held by Bay Bank or used under license by it in the conduct of its business (the "Intellectual Property"). Bay Bank owns or has the right to use and continue to use the Intellectual Property in the operation of its business. Other than as set forth in Schedule 2.26, Bay Bank is not, to its knowledge, infringing or violating any patent, copyright, trademark, service mark, label filing, or trade name owned or otherwise held by any other party, and Bay Bank has not, to its knowledge, used any confidential information or any trade secrets owned or otherwise held by any other party, without holding a valid license for such use. No Intellectual Property will be adversely affected as a result of the Merger.

Section 2.27. Bank Secrecy Act; USA PATRIOT Act. Other than as set forth in Schedule 2.27, Bay Bank has neither had nor suspected any incidents of fraud or defalcation during the last two (2) years. Bay Bank is in material compliance with the Bank Secrecy Act and all regulations promulgated thereunder and has timely and properly filed and maintained all requisite Currency Transaction Reports and Suspicious Activity Reports and has properly monitored transaction activity (including, but not limited to, wire transfers). In addition, Bay Bank is in material compliance with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, GLB Act Privacy Provisions, Office of Foreign Assets Control Regulation (OFAC), Bank Protection Act, and all applicable Financial Crimes Enforcement Network (FinCEN) requirements, and all other related laws.

Section 2.28. Shareholders' List. Bay Bank has provided or made available to Trustmark as of a date within ten (10) days of the date of this Agreement a list of the holders of shares of Bay Bank Stock containing the names, addresses, and number of shares held of record, which shareholders' list is in all respects accurate as of such date and will be updated prior to Closing.

Section 2.29. Vote Required. The affirmative vote of the holders of two thirds (2/3) of the outstanding Bay Bank Stock as required by Section 215a(a)(2) of the National Bank Act, 12 USC 215a(2)(a), is the only vote required of the shareholders of Bay Bank necessary to approve the Merger and the related transactions contemplated thereby.

Section 2.30. Full Disclosure. This Agreement, the Schedules, and all information provided to Trustmark in writing pursuant to this Agreement does not contain any untrue statements of material fact, and Bay Bank has not omitted to disclose to Trustmark any material fact known to Bay Bank, concerning the financial condition, properties, or prospects of Bay Bank.

Section 2.31. Disclosure Documents. With respect to information supplied or to be supplied by Bay Bank for inclusion in the Proxy Statement (as defined below in Section 5.2) and the registration statement to be filed with the Securities and Exchange Commission ("SEC") by Trustmark for the registration of the shares of Trustmark Common Stock to be issued in connection with the Merger (the "Registration Statement"):

(a) the Proxy Statement, at the time of the mailing thereof to shareholders of Bay Bank and at the time of the special meeting of Bay Bank's shareholders, 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; and

(b) the Registration Statement, at the time it becomes effective under the Securities Act of 1933, as amended (the "Securities Act"), will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

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Section 2.32. Trust Business. Bay Bank has properly administered all accounts for which it acts as fiduciary, including accounts for which it serves as trustee, agent, custodian, personal representative, guardian, conservator or investment advisor, in accordance with the terms of the applicable governance documents and applicable laws and regulations, except for instances of noncompliance that have not had a Material Adverse Effect on Bay Bank.

III. REPRESENTATIONS AND WARRANTIES OF TRUSTMARK

Trustmark, for itself and Trustmark National Bank, makes the following representations and warranties to Bay Bank, which representations and warranties shall, individually and in the aggregate, be true and correct in all respects upon the date of this Agreement and on the Closing Date (except that all representations and warranties made as of a specific date shall be true and correct as of such date).

Section 3.1. Organization. Trustmark is a corporation duly organized, validly existing, and in good standing under the laws of the State of Mississippi and a bank holding company duly registered under the Bank Holding Company Act of 1956, as amended, subject to all laws, rules, and regulations applicable to bank holding companies. Trustmark owns 100% of the issued and outstanding capital stock of Trustmark Bank. Trustmark Bank is a national banking association duly organized, validly existing, and in good standing under the laws of the United States. Trustmark Bank is an insured bank as defined in the Federal Deposit Insurance Act. Trustmark and Trustmark Bank have full power and authority (including all licenses, franchises, permits, and other governmental authorizations which are legally required) to own their properties, to engage in the business and activities now conducted by them, and to enter into this Agreement, except where the failure to be so licensed or qualified would not have a Material Adverse Effect on the Condition of Trustmark and Trustmark Bank, considered as a consolidated whole.

Section 3.2. Capitalization.

(a) The authorized capital stock of Trustmark consists of (i) 250,000,000 shares of Trustmark Common Stock, no par value, of which 64,119,235 are issued and outstanding as of September 30, 2011, and of which 5,014,567 are reserved for issuance upon the exercise of stock options and restricted share grants, and (ii) 20,000,000 shares of Trustmark preferred stock, no par value, of which none is issued and outstanding as of September 30, 2011.

(b) All of the issued and outstanding shares of Trustmark Common Stock are validly issued, fully paid, and nonassessable, and have not been issued in violation of the preemptive rights of any person or in violation of any applicable federal or state laws. The shares of Trustmark Common Stock to be issued to Bay Bank shareholders pursuant to the provisions of this Agreement have been duly authorized, will be validly issued, fully paid, and nonassessable, and will not be issued in violation of the preemptive rights of any person. There are no voting trusts, voting agreements, or other similar arrangements affecting the Trustmark Common Stock.

(c) The authorized capital stock of Trustmark Bank consists of 2,677,955 shares of Trustmark Bank common stock, $5.00 par value, 2,677,955 of which are issued and outstanding.

Section 3.3. Approvals; Authority.

(a) Trustmark and Trustmark Bank have full corporate power and authority to execute and deliver this Agreement, to perform their respective obligations hereunder, and to consummate the transactions contemplated hereby.

(b) The Boards of Directors of Trustmark and Trustmark Bank have approved this Agreement and the transactions contemplated herein subject to any approval thereof by the shareholders of Trustmark as required by law, and no further corporate proceeding of Trustmark or Trustmark Bank is needed to execute and deliver this Agreement

and consummate the Merger. This Agreement has been duly executed and delivered by Trustmark and is a duly authorized, valid, and legally binding agreement of Trustmark enforceable against Trustmark in accordance with its terms, subject to the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to creditors' rights generally and general equitable principles.

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Section 3.4. No Conflict With Other Instruments. The execution, delivery, and performance of this Agreement, or the consummation of the transactions contemplated hereby, will not:

(a) violate any provision of the Trustmark Governance Documents;

(b) assuming all required shareholder and regulatory consents and approvals are duly obtained,

(i) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree, or injunction applicable to Trustmark or any of its properties or assets, or

(ii) violate, conflict with, result in a breach of any provision of, or constitute a default (or an event which, with or without notice or lapse of time, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, cause Trustmark or Trustmark Bank to become subject to or liable for the payment of any Tax, or result in the creation of any lien, charge, or encumbrance upon any of the properties or assets of Trustmark under any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease agreement, instrument, or obligation to which Trustmark is a party, or by which any of its properties or assets may be bound or affected, except for such violations, conflicts, breaches, or defaults which either individually or in the aggregate will not have a Material Adverse Effect on the Condition of Trustmark.

Section 3.5. Financial Statements.

(a) Trustmark has furnished or made available to Bay Bank true and complete copies of its Annual Report on Form 10-K for the year ended December 31, 2010 (the "Annual Report"), as filed with the SEC, which contains Trustmark's audited balance sheets as of December 31, 2010, and 2009, and the related statements of income and statements of changes in shareholders' equity and cash flow for the years ended December 31, 2010, 2009, and 2008. Trustmark shall make available to Bay Bank its quarterly reports on Form 10-Q as filed with the SEC for the quarters ended March 31, 2011, June 30, 2011 and September 30, 2011. The financial statements referred to above included in the Annual Report and the three reports on Form 10-Q are referred to herein as the "Trustmark Financial Statements."

(b) The Trustmark Financial Statements fairly present the financial position and results of operation of Trustmark at the dates and for the periods indicated in conformity with GAAP, applied on a consistent basis.

(c) Since December 31, 2010, Trustmark has not had any obligations or liabilities, fixed or contingent, which are material and are not fully shown or provided for in the Trustmark Financial Statements or otherwise disclosed in this Agreement, or in any of the documents delivered to Bay Bank. Since December 31, 2010, there have been no material changes in the financial condition, assets, liabilities, or business of Trustmark, other than changes in the ordinary course of business, which individually or in the aggregate have not had a Material Adverse Effect on the Condition of Trustmark.

Section 3.6. Securities and Exchange Commission Reporting Obligations. Since January 1, 2008, Trustmark has filed all material reports and statements, together with any amendments required to be made with respect thereto, that it was required to file with the SEC pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"). As of their respective dates, each of such reports and statements (or if amended, as of the date so amended), were true and correct and complied in all material respects with the relevant statutes, rules, and regulations enforced or promulgated by the SEC, and such reports did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

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Section 3.7. Trustmark Employee Benefit Plans. The employee benefits plans and health and welfare benefit plans (referred to collectively herein as the "Trustmark Plans") in effect at Trustmark and its Subsidiaries have all been operated in all material respects in compliance with ERISA, since ERISA became applicable with respect thereto. None of the Trustmark Plans nor any of their respective related trusts have been terminated (except the termination of any Trustmark Plan which is in compliance with the requirements of ERISA and which will not result in any additional liability to Trustmark), and there has been no "reportable event," as that term is defined in Section 4043 of ERISA, required to be reported since the effective date of ERISA which has not been reported, and none of such Trustmark Plans nor their respective related trusts have incurred any "accumulated funding deficiency," as such term is defined in Section 302 of ERISA (whether or not waived), since the effective date of ERISA. The Trustmark Plans are the only employee benefit plans covering employees of Trustmark and its Subsidiaries. Trustmark and its Subsidiaries will not have any material liabilities with respect to employee benefits, whether vested or unvested, as of the Closing Date for any of their employees other than under the Trustmark Plans, and as of the date hereof the actuarial present value of the Trustmark Plan assets of each Trustmark Plan is not less (and as of the Effective Time of the Merger such present value will not be less) than the present value of all benefits payable or to be payable thereunder.

Section 3.8. Regulatory Approvals. Trustmark has no reason to believe that it will not be able to obtain all requisite regulatory approvals necessary to consummate the transactions set forth in this Agreement without unnecessary delay.

Section 3.9. Taxes. Since January 1, 2008, Trustmark and its Subsidiaries have filed with the appropriate federal, state, and local governmental authorities all material Tax Returns and reports required to be filed, and have paid all Taxes and assessments shown to be due and payable thereon. At the time of filing, all such Tax Returns were correct in all material respects. Neither Trustmark nor any of its Subsidiaries has executed or filed with the IRS any agreement extending the period for assessment and collection of any federal income Tax. Neither Trustmark nor any Subsidiary is a party to any pending action or proceeding by any governmental authority for assessment or collection of Taxes, nor has any written claim for assessment or collection of Taxes been asserted against Trustmark or any Subsidiary. All Taxes which Trustmark or any Subsidiary is or was required by law to withhold or to collect have been duly withheld and collected and have been paid over to the proper authorities to the extent due and payable, or segregated and set aside for such payment, and, if so segregated and set aside, will be so paid by Trustmark or any Subsidiary, as required by applicable law.

