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7 Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION

11 JOHN FOLSOM, On Behalf of Himself )  
12 and All Others Similarly Situated, )  
13 Plaintiff, )

14 vs. )

15 INDYMAC BANCORP, INC., )  
MICHAEL W. PERRY and A. SCOTT )  
16 KEYS, )  
17 Defendants. )

**VIA FAX**

No.

**CLASS ACTION**

**COMPLAINT FOR VIOLATION OF  
THE FEDERAL SECURITIES LAWS**

**DEMAND FOR JURY TRIAL**

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1 **JURISDICTION AND VENUE**

2 1. Jurisdiction is conferred by §27 of the Securities Exchange Act of 1934  
3 (“1934 Act”). The claims asserted herein arise under §§10(b) and 20(a) of the 1934  
4 Act and SEC Rule 10b-5. The amount in controversy, exclusive of interest and costs,  
5 exceeds the jurisdictional minimum of this Court.

6 2. Venue is proper here pursuant to §27 of the 1934 Act. Many of the false  
7 and misleading statements were made in or issued from this District. IndyMac  
8 Bancorp, Inc. has a substantial presence in California and is headquartered in  
9 Pasadena, California. Many of the acts and transactions giving rise to the violations of  
10 law complained of occurred here.

11 3. In connection with the acts alleged in this complaint, defendants, directly  
12 or indirectly, used the means and instrumentalities of interstate commerce, including,  
13 but not limited to, the mails, interstate telephone communications and the facilities of  
14 the national securities markets.

15 **INTRODUCTION**

16 4. This is a securities class action on behalf of all persons who purchased or  
17 otherwise acquired the common stock of IndyMac Bancorp, Inc. (“IndyMac” or the  
18 “Company”) between August 16, 2007 and May 12, 2008 (the “Class Period”),  
19 against IndyMac and certain of its officers and/or directors for violations of the 1934  
20 Act