Section 3.10. Insurance. Trustmark currently maintains insurance in amounts reasonably necessary for its operations. In the judgment of the Board of Directors of Trustmark, such insurance policies in respect of amounts, types, and risks insured are adequate to insure against risks to which Trustmark and its assets are normally exposed in the operation of its business, subject to customary deductibles and policy limits. Trustmark has no reason to believe that existing insurance coverage cannot be renewed as and when the same shall expire upon terms and conditions as favorable as those presently in effect, other than possible increases in premiums or unavailability of coverage that do not result from any extraordinary loss experience on the part of Trustmark.

Section 3.11. Laws and Regulatory Filings. Trustmark and its Subsidiaries are in material compliance with all applicable federal, state, and local laws, rules, regulations, and orders applicable to them, except where such noncompliance would not result in a Material Adverse Effect on Trustmark. Except for approvals by regulatory authorities having supervisory jurisdiction over Trustmark and its Subsidiaries, no prior consent, approval, or authorization of, or declaration, filing, or registrations with, any person or regulatory authority is required of Trustmark and its Subsidiaries in connection with the execution, delivery, and performance by Trustmark of this Agreement and the transactions contemplated hereby. Since January 1, 2008, Trustmark and its Subsidiaries have filed all reports, registrations, and statements, together with any amendments required to be made thereto, that are required to be filed with the Federal Reserve Board, the FDIC, the OCC, or any other regulatory authority having supervisory

jurisdiction over Trustmark and its Subsidiaries, and such reports, registrations, and statements, as finally amended or corrected, are, to the knowledge of Trustmark and its Subsidiaries, true and correct in all material respects.

Section 3.12. Community Reinvestment Act. Trustmark Bank is in material compliance with the CRA and all regulations promulgated thereunder. Trustmark Bank has a rating of "outstanding" as of its most recent CRA compliance examination and, knows of no reason why it would not receive a rating of "satisfactory" or better pursuant to its next CRA compliance examination, or why the OCC or any other governmental entity may seek to restrain, delay, or prohibit the transactions contemplated hereby as a result of any act or omission of the Trustmark Bank under the CRA.

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Section 3.13. Litigation and Other Proceedings. There are no legal, quasi-judicial, or administrative proceedings of any kind or nature now pending or, to the knowledge of Trustmark, threatened before any court or administrative body in any manner against Trustmark, or any of its properties or capital stock, which might have a Material Adverse Effect on the Condition of Trustmark or the transactions proposed by this Agreement. Trustmark knows of no basis on which any litigation or proceeding could be brought which could have a Material Adverse Effect on the Condition of Trustmark or which could question the validity of any action taken or to be taken in connection with this Agreement and the transactions contemplated hereby. Trustmark is not in default with respect to any judgment, order, writ, injunction, decree, award, rule, or regulation of any court, arbitrator, or governmental agency or instrumentality.

Section 3.14. Brokers and Finders. Neither Trustmark nor any of its officers, directors, or employees have employed any broker or finder or incurred any liability for any brokerage fees, commissions, or finders' fees in connection with this Agreement.

Section 3.15. Sarbanes-Oxley Act Compliance. Trustmark and its Subsidiaries and any of the officers and directors of Trustmark, in their capacities as such, are in compliance, in all material respects, with the provisions of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act") and the related rules and regulations promulgated thereunder by the SEC and NASDAQ.

Section 3.16. Absence of Certain Changes. Since December 31, 2010, (a) Trustmark and its Subsidiaries have conducted their respective businesses in the ordinary and usual course consistent with prudent banking practices (excluding the incurrence of expenses related to this Agreement and the transactions contemplated hereby), and (b) no event has occurred or circumstance arisen that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect on Trustmark.

Section 3.17. Accounting Controls. Trustmark has devised and maintained a system of internal accounting controls sufficient to provide reasonable assurance that:

(a) all material transactions are executed in accordance with general or specific authorization of the Board of Directors and the duly authorized executive officers of Trustmark and Trustmark Bank;

(b) all material transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP, consistently applied, with respect to institutions such as Trustmark and Trustmark Bank or other criteria applicable to such financial statements, and to maintain proper accountability for items therein; and

(c) Access to the material properties and assets of Trustmark and Trustmark Bank are permitted only in accordance with general or specific authorization of the Board of Directors and the duly authorized executive officers of Trustmark and Trustmark Bank.

Section 3.18. Disclosure Documents. With respect to information supplied or to be supplied by Trustmark for inclusion in the Proxy Statement and the Registration Statement:

(a) the Proxy Statement, at the time of the mailing thereof to shareholders of Bay Bank and at the time of the special meeting of Bay Bank's shareholders, 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; and

(b) the Registration Statement, at the time it becomes effective under the Securities Act, will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

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IV. COVENANTS OF BAY BANK

Bay Bank covenants and agrees with Trustmark as follows:

Section 4.1. Shareholder Approval and Best Efforts.

(a) Bay Bank shall duly take all lawful action to establish the Record Date for, duly call, give notice of, convene and hold a meeting of its shareholders (or any adjournment or postponement thereof) (the "Shareholders' Meeting") as promptly as reasonably practicable after the Registration Statement is declared effective under the Securities Act by the SEC, but in no event later than March 31, 2012, for the purpose of considering and adopting this Agreement (the "Shareholder Approval"). Bay Bank agrees that its obligations pursuant to this Section 4.1(a) shall not be affected by the commencement, public proposal, public disclosure or communication to Bay Bank of any Acquisition Proposal or by any Change of Recommendation.

(b) Subject to Section 4.5, Bay Bank shall, (i) through the Bay Bank Board, recommend to its shareholders adoption of this Agreement (the "Bay Bank Board Recommendation"), (ii) include such Bay Bank Board Recommendation in the Proxy Statement and (iii) use reasonable best efforts to obtain from its shareholders a vote approving and adopting this Agreement.

(c) Bay Bank shall give Trustmark at least ten (10) days written notice of the intended record date for the Shareholders' Meeting (or of any change to such previously identified record date).

(d) If the Bay Bank shareholders approve the Merger, Bay Bank will take all reasonable action to aid and assist in the consummation of the Merger, and will use its best efforts to take or cause to be taken all other actions necessary, proper, or advisable to consummate the transactions contemplated by this Agreement, including such actions as Trustmark reasonably considers necessary, proper, or advisable in connection with filing applications and registration statements with, or obtaining approvals from, all governmental entities having jurisdiction over the transactions contemplated by this Agreement.

Section 4.2. Activities of Bay Bank Pending Closing.

(a) From the date hereof to and including the Closing Date, as long as this Agreement remains in effect Bay Bank shall:

(i) conduct its affairs (including, without limitation, the making of or agreeing to make any loans or other extensions of credit) only in the ordinary course of business consistent with past practices and prudent banking principles;

(ii) use its best efforts to preserve intact its present business organizations, keep available the services of its present officers, directors, key employees, and agents, and preserve its relationships and goodwill with customers and advantageous business relationships; and

(iii) except as required by law or regulation, take no action which would adversely affect or delay the ability of Bay Bank or Trustmark to obtain any approvals from any regulatory agencies or other approvals required for consummation of the transactions contemplated hereby or to perform its obligations and agreements under this Agreement.

(b) From the date hereof to and including the Closing Date, except as required by law or regulation, as long as this Agreement remains in effect or unless Trustmark otherwise consents in writing (which consent shall not be

unreasonably withheld), Bay Bank shall not:

(i) make or agree to make or renew any loans or other extensions of credit to any borrower in excess of $100,000 (except (A) pursuant to commitments made prior to the date of this Agreement, (B) loans fully secured by a certificate of deposit at Bay Bank, and (C) renewals, extensions, and consolidations of any loans other than those loans listed in Schedule 2.7); provided, however, that in the event that Bay Bank desires to make or renew any such loan in excess of $100,000, Bay Bank shall so advise Trustmark in writing. Trustmark shall notify Bay Bank in writing within three (3) business days of receipt of such notice whether Trustmark consents to such loan or extension of credit, provided that if Trustmark fails to notify Bay Bank within such time frame, Trustmark shall be deemed to have consented to such loan or extension of credit;

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(ii) issue or sell or obligate itself to issue or sell any shares of its capital stock or any warrants, rights, or options to acquire, or any securities convertible into, any shares of its capital stock, or declare or pay any dividend in respect of its capital stock;

(iii) open or close any branch office, or acquire or sell or agree to acquire or sell, any branch office or any deposit liabilities, and shall otherwise consult with and seek the advice of Trustmark with respect to basic policies relating to branching, site location, and relocation;

(iv) enter into, amend, or terminate any agreement of the type that would be required to be disclosed in Schedule 2.13, or any other material agreement, or acquire or dispose of any material amount of assets or liabilities, except in the ordinary course of business consistent with prudent banking practices;

(v) implement any salary increases that are not in the ordinary course of business and which are inconsistent with past practices;

(vi) grant any severance or termination pay (other than pursuant to Bay Bank's policies in effect on the date hereof) to, or enter into any employment, consulting, noncompetition, retirement, parachute, severance, or indemnification agreement with, any officer, director, employee, or agent of Bay Bank, either individually or as part of a class of similarly situated persons (other than as required or contemplated by this Agreement);

(vii) cause or allow any of the things listed in Section 2.17 to occur (except with respect to Section 2.17(g)), Bay Bank shall use its best efforts to not cause or allow any of the things listed therein to occur);

(viii) sell, transfer, convey, or otherwise dispose of any real property (including "other real estate owned") or interest therein;

(ix) foreclose upon or otherwise acquire any commercial real property prior to receipt and approval by Trustmark of a Phase I environmental review thereof;

(x) increase or decrease the rate of interest paid on deposit accounts, except in a manner and pursuant to policies consistent with Bay Bank's past practices;

(xi) establish any new Subsidiary;

(xii) voluntarily make any material change in the interest rate risk profile of Bay Bank as of September 30, 2011;

(xiii) materially deviate from policies and procedures existing as of the date of this Agreement with respect to (A) classification of assets, (B) the allowance for loan losses, and (C) accrual of interest on assets, except as otherwise required by the provisions of this Agreement;

(xiv) amend or change any provision of the Bay Bank Governance Documents;

(xv) make any capital expenditure which would exceed an aggregate of $25,000;

(xvi) excluding deposits, certificates of deposit, Federal Home Loan Bank advances and borrowings consistent with past practices, undertake any additional borrowings in excess of ninety (90) days; or

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(xvii) modify any outstanding loan or acquire any loan participation, unless such modification is made in the ordinary course of business, consistent with past practice.

(xviii) make any acquisition of or investment in any person, or of all or any portion of the assets, business, deposits or properties of any other entity, by purchase of or other acquisition of stock or other equity interests (other than in a fiduciary capacity in the ordinary course of business consistent with past practice), by merger, consolidation, asset purchase or other business combination, or by formation of any joint venture or other business organization or by contributions to capital (other than by way of foreclosures or acquisitions of control in a fiduciary or similar capacity or in satisfaction of debts previously contracted in good faith, in each case in the ordinary course of business); (ii) enter into a plan of consolidation, merger, share exchange, share acquisition, reorganization or complete or partial liquidation with any person, or a letter of intent, memorandum of understanding or agreement in principle with respect thereto; or (iii) other than by way of foreclosures or acquisitions of control in a fiduciary or similar capacity or in satisfaction of debts previously contracted in good faith, in each case in the ordinary course of business, make any purchases or other acquisitions of any debt securities, property or assets (including any investments or commitments to invest in real estate or any real estate development project) in or from any person except in the ordinary course of business and in a transaction that, together with other such transactions, is not material to it, taken as a whole, and does not present a material risk that the Closing Date will be materially delayed or that the regulatory approvals will be more difficult to obtain.

Section 4.3. Access to Properties and Records.

(a) To the extent permitted by applicable law, Bay Bank shall:

(i) afford the executive officers and authorized representatives (including legal counsel, accountants and consultants) of Trustmark full access to the properties, books, and records of Bay Bank in order that Trustmark may have full opportunity to make such reasonable investigation as it shall desire to make of the affairs of Bay Bank;

(ii) furnish Trustmark with such additional financial and operating data and other information as to the business and properties of Bay Bank as Trustmark shall, from time to time, request.

(b) As soon as practicable after they become available, Bay Bank will deliver or make available to Trustmark all call reports filed by Bay Bank with the appropriate federal regulatory authority after the date of this Agreement. All financial statements shall be prepared in accordance with GAAP, applied on a consistent basis with previous accounting periods.

(c) In the event of the termination of this Agreement, Trustmark will return to Bay Bank all documents and other information obtained pursuant hereto, will return or destroy any copies (including information or data stored on any electronic or other medium) and any analyses or studies based on such information and will keep confidential any information obtained pursuant to this Agreement.

Section 4.4. Information for Regulatory Applications and SEC Filings.

(a) To the extent permitted by law, Bay Bank will furnish Trustmark with all information concerning Bay Bank required for inclusion in any application, filing, registration statement, or document to be made or filed by Trustmark or Bay Bank with any federal or state regulatory or supervisory authority in connection with the transactions contemplated by this Agreement during the pendency of this Agreement.

(b) Bay Bank represents and warrants that all information so furnished for such applications and filings shall, to the best of its knowledge, be true and correct in all material respects without omission of any material fact required

to be stated to make the information not misleading.

(c) Bay Bank agrees at any time, upon the request of Trustmark, to furnish to Trustmark a written letter or statement confirming the accuracy of the information with respect to Bay Bank contained in any report or other application or statement referred to in this Agreement, and confirming that the information with respect to Bay Bank contained in such document or draft was furnished by Bay Bank expressly for use therein or, if such is not the case, indicating the inaccuracies contained in such document or indicating the information not furnished by Bay Bank expressly for use therein.

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Section 4.5. Standstill Provision.

(a) So long as this Agreement is in effect, Bay Bank:

(i) shall cease any existing negotiations or provision of Company information for any Acquisition Proposal (as defined below in Section 4.5(b));

(ii) shall not, and Bay Bank agrees and will use its best efforts to cause its directors, officers, employees, agents, and representatives to not, directly or indirectly, take any action to solicit, initiate, or encourage the making of any Acquisition Proposal; and

(iii) shall not, and Bay Bank agrees and will use its best efforts to cause its directors, officers, employees, agents, and representatives to not, enter into any negotiations concerning, furnish any nonpublic information relating to Bay Bank in connection with, or agree to any Acquisition Proposal.

(b) Bay Bank agrees to notify Trustmark promptly of any Acquisition Proposal received and provide reasonable detail as to the identity of the proposed acquiror and the nature of the proposed transaction. "Acquisition Proposal" means a written offer or proposal which contains a fixed price per share or a mathematically ascertainable formula for calculating a price per share for Bay Bank Stock regarding any of the following (other than the transactions contemplated by this Agreement):

(i) any merger, reorganization, consolidation, share exchange, recapitalization, business combination, liquidation, dissolution, or other similar transaction involving the sale, lease, exchange, mortgage, pledge, transfer, or other disposition of all or substantially all of the assets or equity securities or deposits of Bay Bank, whether in a single transaction or series of related transactions, which could reasonably be expected to impede, interfere with, prevent, or materially delay the completion of the Merger;

(ii) any tender offer or exchange offer for all or substantially all of the outstanding shares of the capital stock of Bay Bank or the filing of a registration statement under the Securities Act in connection therewith; or

(iii) any public announcement of a proposal, plan, or intention to do any of the foregoing or any agreement to engage in any of the foregoing.

Section 4.6. Bank Merger. Prior to the Effective Time, Bay Bank shall cooperate with Trustmark and Trustmark Bank as necessary in conjunction with all approvals, filings, and other steps necessary to cause the consummation of the Merger.

Section 4.7. Employee Benefit Plans. Bay Bank shall execute and deliver such instruments and take such other actions as Trustmark may reasonably require in order to cause the amendment or termination of any of its employee benefit plans on terms satisfactory to Trustmark and in accordance with applicable law and effective as of the Closing Date.

Section 4.8. Current Information. During the period from the date of this Agreement to the Effective Date, Bay Bank will cause one or more of their designated representatives to confer on a regular and frequent basis with representatives of Trustmark and to report the general status of its ongoing operations. In addition, separate reporting on matters involving the loan portfolio will occur monthly and will include, but not be limited to: (i) all board reports; (ii) new and renewed loan reports; (iii) month-end delinquency/past due reports; (iv) month-end loan extensions; (v) loan policy exceptions, loan documentation/collateral exceptions, and financial statement exceptions; (vi) watch list reports (all special mention, substandard, doubtful and loss loans); (vii) all written communications/officer

memoranda concerning problem loan accounts greater than $100,000; (viii) notification and written details involving new loan products and/or loan programs; (ix) loan presentations/approval packages for new and/or renewed loans, lines of credit or commitments of $100,000 or more; (x) all loan review statistical/analysis reports and any loan review reports related to branches; (xi) reconciliation of allowance for loan and lease losses to include gross chargeoffs, recoveries and net chargeoffs; (xii) written explanation of any gross chargeoffs greater than $50,000; (xiii) written analysis of adequacy of allowance for loan and lease losses; and (xiv) such other information regarding specific loans, the loan portfolio, and management of the loan portfolio as may be requested. Bay Bank will promptly notify Trustmark of any material change in the normal course of their business or in the operation of their properties.

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Section 4.9. Dividends. Bay Bank shall not declare or pay to its shareholders any cash or other dividends during the term of this Agreement.

Section 4.10. Directors Vote. The members of the Board of Directors of Bay Bank agree in their individual capacities to vote their shares of Bay Bank Stock in favor of the Merger at the special meeting of shareholders called to consider and vote upon the Merger.

V. COVENANTS OF TRUSTMARK

Trustmark covenants and agrees with Bay Bank as follows:

Section 5.1. Regulatory Filings and Best Efforts. Trustmark will take all reasonable action to aid and assist in the consummation of the Merger and the transactions contemplated hereby, and will use its best efforts to take or cause to be taken all other actions necessary, proper, or advisable to consummate the transactions contemplated by this Agreement, including such actions which are necessary, proper, or advisable in connection with filing applications with, or obtaining approvals from, all regulatory authorities having jurisdiction over the transactions contemplated by this Agreement.

Section 5.2. Registration Statement. After the execution of this Agreement, Trustmark will prepare and file with the SEC a Registration Statement on Form S-4 under the Securities Act and any other applicable documents, relating to the shares of Trustmark Common Stock to be delivered to the shareholders of Bay Bank pursuant to this Agreement, and will use its best efforts to cause the Registration Statement to become effective. Bay Bank and its counsel shall be given the opportunity to participate in the preparation of the Registration Statement and shall have the right to approve the content of the Registration Statement with respect to Bay Bank and the Bay Bank shareholders' meeting. At the time the Registration Statement becomes effective, the Registration Statement will comply in all material respects with the provisions of the Securities Act and the published rules and regulations thereunder, and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not false or misleading, and at the time of mailing thereof to Bay Bank's shareholders and at the time of the Bay Bank Shareholders' Meeting, the Proxy Statement included as part of the Registration Statement (the "Proxy Statement"), as amended or supplemented by any amendment or supplement filed by Trustmark will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not false or misleading; provided, however, that none of the provisions of this subparagraph shall apply to statements in or omissions from the Registration Statement or the Proxy Statement made in reliance upon and in conformity with information furnished by Bay Bank for use in the Registration Statement or the Proxy Statement.

Section 5.3. Employee Benefit Plans. Trustmark agrees that the employees of Bay Bank who continue their employment after the Closing Date (the "Bay Bank Employees") will be entitled to participate as newly hired employees in the employee benefit plans and programs maintained for employees of Trustmark on the Closing Date, in accordance with the respective terms of such plans and programs, and Trustmark shall take all actions necessary or appropriate to facilitate coverage of the Bay Bank Employees in such plans and programs from and after the Closing Date, subject to the following:

(a) Each Bay Bank Employee will be entitled to credit for prior service with Bay Bank for all purposes under the employee benefit plans and other employee benefit plans and programs (other than stock option plans), sponsored by Trustmark to the extent Bay Bank sponsored a similar type of plan in which the Bay Bank Employees participated immediately prior to the Closing Date. Any eligibility waiting period and pre-existing condition exclusion applicable to such plans and programs shall be waived with respect to each Bay Bank Employee and their eligible dependents. For purposes of determining Bay Bank Employees benefit for the calendar year in which the Merger

occurs under Trustmark's vacation program, any vacation taken by the Bay Bank Employees immediately preceding the Closing Date for the calendar year in which the Merger occurs will be deducted from the total Trustmark vacation benefit available to such Bay Bank Employees for such calendar year. Trustmark further agrees to credit the Bay Bank Employees and their eligible dependents for the year during which coverage under Trustmark's group health plan begins, with any deductibles already incurred during such year, under Bay Bank's group health plan.

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(b) The Bay Bank Employees shall be entitled to credit for past service with Bay Bank for the purpose of satisfying any eligibility or vesting periods applicable to Trustmark's employee benefit plans which are subject to Sections 401(a) and 501(a) of the Code (including, without limitation, Trustmark's 401(k) Plan).

Section 5.4. Regulatory Approvals. Trustmark will file all necessary regulatory documents, notices, and applications not later than the 30th day after the execution of this Agreement and will provide Bay Bank with a copy of the non-confidential portions of notices, applications, statements, or correspondence submitted to or received from regulatory authorities in connection with the Merger.

Section 5.5. NASDAQ Listing. Trustmark will file all documents required to have the shares of Trustmark Common Stock to be issued pursuant to the Agreement included for quotation on The NASDAQ Global Select Market and use its best efforts to effect said listing.

Section 5.6. Indemnification; Insurance.

(a) For a period of three (3) years from and after the Effective Time, Trustmark (the "Indemnifying Party") shall indemnify and hold harmless each present and former director, officer, and employee of Bay Bank determined as of the Effective Time (the "Indemnified Parties") against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages, or liabilities (collectively, "Costs") incurred in connection with any claim, action, suit, proceeding, or investigation whether civil or criminal, administrative or investigative, arising out of matters existing or occurring at or prior to the Effective Time, including any director liability arising out of the Bay Bank Board Recommendation and approval of this Agreement by the Bay Bank Board of Directors, whether asserted or claimed prior to, at, or after the Effective Time to the fullest extent to which such Indemnified Parties were entitled under the Bay Bank Governance Documents and applicable laws.

(b) Any Indemnified Party wishing to claim indemnification under this Section, upon learning of any such claim, action, suit, proceeding, or investigation, shall promptly notify the Indemnifying Party, but the failure to so notify shall not relieve the Indemnifying Party of any liability it may have to such Indemnified Party if such failure does not materially prejudice the Indemnifying Party. In the event of any such claim, action, suit, proceeding, or investigation (whether arising before or after the Effective Time),

(i) the Indemnifying Party shall have the right to assume the defense thereof and the Indemnifying Party shall not be liable to such Indemnified Parties for any legal expenses of other counsel or any other expenses subsequently incurred by such Indemnified Parties in connection with the defense thereof, except that if the Indemnifying Party elects not to assume such defense or counsel for the Indemnified Party and the Indemnified Parties, the Indemnified Parties may retain counsel which is reasonably satisfactory to the Indemnifying Party, and the Indemnifying Party shall pay, promptly as statements therefor are received, the reasonable fees and expenses of such counsel for the Indemnified Parties (which may not exceed one firm in any jurisdiction unless the use of one counsel for such Indemnified Parties would present such counsel with a conflict of interest);

(ii) the Indemnified Parties will cooperate in the defense of any such matter; and

(iii) the Indemnifying Party shall not be liable for any settlement effected without its prior written consent.

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(c) Trustmark shall use its commercially reasonable efforts to maintain its existing policy of directors and officers liability insurance (or comparable coverage) for a period of not less than three (3) years after the Effective Time; which policy shall be amended, however, to include the directors and officers of Bay Bank currently covered under the policy held by Bay Bank, and which shall be a "claims made" policy providing coverage for (among other things) acts or omissions occurring prior to the Effective Time.

VI. MUTUAL COVENANTS OF TRUSTMARK AND BAY BANK

Section 6.1. Notification; Updated Disclosure Schedules. Bay Bank shall give prompt notice to Trustmark, and Trustmark shall give prompt notice to Bay Bank, of:

(a) any representation or warranty made by it in this Agreement becoming untrue or inaccurate in any respect, including, without limitation, as a result of any change in a Schedule; or

(b) the failure by it to comply with or satisfy in any material respect any covenant, condition, or agreement to be complied with or satisfied by it under this Agreement; provided, however, that no such notification shall affect the representations, warranties, covenants, or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

Section 6.2. Confidentiality. Neither Trustmark nor Bay Bank will, directly or indirectly, before or after the consummation or termination of this Agreement, disclose any confidential information, whether written or oral ("Subject Information") acquired from the other party to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever, other than in connection with the regulatory notice and application process or, after termination of this Agreement pursuant to Section 8.1, use such Subject Information for its own purposes or for the benefit of any person, firm, corporation, association, or other entity under any circumstances. The term "Subject Information" does not include any information that (a) at the time of disclosure or thereafter is generally available to and known to the public, other than by a breach of this Agreement by the disclosing party, (b) was available to the disclosing party on a nonconfidential basis from a source other than the nondisclosing party, (c) was independently acquired or developed by the disclosing party without violating any obligations of this Agreement, or (d) is required to be disclosed under applicable law or legal process; provided, however, the disclosing party must give prompt notice to the nondisclosing party of the legal requirement and cooperate with the nondisclosing party in any effort to oppose such requirement.

Section 6.3. Publicity. Except as otherwise required by applicable law or in connection with the regulatory application process, as long as this Agreement is in effect, neither Trustmark nor Bay Bank shall, nor shall they permit any of their officers, directors, or representatives to, issue or cause the publication of any press release or public announcement with respect to, or otherwise make any public announcement concerning, the transactions contemplated by this Agreement without the consent of the other party, which consent shall not be unreasonably withheld or delayed.

VII. CLOSING

Section 7.1. Closing.

(a) Subject to the other provisions of this Article VII, on a mutually acceptable date ("Closing Date") as soon as practicable within a thirty (30) day period commencing with the latest of the following dates:

(i) the receipt of Bay Bank shareholder approval and the last approval from any requisite regulatory or supervisory authority and the expiration of any statutory or regulatory waiting period which is necessary to effect the

Merger; or

(ii) if the transactions contemplated by this Agreement are being contested in any legal proceeding, and Trustmark or Bay Bank, pursuant to Section 11.1, has elected to contest the same, then the date that such proceeding has been brought to a conclusion favorable, in the judgment of each of Trustmark and Bay Bank, to the consummation of the transactions contemplated herein, or such prior date as each of Trustmark and Bay Bank shall elect whether or not such proceeding has been brought to a conclusion.

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(b) A meeting ("Closing") will take place at which the parties to this Agreement will exchange certificates, opinions, letters, and other documents in order to determine whether any condition exists which would permit the parties hereto to terminate this Agreement. If no such condition then exists or if no party elects to exercise any right it may have to terminate this Agreement, then and thereupon the appropriate parties shall execute such documents and instruments as may be necessary or appropriate to effect the transactions contemplated by this Agreement. The Closing shall take place at the offices of Brunini, Grantham, Grower & Hewes, PLLC, in Jackson, Mississippi, or at such other place to which the parties hereto may mutually agree.

Section 7.2. Effective Time. Subject to the terms and upon satisfaction of all requirements of law and the conditions specified in this Agreement including, among other conditions, the receipt of any requisite approvals of the shareholders of Bay Bank and the regulatory approvals of the Federal Reserve Board, FDIC, OCC, and any other federal or state regulatory agency whose approval must be received in order to consummate the Merger, the Merger shall become effective, and the effective time of the Merger shall occur, at the date and time specified in the Merger approval to be issued by the OCC (the "Effective Time").

VIII. TERMINATION

Section 8.1. Termination.

(a) This Agreement may be terminated by action of the Board of Directors of Trustmark or Bay Bank at any time prior to the Effective Time if:

(i) any court of competent jurisdiction in the United States or other United States (federal or state) governmental body shall have issued an order, decree, or ruling or taken any other action restraining, enjoining, or otherwise prohibiting the Merger and such order, decree, ruling, or other action shall have been final and non-appealable;

(ii) any of the transactions contemplated by this Agreement are disapproved by any regulatory authority or other person whose approval is required to consummate any of such transactions; or

(iii) the Merger shall not have become effective on or before the one hundred and fiftieth (150th) day following the date of this Agreement, or such later date as shall have been approved in writing by the Boards of Directors of Trustmark and Bay Bank; provided, however, that the right to terminate under this Section 8.1(a)(iii) shall not be available to any party whose failure to fulfill any material obligation under this Agreement has been the cause of, or has resulted in, the failure of the Merger to become effective on or before such date.

(b) This Agreement may be terminated at any time prior to the Closing by the Board of Directors of Bay Bank if:

(i) Trustmark shall fail to comply in any material respect with any of its covenants or agreements contained in this Agreement, or if any of the representations or warranties of Trustmark contained herein shall be inaccurate in any material respect; or

(ii) if the conditions set forth in Article X have not been met or waived by Bay Bank.

In the event the Board of Directors of Bay Bank desires to terminate this Agreement because of an alleged breach or inaccuracy or change as provided in Section 8.1(b)(i), such Board of Directors must notify Trustmark in writing of its intent to terminate stating the reason therefor. Trustmark shall have fifteen (15) days from the receipt of such notice to cure the alleged breach or inaccuracy, subject to the approval of Bay Bank (which approval shall not be

unreasonably withheld).

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(c) This Agreement may be terminated at any time prior to the Closing by action of the Board of Directors of Trustmark if:

(i) Bay Bank shall fail to comply in any material respect with any of its covenants or agreements contained in this Agreement, or if any of the representations or warranties of Bay Bank contained herein shall be inaccurate in any material respect;

(ii) if the conditions set forth in Article IX have not been met or waived by Trustmark; or

(iii) if, prior to receipt of the Shareholder Approval, Bay Bank or the Bay Bank Board (or any committee thereof) has (A) effected a Change of Recommendation or approved, adopted, endorsed or recommended any Acquisition Proposal, (B) failed to recommend the Merger and the approval of this Agreement by the shareholders of Bay Bank, (C) breached the terms of Section 4.5 in any respect adverse to Purchaser, or (D) breached its obligations under Section 4.1 by failing to call, give notice of, convene and hold the Bay Bank Shareholders' Meeting in accordance with Section 4.1; or

(iv) if Bay Bank or the Bay Bank Board has, in response to the commencement (other than by Purchaser or a Subsidiary thereof) of a tender offer or exchange offer, recommended that the shareholders of Bay Bank tender their shares in such tender or exchange offer or otherwise failed to recommend that such shareholders reject such tender offer or exchange offer within the ten (10) Business Day period specified in Rule 14e-2(a) under the Exchange Act.

(v) the Board of Directors of Trustmark reasonably concludes in good faith, after consulting with counsel, that Trustmark will be unable to obtain any regulatory approval required to consummate the Merger or any such approval is accompanied by terms or conditions which materially and adversely impact the financial consequences of the Merger to Trustmark.

In the event the Board of Directors of Trustmark desires to terminate this Agreement because of an alleged breach or inaccuracy or change as provided in Section 8.1(c)(i), the Board of Directors of Trustmark must notify Bay Bank in writing of its intent to terminate stating the cause therefor. Bay Bank shall have fifteen (15) days from the receipt of such notice to cure the alleged breach or inaccuracy, subject to the approval of Trustmark (which approval shall not be unreasonably withheld).

(d) This Agreement may be terminated at any time prior to the Closing with the mutual written consent of Trustmark and Bay Bank and the approval of such action by their respective Boards of Directors.

(e) This Agreement may be terminated at any time prior to Closing by either Trustmark or Bay Bank, if the shareholders of Bay Bank fail to approve the Merger at the Bay Bank Shareholders' Meeting called for such purpose (or any adjournment thereof).

Section 8.2. Effect of Termination. In the event of termination of this Agreement by either Trustmark or Bay Bank as provided in Section 8.1 or the abandonment of the Merger without breach by any party hereto, this Agreement (other than Section 6.2 and Section 12.4) shall become void and have no effect, without any liability on the part of any party or its directors, officers, or shareholders. Nothing contained in this Section shall relieve any party hereto of any liability for a breach of this Agreement.

IX. CONDITIONS TO OBLIGATIONS OF TRUSTMARK

The obligations of Trustmark under this Agreement are subject to the satisfaction, at or prior to the Closing Date of the following conditions, which may be waived by Trustmark in its sole discretion:

Section 9.1. Compliance with Representations and Covenants. The representations and warranties made by Bay Bank in this Agreement must have been true in all respects when made and shall be true in all respects as of the Closing Date with the same force and effect as if such representations and warranties were made at and as of the Closing Date, and Bay Bank shall have performed or complied with all covenants and conditions required by this Agreement to be performed and complied with prior to or at the Closing. Trustmark shall have been furnished with a certificate, executed by an appropriate representative of Bay Bank and dated as of the Closing Date, to the foregoing effect.

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Section 9.2. Absence of Material Adverse Effect. There shall have been no change after the date hereof in the assets, properties, business, or financial condition of Bay Bank which have, or which may be foreseen to have, a Material Adverse Effect on the Condition of Bay Bank or the transactions contemplated hereby; provided, however, that for purposes of this Section a Material Adverse Effect shall not include a change with respect to, or effect on, Bay Bank resulting:

(a) from a change in law, rule, regulation, or GAAP;

(b) as a result of entering into this Agreement or complying with this Agreement; or

(c) from any other matter affecting federally-insured depository institutions generally, including, without limitation, changes in general economic conditions and changes in prevailing interest or deposit rates.

Section 9.3. Legal Opinion. Trustmark shall have received an opinion of Haskell Slaughter Young & Rediker, LLC, counsel to Bay Bank, dated as of the Closing Date, addressed to Trustmark and in form and substance satisfactory to counsel for Trustmark.

Section 9.4. Tax Opinion. Trustmark shall have received an opinion of Brunini, Grantham, Grower & Hewes, PLLC, to the effect that on the basis of certain facts, representations, and opinions set forth in such opinion that the Merger will qualify as a reorganization under Section 368(a) of the Code. In rendering such opinion, such counsel may require and rely upon and may incorporate by reference representations and covenants, including those contained in certificates of officers and/or directors of Bay Bank, Trustmark, and others.

X. CONDITIONS TO OBLIGATIONS OF BAY BANK

The obligations of Bay Bank under this Agreement are subject to the satisfaction, at or prior to the Closing Date, of the following conditions, which may be waived by Bay Bank in its sole discretion:

Section 10.1. Compliance with Representations and Covenants. The representations and warranties made by Trustmark in this Agreement must have been true in all respects when made and shall be true in all respects as of the Closing Date with the same force and effect as if such representations and warranties were made at and as of the Closing Date, and Trustmark shall have performed and complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by Trustmark prior to or at the Closing. Bay Bank shall be furnished with a certificate, executed by appropriate representatives of Trustmark and dated as of the Closing Date, to the foregoing effect.

Section 10.2. Absence of Material Adverse Effect. There shall have been no change after the date hereof in the assets, properties, business, or financial condition of Trustmark which has, or which may be foreseen to have a Material Adverse Effect on the Condition of Trustmark considered as a consolidated whole or the transactions contemplated hereby; provided, however, that for purposes of this Section, a Material Adverse Effect will not include a change with respect to, or effect on, Trustmark resulting:

(a) from a change in law, rule, regulation, or GAAP;

(b) as a result of entering into this Agreement or complying with this Agreement;

(c) from any other matter affecting federally-insured depository institutions generally (including without limitation, their holding companies), including, without limitation, changes in general economic conditions and changes in prevailing interest or deposit rates.

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Section 10.3. Legal Opinion. Bay Bank shall have received an opinion of Brunini, Grantham, Grower & Hewes, PLLC, counsel to Trustmark, dated as of the Closing Date, addressed to Bay Bank and in form and substance satisfactory to counsel for Bay Bank.

Section 10.4. Tax Opinion. Bay Bank shall have received an opinion of Brunini, Grantham, Grower & Hewes, PLLC, to the effect that on the basis of certain facts, representations, and opinions set forth in such opinion that the Merger will qualify as a reorganization under Section 368(a) of the Code. In rendering such opinion, such counsel may require and rely upon and may incorporate by reference representations and covenants, including those contained in certificates of officers and/or directors of Bay Bank, Trustmark, and others.

XI. CONDITIONS TO RESPECTIVE OBLIGATIONS OF TRUSTMARK AND BAY BANK

The respective obligations of Trustmark and Bay Bank under this Agreement are subject to the satisfaction of the following conditions which may be waived by Trustmark and Bay Bank, respectively, in their sole discretion:

Section 11.1. Government Approvals. Trustmark shall have received the approval, or waiver of approval, of the transactions contemplated by this Agreement from all necessary governmental agencies and authorities, including the OCC and any other regulatory agency whose approval must be received in order to consummate the Merger, which approvals shall not impose any restrictions on the operations of Trustmark or the Surviving Bank which are unacceptable to Trustmark, and such approvals and the transactions contemplated hereby shall not have been contested by any federal or state governmental authority or any third party (except shareholders asserting dissenters' rights) by formal proceeding. It is understood that, if any such contest is brought by formal proceeding, Trustmark or Bay Bank may, but shall not be obligated to, answer and defend such contest or otherwise pursue the Merger over such objection.

Section 11.2. Shareholder Approval. The holders of Bay Bank Stock shall have approved this Agreement and the transactions contemplated by this Agreement.

Section 11.3. Registration of Trustmark Common Stock. The Registration Statement covering the Trustmark Common Stock to be issued in the Merger shall have become effective under the Securities Act and no stop orders suspending such effectiveness shall be in effect, and no claim, action, suit, proceeding, or investigation by the SEC to suspend the effectiveness of the Registration Statement shall have been initiated or continuing, or have been threatened and be unresolved, and all necessary approvals under state securities laws relating to the issuance or trading of the Trustmark Common Stock to be issued in the Merger shall have been received.

Section 11.4. Listing of Trustmark Common Stock. The shares of Trustmark Common Stock to be delivered to the shareholders of Bay Bank pursuant to this Agreement shall have been authorized for listing on The NASDAQ Global Select Market.

XII. MISCELLANEOUS

Section 12.1. Certain Definitions. Except as otherwise provided herein, the capitalized terms set forth below shall have the following meanings:

(a) "Affiliate" means any natural person, corporation, general partnership, limited partnership proprietorship, other business organization, trust, union, association, or governmental authority that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

(b) "Condition" means the business, assets, operations, financial condition, or results of operations of Bay Bank or Trustmark, as the case may be.

(c) "Deposit Insurance Fund" means the Deposit Insurance Fund of the FDIC created by the Federal Deposit Insurance Reform Act of 2005, Public Law 101-171, adopted into law on February 8, 2006, pursuant to Sections 2101 et. seq. of which the Bank Insurance Fund and the Savings Association Insurance Fund were merged effective March 31, 2006 into a new fund known as the Deposit Insurance Fund to insure the safety of deposits of FDIC member banks.

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(d) "Material Adverse Effect," "material," or "materially" when used in reference to Bay Bank shall be understood to mean a breach of any representation, warranty, or covenant contained in this Agreement which, separately or in the aggregate with any other such breach, does or could result in a cost, loss, detriment, or obligation in excess of $500,000 on a pre-tax basis; provided, however, with reference to the representations, warranties, and covenants of Trustmark and its Subsidiaries contained in this Agreement, "Material Adverse Effect," "material," or "materially" shall have the meaning normally accorded to such terms considering the relative importance of such representation, warranty, or covenant in the context of an organization of the type and size of Trustmark.

(e) "Subsidiary" or "Subsidiaries" shall mean, when used with reference to an entity, any corporation, association, or other entity in which fifty percent (50%) of the issued and outstanding voting securities are owned directly or indirectly by any such entity, or any partnership, joint venture, limited liability company, or other enterprise in which any entity has, directly or indirectly, any equity interest.

Section 12.2. Non-Survival of Representations and Warranties. The representations, warranties, covenants, and agreements of Trustmark and Bay Bank contained in this Agreement shall terminate at the Closing.

Section 12.3. Amendments. This Agreement may be amended only by a written instrument signed by Trustmark and Bay Bank at any time prior to the Effective Time with respect to any of the terms contained herein; provided, however, that the Merger Consideration to be received by the shareholders of Bay Bank pursuant to this Agreement shall not be decreased subsequent to the approval of the transactions contemplated by the Agreement without the further approval by such shareholders.

Section 12.4. Expenses. Whether or not the transactions provided for herein are consummated, each party to this Agreement will pay its respective expenses incurred in connection with the preparation and performance of its obligations under this Agreement. Similarly, each party agrees to indemnify the other parties against any cost, expense, or liability (including reasonable attorneys' fees) in respect of any claim made by any party for a broker's or finder's fee in connection with this transaction other than one based on communications between the party and the claimant seeking indemnification. Except as disclosed herein, Trustmark and Bay Bank represent and warrant to each other that neither of them, nor any of their agents, employees, or representatives has incurred any liability for any commissions or brokerage fees in connection with this Merger.

Section 12.5. Notices. Except as explicitly provided herein, any notice given hereunder shall be in writing and shall be delivered in person or mailed by first class mail, postage prepaid or sent by facsimile, courier or personal delivery to the parties at the following addresses, unless by such notice a different address shall have been designated:

IF TO TRUSTMARK OR TRUSTMARK BANK:

Trustmark Corporation [or]
Trustmark National Bank
Attention: Gerard R. Host
248 E. Capitol Street, Suite 340
Jackson, Mississippi 39201
(601) 208-6651 (phone)
(601) 208-6694 (fax)

AND

IF TO BAY BANK:

Bay Bank & Trust Co.
Attention: Kenneth E. Padgett
1701 Highway A1A, Suite 202
Vero Beach, Florida
772-231-0810 (phone)
772-231-0803 (fax)

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Trustmark Corporation [or]
Trustmark National Bank
Attention: T. Harris Collier III
248 E. Capitol Street, Suite 733
Jackson, Mississippi 39201
(601) 208-5088 (phone)
(601) 208-6424 (fax)

With a copy to:

Brunini, Grantham, Grower & Hewes, PLLC

Attention: Granville Tate, Jr.
190 E. Capitol Street, Suite 100
Jackson, Mississippi 39201
(601) 948-3101 (phone)
(601) 960-6902 (fax)

Bay Bank & Trust Co.
E. Clay Lewis, III
509 Harrison Avenue
Panama City, Florida 32401
(850) 769-3333 (phone)
(850) 785-9553 (fax)

With a copy to:

Haskell Slaughter Young & Rediker, LLC
Attention: Robert E. Lee Garner
2001 Park Place, Suite 1400
Birmingham, Alabama 35203
(205) 251-1000 (phone)
(205) 324-1133 (fax)

All notices sent by mail as provided above shall be deemed delivered three (3) days after deposit in the mail. All notices sent by courier as provided above shall be deemed delivered on the date set forth on the courier's delivery receipt and all notices sent by facsimile shall be deemed delivered upon confirmation of receipt. All other notices shall be deemed delivered when actually received. Any party to this Agreement may change its address for the giving of notice specified above by giving notice as herein provided.

Section 12.6. Controlling Law. All questions concerning the validity, operation, and interpretation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of the State of Mississippi and, to the extent applicable, by the laws of the United States of America.

Section 12.7. Headings; References. The headings and titles to the sections of this Agreement are inserted for convenience only and shall not be deemed a part hereof or affect the construction or interpretation of any provision hereof. References to Sections, Exhibits, Schedules, paragraphs, and subsections in this Agreement shall be deemed to refer to this Agreement unless specifically stated otherwise.

Section 12.8. Modifications or Waiver. No termination, cancellation, modification, amendment, deletion, addition, or other change in this Agreement, or any provision hereof, or waiver of any right or remedy herein provided, shall be effective for any purpose unless specifically set forth in a writing signed by the party or parties to be bound thereby. The waiver of any right or remedy in respect to any occurrence or event on one occasion shall not be deemed a waiver of such right or remedy in respect to such occurrence or event on any other occasion.

Section 12.9. Severability. Any provision hereof prohibited by or unlawful or unenforceable under any applicable law or any jurisdiction shall as to such jurisdiction be ineffective, without affecting any other provision of this Agreement, or shall be deemed to be severed or modified to conform with such law, and the remaining provisions of this Agreement shall remain in force; provided that the purpose of the Agreement can be effected. To the fullest extent, however, that the provisions of such applicable law may be waived, they are hereby waived, to the end that this Agreement be deemed to be a valid and binding agreement enforceable in accordance with its terms.

Section 12.10. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, but shall not be assigned by any party without the prior written consent of the other parties.

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Section 12.11. Consolidation of Agreements. All understandings and agreements heretofore made between the parties hereto are merged in this Agreement which (together with any agreements executed by the parties hereto contemporaneously with or subsequent to the execution of this Agreement) shall be the sole expression of the agreement of the parties respecting the Merger.

Section 12.12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall be deemed to constitute one and the same instrument.

Section 12.13. Binding on Successors. Except as otherwise provided herein, this Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, executors, trustees, administrators, guardians, successors, and assigns.

Section 12.14. Gender. Any pronoun used herein shall refer to any gender, either masculine, feminine or neuter, as the context requires.

Section 12.15. Disclosures. Any disclosure made in any document delivered pursuant to this Agreement or referred to or described in writing in any Section of this Agreement or any Schedule attached hereto shall be deemed to be disclosure for purposes of any such Section or Schedule.

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IN WITNESS WHEREOF, the undersigned authorized representatives of the parties to this Agreement have executed and delivered this Agreement as of the date first above written.

TRUSTMARK CORPORATION

By: /s/ Gerard R. Host
Gerard R. Host,
President and Chief Executive Officer

ATTEST:

/s/ T. Harris Collier III
T. Harris Collier III, Secretary

TRUSTMARK NATIONAL BANK

By: /s/ Gerard R. Host
Gerard R. Host,
President and Chief Executive Officer

ATTEST:

/s/ T. Harris Collier III
T. Harris Collier III, Secretary

BAY BANK & TRUST CO.

/s/ Kenneth E. Padgett
Kenneth E. Padgett, Chairman

ATTEST:

/s/ Linda Carlson Newton
Linda Carlson Newton, Secretary

[Signature Page to Agreement and Plan of Merger]

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The members of the Board of Directors of Bay Bank & Trust Co. join in the execution of this Agreement in their individual capacities for the sole purpose of agreeing to the terms of Section 4.10 hereof.

/s/ Ivie R. Burch
Ivie R. Burch

/s/ Rebecca S. Daffin
Rebecca S. Daffin

/s/ E. Clay Lewis, III
E. Clay Lewis, III

/s/ Don E. McCormick
Don E. McCormick

/s/ James R. Moody, IV
James R. Moody, IV

/s/ Donald F. Nations
Donald F. Nations

/s/ Jeffrey K. Padgett
Jeffrey K. Padgett

/s/ Kenneth E. Padgett
Kenneth E. Padgett

/s/ John T. Patronis
John T. Patronis

/s/ Kal G. Squires
Kal G. Squires

/s/ Jay N. Trumbull
Jay N. Trumbull

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Execution Copy

EXHIBIT A

to

Agreement and Plan of Merger

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BANK MERGER AGREEMENT

OF

BAY BANK & TRUST CO., A FLORIDA BANKING CORPORATION

WITH AND INTO

TRUSTMARK NATIONAL BANK, A NATIONAL BANKING ASSOCIATION
UNDER THE ARTICLES OF ASSOCIATION OF TRUSTMARK NATIONAL BANK
UNDER THE TITLE OF TRUSTMARK NATIONAL BANK

As of November 30, 2011, Trustmark Corporation and Bay Bank & Trust Co., a banking corporation organized under the laws of the state of Florida, being located in Panama City, County of Bay, State of Florida ("Bay Bank"), entered into an Agreement and Plan of Merger (the "Agreement"). This Bank Merger Agreement is made and entered into in furtherance of the Agreement and is between Bay Bank with a capital of $3,913,440 divided into 782,688 shares of common stock, each of $5.00 par value, surplus of $10,822,405 and undivided profits, including capital reserves, of $10,888,784 and net unrealized holding gains on available for sale securities of ($175,541) as of September 30, 2011, and Trustmark National Bank ("Trustmark Bank"), a national banking association organized under the laws of the United States, being located in Jackson, County of Hinds, State of Mississippi, with a capital of $13,389,775 divided into 2,677,955 shares of common stock, each of $5.00 par value, surplus of $681,273,866 and undivided profits, including capital reserves, of $528,574,795 and accumulated other comprehensive income, net of tax, of $19,606,517 as of September 30, 2011. Bay Bank and Trustmark Bank are each acting pursuant to a resolution of its board of directors, adopted by a vote of a majority of its directors, pursuant to the authority given by and in accordance with the provisions of 12 USC 1828(c) and Article 12, Sections 215a and 215a-1 of the United States Code, respectively.

Bay Bank and Trustmark Bank hereby adopt this Bank Merger Agreement for the purpose of merging Bay Bank with and into Trustmark Bank.

Section 1 Bay Bank shall be merged with and into Trustmark Bank under the Charter of Trustmark Bank (the "Bank Merger").

Section 2 The name of the merged association (the "Association") shall be Trustmark National Bank.

Section 3 The business of the Association shall be that of a national banking association. This business shall be conducted by the Association at its main office which shall be located at Jackson, Mississippi, and at its legally established branches.

Section 4 The amount of capital stock of the Association shall be $13,389,775 divided into 2,677,955 shares of common stock, each of a $5.00 par value and at the time the Bank Merger shall become effective, the Association shall have a surplus of approximately $681,273,866, and undivided profits, including capital reserves, which when combined with the capital and surplus will be equal to the combined capital structures of the merging banks as stated in the preamble of this agreement, adjusted however, for normal earnings and expenses between September 30, 2011, and the effective time of the Bank Merger.

Section 5 All assets of each of the merging banks, as they exist at the effective time of the Bank Merger, shall pass to and vest in the Association without any conveyance or other transfer; and the Association shall be responsible for all of the liabilities of every kind and description, including liabilities arising out of the operation of a trust department, of

each of the merging banks existing as of the effective time of the Bank Merger.

As its contribution to the capital structure of the Association, Bay Bank shall contribute to the Association acceptable assets having a book value, over and above its liability to its creditors, of at least $25,800,170, and having an estimated fair value, over and above its liability to its creditors, of at least $25,800,170, adjusted, however, for normal earnings and expenses between September 30, 2011, and the effective time of the Bank Merger, and for allowance of cash payments, if any, permitted under this agreement.

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As its contribution to the capital structure of the Association, Trustmark Bank shall contribute acceptable assets having a book value, over and above its liability of its creditors, of at least $1,242,844,953 and having an estimated fair value, over and above its liability to is creditors, of at least $1,242,844,953, adjusted, however, for normal earnings and expenses between September 30, 2011, and the effective time of the Bank Merger, and for allowance of cash payments, if any, permitted under this agreement.

Section 6 At the effective time of the Bank Merger, Trustmark Corporation shall retain its present rights in and to each of the 13,389,775 issued and outstanding shares of common stock, $5.00 par value of Trustmark Bank, which are owned by Trustmark Corporation, and each of the 782,688 issued and outstanding shares of Bay Bank common stock, $5.00 par value, shall be canceled and retired.

Section 7 Bay Bank shall not declare any other cash or other dividends prior to closing. From the date hereof until the effective time of the Bank Merger, Trustmark Bank shall be entitled to declare and pay such dividends as may, from time to time, be declared by the Board of Directors of Trustmark Bank.

Section 8 The present Board of Directors of Trustmark Bank shall continue to serve as the Board of Directors of the Association until the next annual meeting of shareholders or until such time as their successors have been elected and have qualified.

Section 9 Effective as of the time the Bank Merger shall become effective as specified in the Bank Merger approval to be issued by the Comptroller of the Currency, the Articles of Association of the merged bank shall read in their entirety as follows:

FIRST. The title of this Association shall be “Trustmark National Bank.”

SECOND. The main office of the Association shall be in Jackson, County of Hinds, State of Mississippi. The general business of the Association shall be conducted at its main office and its branches.

THIRD. The Board of Directors of this Association shall consist of not less than five nor more than twenty-five members, the exact number of Directors within such minimum and maximum limits to be fixed and determined from time to time by resolution of a majority of the full Board of Directors or by resolution of the shareholders at any annual or special meeting thereof. Each Director shall own common or preferred stock of the Association or of a company which has control over the Association within the meaning of 12 U.S.C. ' 1841 ("The Bank Holding Company Act"), with an aggregate par, fair market or equity value of not less than $1,000, as of either (i) the date of purchase, (ii) the date the person became a director, or (iii) the date of that person's most recent election to the Board of Directors, whichever is more recent. Any combination of common or preferred stock of the Association or holding company may be used. Unless otherwise provided by the laws of the United States, any vacancy in the Board of Directors for any reason, including an increase in the number thereof, may be filled through appointment by a majority of the remaining Directors then in office, and any director so appointed shall hold his place until the next election, and until his successor shall have been elected and qualified.

FOURTH. The annual meeting of the shareholders for the election of Directors and the transaction of whatever other business may be brought before said meeting shall be held at the main office or such other place as the Board of Directors may designate, on the day of each year specified therefor in the Bylaws, but if no election is held on that day, it may be held on any subsequent day according to the provisions of law; and all elections shall be held according to such lawful regulations as may be prescribed by the Board of Directors.

Nominations for election to the Board of Directors may be made by the Board of Directors or by any stockholder of any outstanding class of capital stock of the Association entitled to vote for election of directors. Nominations, other

than those made by or on behalf of the existing management of the Association, shall be made in writing and shall be delivered or mailed to the Chairman of the Board of the Association not less than 14 days nor more than 50 days prior to any meeting of stockholders called for the election of directors; provided however, that if less than 21 days' notice of the meeting is given to shareholders, such nominations shall be mailed or delivered to the Chairman of the Board of the Association not later than the close of business on the seventh day following the day on which the notice of the meeting was mailed. Such notification shall contain the following information to the extent known to the notifying shareholder: (a) the name and address of each proposed nominee; (b) the principal occupation of each proposed nominee; (c) the total number of shares of capital stock of the Association that will be voted for each proposed nominee; (d) the name and residence address of the notifying shareholder; and (e) the number of shares of capital stock of the Association owned by the notifying shareholder. Nominations not made in accordance herewith may, in his discretion, be disregarded by the chairman of the meeting, and upon his instructions the vote tellers may disregard all votes cast for each such nominee.

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FIFTH. The authorized amount of capital stock of this Association shall be 2,677,955 shares of common stock of the par value of Five Dollars ($5.00) each; but said capital stock may be increased or decreased from time to time, in accordance with the provisions of the laws of the United States.

If the capital stock is increased by the sale of additional shares thereof, each shareholder shall be entitled to subscribe for such additional shares in proportion to the number of shares of said capital stock owned by him at the time the increase is authorized by the shareholders unless another time subsequent to the date of the shareholders' meeting is specified in a resolution adopted by the shareholders at the time the increase is authorized, except when they are (1) issued to effect or to raise the necessary capital to effect a merger or consolidation, (2) issued to effect or to raise the necessary capital to effect an acquisition of assets, (3) issued for consideration other than cash, (4) issued to satisfy conversion rights, or other rights or options, or (5) issued pursuant to any employee stock option or stock purchase plan. The Board of Directors shall have the power to prescribe a reasonable period of time within which the preemptive rights to subscribe to the new shares of capital stock must be exercised.

The Association, at any time and from time to time, may authorize and issue debt obligations, whether or not subordinated, without the approval of the shareholders.

SIXTH. The Board of Directors shall appoint one of its members President of the Association, who shall be Chairman of the Board, unless the Board appoints another director to be the Chairman. The Board of Directors shall have the power to appoint one or more Vice Presidents, and to appoint a Secretary and such officers and employees as may be required to transact the business of the Association.

The Board of Directors shall have the power to define the duties of the officers and employees of the Association; to fix the salaries to be paid to them; to dismiss them; to require bonds from them and to fix the penalty thereof; to regulate the manner in which any increase of the capital of the Association shall be made; to manage the affairs of the Association; to make all Bylaws that it may be lawful for them to make; and generally to do and perform all acts that it may be legal for a Board of Directors to do and perform.

SEVENTH. The Board of Directors shall have the power to change the location of the main office to any other place within the limits of Jackson, Mississippi, without the approval of the shareholders but subject to the approval of the Comptroller of the Currency; and shall have the power to establish or change the location of any branch or branches of the Association to any other location, without the approval of the shareholders but subject to the approval of the Comptroller of the Currency.

EIGHTH. The corporate existence of this Association shall continue until terminated in accordance with the laws of the United States.

NINTH. The Board of Directors of this Association, or any three or more shareholders owning, in the aggregate, not less than 25 percent of the stock of this Association, may call a special meeting of the shareholders at any time. Unless otherwise provided by the laws of the United States, a notice of the time, place, and purpose of every annual or special meeting of the shareholders shall be given by First Class Mail, postage prepaid, mailed at least ten days prior to the date of such meeting to each shareholder of record at his address as shown upon the books of this Association.

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TENTH. Any person, his heirs, executors, or administrators, may be indemnified or reimbursed by the Association for reasonable expenses actually incurred in connection with any action, suit, or proceeding, civil or criminal, to which he or they shall be made a party or potential party by reason of his being or having been a director, or an honorary or advisory director, officer, or employee of the Association or of any firm, corporation, or organization which he served in any such capacity at the request of the Association; provided, however, that no person shall be so indemnified or reimbursed in relation to any matter in such action, suit, or proceeding as to which he shall finally be adjudged to have been guilty of or liable for negligence or willful misconduct in the performance of his duties to the Association; and provided further, that no person shall be so indemnified or reimbursed in relation to any administrative proceeding or action instituted by an appropriate bank regulatory agency which proceeding or action results in a final order assessing civil money penalties or requiring affirmative action by an individual or individuals in the form of payments to the Association. The foregoing right of indemnification or reimbursement shall not be exclusive of other rights to which such person, his heirs, executors, or administrators, may be entitled as a matter of law. The Association may, upon affirmative vote of a majority of its Board of Directors, purchase insurance to indemnify its directors, honorary or advisory directors, officers and employees to the extent that such indemnification is allowed in these Articles of Association. Such insurance may, but need not, be for the benefit of all directors, honorary or advisory directors, officers or employees.

ELEVENTH. These Articles of Association may be amended at any regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the stock of this Association, unless the vote of the holders of a greater amount of stock is required by law, and in that case by the vote of the holders of such greater amount.

Section 10 This Bank Merger Agreement may be terminated in the manner and to the extent provided in the Agreement.

Section 11 This Bank Merger Agreement shall be ratified and confirmed by the affirmative vote of shareholders of each of the merging banks owning at least sixty-seven percent (67%) of its capital stock outstanding, at a meeting to be held on the call of the directors; and the Bank Merger shall become effective at the time specified in the approval of Bank Merger to be issued by the Comptroller of the Currency of the United States.

[Signatures on Following Pages]

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WITNESS, the signatures and seals of said merging banks this 30 day of November, 2011, each hereunto set by its Chief Executive Officer or Chairman of the Board and attested by its President, Executive Vice President, Secretary, or Assistant Secretary pursuant to a resolution of its Board of Directors, acting by a majority thereof, and witness the signature hereto of the majority of each of said Boards of Directors.

TRUSTMARK NATIONAL BANK		TRUSTMARK CORPORATION	
By:	/s/ Gerard R. Host Gerard R. Host, President and Chief Executive Officer	By:	/s/ Gerard R. Host Gerard R. Host, President and Chief Executive Officer
Attest:		Attest:	
By:	/s/ T. Harris Collier III T. Harris Collier III, Secretary	By:	/s/T. Harris Collier III T. Harris Collier III, Secretary
	(SEAL)		(SEAL)

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, the undersigned authority in and for the said county and state, on this 30 day of November, 2011, within my jurisdiction, the within named GERARD R. HOST and T. HARRIS COLLIER III, who acknowledged that they are the President and Chief Executive Officer and Secretary, respectively, of each of Trustmark Corporation, a Mississippi bank holding company, and Trustmark National Bank, a national banking association, and that for and on behalf of the said corporation and association, and as their acts and deeds he executed the above and foregoing instrument, after first having been duly authorized by said corporation and association so to do.

/s/ Tina Ginn
Notary Public

My Commission expires: (SEAL)

12-4-14

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Ratified by the Board of Directors of Trustmark National Bank.

/s/ Adolphus B. Baker
Adolphus B. Baker

/s/ John M. McCullouch
John M. McCullouch

/s/ Toni D. Cooley
Toni D. Cooley

/s/ Richard H. Puckett
Richard H. Puckett

/s/ William C. Deviney, Jr.
William C. Deviney, Jr.

/s/ Charles W. Renfrow
Charles W. Renfrow

/s/ Gerald R. Dunkle
Gerald R. Dunkle

/s/ R. Michael Summerford
R. Michael Summerford

/s/ Daniel A. Grafton
Daniel A. Grafton

/s/ Harry M. Walker
Harry M. Walker

/s/ Gerard R. Host
Gerard R. Host

/s/ Leroy G. Walker, Jr.
Leroy G. Walker, Jr.

/s/ David H. Hoster II
David H. Hoster II

/s/ Allen Wood, Jr.
Allen Wood, Jr.

/s/ Larry L. Lambiotte
Larry L. Lambiotte

/s/ William G. Yates III
William G. Yates III

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BAY BANK &
TRUST CO.

By: /s/
Kenneth E.
Padgett
Kenneth E.
Padgett,
Chairman

Attest:

By: /s/ Linda
Carlson
Newton
Linda
Carlson
Newton,
Secretary

(SEAL)

STATE OF FLORIDA
COUNTY OF Indian River

Personally appeared before me, the undersigned authority in and for the said county and state, on this 29 day of November, 2011, within my jurisdiction, the within named KENNETH E. PADGETT, who acknowledged that he is the Chairman of Bay Bank & Trust Co., a Florida banking corporation, and that for and on behalf of the said corporation, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

/s/ Carolyn P. Klotzer
Notary Public (SEAL)

My Commission expires:
August 16, 2014

STATE OF FLORIDA
COUNTY OF Bay

Personally appeared before me, the undersigned authority in and for the said county and state, on this 30th day of November, 2011, within my jurisdiction, the within named LINDA CARLSON NEWTON, who acknowledged that she is the Secretary of Bay Bank & Trust Co., a Florida banking corporation, and that for and on behalf of the said corporation, and as its act and deed she executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

/s/ Luann H. Price
Notary Public (SEAL)

My Commission expires:
10/8/2012

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Ratified by the Board of Directors of Bay Bank & Trust Co.

/s/ Ivie R. Burch
Ivie R. Burch

/s/ Jeffrey K. Padgett
Jeffrey K. Padgett

/s/ Rebecca S. Daffin
Rebecca S. Daffin

/s/ Kenneth E. Padgett
Kenneth E. Padgett

/s/ E. Clay Lewis, III
E. Clay Lewis, III

/s/ John T. Patronis
John T. Patronis

/s/ Don E. McCormick
Don E. McCormick

/s/ Kal G. Squires
Kal G. Squires

/s/ James R. Moody, IV
James R. Moody, IV

/s/ Jay N. Trumbull
Jay N. Trumbull

/s/ Donald F. Nations
Donald F. Nations

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Appendix B

FLORIDA BUSINESS CORPORATION ACT
APPRAISAL RIGHTS STATUTES

607.1301. Appraisal rights; definitions

The following definitions apply to ss. 607.1302-607.1333:

(1) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of s. 607.1302(2)(d), a person is deemed to be an affiliate of its senior executives.

(2) "Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

(3) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in ss. 607.1322-607.1333, includes the surviving entity in a merger.

(4) "Fair value" means the value of the corporation's shares determined:

(a) Immediately before the effectuation of the corporate action to which the shareholder objects.

(b) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable to the corporation and its remaining shareholders.

(c) For a corporation with 10 or fewer shareholders, without discounting for lack of marketability or minority status.

(5) "Interest" means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(6) "Preferred shares" means a class or series of shares the holders of which have preference over any other class or series with respect to distributions.

(7) "Record shareholder" means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

(8) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, or anyone in charge of a principal business unit or function.

(9) "Shareholder" means both a record shareholder and a beneficial shareholder.

607.1302. Right of shareholders to appraisal

(1) A shareholder of a domestic corporation is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

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(a) Consummation of a conversion of such corporation pursuant to s. 607.1112 if shareholder approval is required for the conversion and the shareholder is entitled to vote on the conversion under ss. 607.1103 and 607.1112(6), or the consummation of a merger to which such corporation is a party if shareholder approval is required for the merger under s. 607.1103 and the shareholder is entitled to vote on the merger or if such corporation is a subsidiary and the merger is governed by s. 607.1104;

(b) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(c) Consummation of a disposition of assets pursuant to s. 607.1202 if the shareholder is entitled to vote on the disposition, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within 1 year after the date of sale;

(d) An amendment of the articles of incorporation with respect to the class or series of shares which reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

(e) Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors, except that no bylaw or board resolution providing for appraisal rights may be amended or otherwise altered except by shareholder approval; or

(f) With regard to a class of shares prescribed in the articles of incorporation prior to October 1, 2003, including any shares within that class subsequently authorized by amendment, any amendment of the articles of incorporation if the shareholder is entitled to vote on the amendment and if such amendment would adversely affect such shareholder by:

1. Altering or abolishing any preemptive rights attached to any of his or her shares;

2. Altering or abolishing the voting rights pertaining to any of his or her shares, except as such rights may be affected by the voting rights of new shares then being authorized of any existing or new class or series of shares;

3. Effecting an exchange, cancellation, or reclassification of any of his or her shares, when such exchange, cancellation, or reclassification would alter or abolish the shareholder’s voting rights or alter his or her percentage of equity in the corporation, or effecting a reduction or cancellation of accrued dividends or other arrearages in respect to such shares;

4. Reducing the stated redemption price of any of the shareholder’s redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his or her shares, or making any of his or her shares subject to redemption when they are not otherwise redeemable;

5. Making noncumulative, in whole or in part, dividends of any of the shareholder’s preferred shares which had theretofore been cumulative;

6. Reducing the stated dividend preference of any of the shareholder’s preferred shares; or

7. Reducing any stated preferential amount payable on any of the shareholder's preferred shares upon voluntary or involuntary liquidation.

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(2) Notwithstanding subsection (1), the availability of appraisal rights under paragraphs (1)(a), (b), (c), and (d) shall be limited in accordance with the following provisions:

(a) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

1. Listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

2. Not so listed or designated, but has at least 2,000 shareholders and the outstanding shares of such class or series have a market value of at least $10 million, exclusive of the value of such shares held by its subsidiaries, senior executives, directors, and beneficial shareholders owning more than 10 percent of such shares.

(b) The applicability of paragraph (a) shall be determined as of:

1. The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

2. If there will be no meeting of shareholders, the close of business on the day on which the board of directors adopts the resolution recommending such corporate action.

(c) Paragraph (a) shall not be applicable and appraisal rights shall be available pursuant to subsection (1) for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in paragraph (a) at the time the corporate action becomes effective.

(d) Paragraph (a) shall not be applicable and appraisal rights shall be available pursuant to subsection (1) for the holders of any class or series of shares if:

1. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who:

a. Is, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of 20 percent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within 1 year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

b. Directly or indirectly has, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporation of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of 25 percent or more of the directors to the board of directors of the corporation; or

2. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or otherwise, pursuant to such corporate action by a person, or by an affiliate of a person, who is, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

a. Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

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b. Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in s. 607.0832; or

c. In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

(e) For the purposes of paragraph (d) only, the term "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares, provided that a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within 1 year of that date if such action would otherwise afford appraisal rights.

(4) A shareholder entitled to appraisal rights under this chapter may not challenge a completed corporate action for which appraisal rights are available unless such corporate action:

(a) Was not effectuated in accordance with the applicable provisions of this section or the corporation's articles of incorporation, bylaws, or board of directors' resolution authorizing the corporate action; or

(b) Was procured as a result of fraud or material misrepresentation.

607.1303. Assertion of rights by nominees and beneficial owners

(1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(a) Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in s. 607.1322(2)(b)2.

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(b) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

607.1320. Notice of appraisal rights

(1) If proposed corporate action described in s. 607.1302(1) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that shareholders are, are not, or may be entitled to assert appraisal rights under this chapter. If the corporation concludes that appraisal rights are or may be available, a copy of ss. 607.1301-607.1333 must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to s. 607.1104, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within 10 days after the corporate action became effective and include the materials described in s. 607.1322.

(3) If the proposed corporate action described in s. 607.1302(1) is to be approved other than by a shareholders' meeting, the notice referred to in subsection (1) must be sent to all shareholders at the time that consents are first solicited pursuant to s. 607.0704, whether or not consents are solicited from all shareholders, and include the materials described in s. 607.1322.

607.1321. Notice of intent to demand payment

(1) If proposed corporate action requiring appraisal rights under s. 607.1302 is submitted to a vote at a shareholders' meeting, or is submitted to a shareholder pursuant to a consent vote under s. 607.0704, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must deliver to the corporation before the vote is taken, or within 20 days after receiving the notice pursuant to s. 607.1320(3) if action is to be taken without a shareholder meeting, written notice of the shareholder's intent to demand payment if the proposed action is effectuated.

(b) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) is not entitled to payment under this chapter.

607.1322. Appraisal notice and form

(1) If proposed corporate action requiring appraisal rights under s. 607.1302(1) becomes effective, the corporation must deliver a written appraisal notice and form required by paragraph (2)(a) to all shareholders who satisfied the requirements of s. 607.1321. In the case of a merger under s. 607.1104, the parent must deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(2) The appraisal notice must be sent no earlier than the date the corporate action became effective and no later than 10 days after such date and must:

(a) Supply a form that specifies the date that the corporate action became effective and that provides for the shareholder to state:

1. The shareholder's name and address.

2. The number, classes, and series of shares as to which the shareholder asserts appraisal rights.

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3. That the shareholder did not vote for the transaction.

4. Whether the shareholder accepts the corporation's offer as stated in subparagraph (b)4.

5. If the offer is not accepted, the shareholder's estimated fair value of the shares and a demand for payment of the shareholder's estimated value plus interest.

(b) State:

1. Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subparagraph 2.

2. A date by which the corporation must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the subsection (1) appraisal notice and form are sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date.

3. The corporation's estimate of the fair value of the shares.

4. An offer to each shareholder who is entitled to appraisal rights to pay the corporation's estimate of fair value set forth in subparagraph 3.

5. That, if requested in writing, the corporation will provide to the shareholder so requesting, within 10 days after the date specified in subparagraph 2., the number of shareholders who return the forms by the specified date and the total number of shares owned by them.

6. The date by which the notice to withdraw under s. 607.1323 must be received, which date must be within 20 days after the date specified in subparagraph 2.

(c) Be accompanied by:

1. Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of the fiscal year ending not more than 15 months prior to the date of the corporation's appraisal notice, an income statement for that year, a cash flow statement for that year, and the latest available interim financial statements, if any.

2. A copy of ss. 607.1301-607.1333.

607.1323. Perfection of rights; right to withdraw

(1) A shareholder who wishes to exercise appraisal rights must execute and return the form received pursuant to s. 607.1322(1) and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to s. 607.1322(2)(b)2. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (2).

(2) A shareholder who has complied with subsection (1) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal

notice pursuant to s. 607.1322(2)(b)6. A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

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(3) A shareholder who does not execute and return the form and, in the case of certificated shares, deposit that shareholder's share certificates if required, each by the date set forth in the notice described in subsection (2), shall not be entitled to payment under this chapter.

607.1324. Shareholder's acceptance of corporation's offer

(1) If the shareholder states on the form provided in s. 607.1322(1) that the shareholder accepts the offer of the corporation to pay the corporation's estimated fair value for the shares, the corporation shall make such payment to the shareholder within 90 days after the corporation's receipt of the form from the shareholder.

(2) Upon payment of the agreed value, the shareholder shall cease to have any interest in the shares.

607.1326. Procedure if shareholder is dissatisfied with offer

(1) A shareholder who is dissatisfied with the corporation's offer as set forth pursuant to s. 607.1322(2)(b)4. must notify the corporation on the form provided pursuant to s. 607.1322(1) of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) within the timeframe set forth in s. 607.1322(2)(b)2. waives the right to demand payment under this section and shall be entitled only to the payment offered by the corporation pursuant to s. 607.1322(2)(b)4.

607.1330. Court action

(1) If a shareholder makes demand for payment under s. 607.1326 which remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, any shareholder who has made a demand pursuant to s. 607.1326 may commence the proceeding in the name of the corporation.

(2) The proceeding shall be commenced in the appropriate court of the county in which the corporation's principal office, or, if none, its registered office, in this state is located. If the corporation is a foreign corporation without a registered office in this state, the proceeding shall be commenced in the county in this state in which the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

(3) All shareholders, whether or not residents of this state, whose demands remain unsettled shall be made parties to the proceeding as in an action against their shares. The corporation shall serve a copy of the initial pleading in such proceeding upon each shareholder party who is a resident of this state in the manner provided by law for the service of a summons and complaint and upon each nonresident shareholder party by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. If it so elects, the court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them or in any amendment to the order. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(5) Each shareholder made a party to the proceeding is entitled to judgment for the amount of the fair value of such shareholder's shares, plus interest, as found by the court.

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(6) The corporation shall pay each such shareholder the amount found to be due within 10 days after final determination of the proceedings. Upon payment of the judgment, the shareholder shall cease to have any interest in the shares.

607.1331. Court costs and counsel fees

(1) The court in an appraisal proceeding shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(2) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with ss. 607.1320 and 607.1322; or

(b) Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(3) If the court in an appraisal proceeding finds that the services of counsel for any shareholder were of substantial benefit to other shareholders similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the shareholders who were benefited.

(4) To the extent the corporation fails to make a required payment pursuant to s. 607.1324, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all costs and expenses of the suit, including counsel fees.

607.1332. Disposition of acquired shares

Shares acquired by a corporation pursuant to payment of the agreed value thereof or pursuant to payment of the judgment entered therefor, as provided in this chapter, may be held and disposed of by such corporation as authorized but unissued shares of the corporation, except that, in the case of a merger or share exchange, they may be held and disposed of as the plan of merger or share exchange otherwise provides. The shares of the surviving corporation into which the shares of such shareholders demanding appraisal rights would have been converted had they assented to the merger shall have the status of authorized but unissued shares of the surviving corporation.

607.1333. Limitation on corporate payment

(1) No payment shall be made to a shareholder seeking appraisal rights if, at the time of payment, the corporation is unable to meet the distribution standards of s. 607.06401. In such event, the shareholder shall, at the shareholder’s option:

(a) Withdraw his or her notice of intent to assert appraisal rights, which shall in such event be deemed withdrawn with the consent of the corporation; or

(b) Retain his or her status as a claimant against the corporation and, if it is liquidated, be subordinated to the rights of creditors of the corporation, but have rights superior to the shareholders not asserting appraisal rights, and if it is not liquidated, retain his or her right to be paid for the shares, which right the corporation shall be obliged to satisfy when the restrictions of this section do not apply.

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(2) The shareholder shall exercise the option under paragraph (1)(a) or paragraph (b) by written notice filed with the corporation within 30 days after the corporation has given written notice that the payment for shares cannot be made because of the restrictions of this section. If the shareholder fails to exercise the option, the shareholder shall be deemed to have withdrawn his or her notice of intent to assert appraisal rights.

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 21. Exhibits and Financial Statement Schedules.

List of Exhibits

Exhibit	Description
2.1	Agreement and Plan of Merger, dated as of November 30, 2011, by and among the Registrant, Trustmark National Bank, and Bay Bank and Trust Co. (included as Appendix A to the proxy statement/prospectus, which forms a part of this Registration Statement on Form S-4).
3.1	Articles of Incorporation of the Registrant, as amended. Incorporated herein by reference to Exhibit 3-a to Trustmark's Annual Report on Form 10-K for the year ended December 31, 2002, filed on March 21, 2003.
3.2	Amended and Restated Bylaws of the Registrant. Incorporated herein by reference to Exhibit 3.2 to Trustmark's Current Report on Form 8-K filed on November 25, 2008.
5.1*	Opinion of Brunini, Grantham, Grower & Hewes, PLLC, regarding the legality of the securities being registered.
8.1+	Opinion of Brunini, Grantham, Grower & Hewes, PLLC, as to certain tax matters.
23.1+	Consent of KPMG LLP.
23.2*	Consent of Brunini, Grantham, Grower & Hewes, PLLC, included as part of its opinion filed as Exhibit 5.1 and incorporated herein by reference.
23.3+	Consent of Brunini, Grantham, Grower & Hewes, PLLC, included as part of its opinion filed as Exhibit 8.1 and incorporated herein by reference.
24.1+	Power of Attorney of Directors and Officers of the Registrant, included on the signature page of Form S-4 filed on January 26, 2012 and incorporated herein by reference.
99.1*	Form of Proxy for Special Meeting of Shareholders of Bay Bank & Trust Co.

* Filed herewith.

+ Previously filed.

Financial Statement Schedules

None. All other schedules for which provision is made in Regulation S-X of the SEC are not required under the related restrictions or are inapplicable, and, therefore, have been omitted.

Item 22. Undertakings.

The undersigned registrant hereby undertakes:

To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

i. To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

ii. To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective Registration Statement; and

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iii. To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934, as amended (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

The undersigned registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

The registrant undertakes that every prospectus (i) that is filed pursuant to paragraph (1) immediately preceding, or (ii) that purports to meet the requirements of section 10(a)(3) of the Act and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC, such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11 or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Amendment No. 1 to registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Jackson and State of Mississippi on February 6, 2012.

TRUSTMARK CORPORATION
(Registrant)

By: /s/ Gerard R. Host
Gerard R. Host
President and Chief
Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 1 to registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* Adolphus B. Baker	Director	February 6, 2012
* William C. Deviney, Jr.	Director	February 6, 2012
* Daniel A. Grafton	Chairman and Director	February 6, 2012
/s/ Louis E. Greer Louis E. Greer	Treasurer and Principal Financial Officer (principal accounting officer)	February 6, 2012
/s/ Gerard R. Host Gerard R. Host	President and Chief Executive Officer (principal executive officer)	February 6, 2012
* David H. Hoster II	Director	February 6, 2012
* John M. McCullouch	Director	February 6, 2012
* Richard H. Puckett	Director	February 6, 2012

* R. Michael Summerford	Director	February 6, 2012
* LeRoy G. Walker, Jr.	Director	February 6, 2012
* William G. Yates, Jr.	Director	February 6, 2012

*By: /s/ Louis E. Greer Attorney-In-Fact

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EXHIBIT LIST

Exhibit	Description
2.1	Agreement and Plan of Merger, dated as of November 30, 2011, by and among the Registrant, Trustmark National Bank, and Bay Bank and Trust Co. (included as Appendix A to the proxy statement/prospectus, which forms a part of this Registration Statement on Form S-4).
3.1	Articles of Incorporation of the Registrant, as amended. Incorporated herein by reference to Exhibit 3-a to Trustmark's Annual Report on Form 10-K for the year ended December 31, 2002, filed on March 21, 2003.
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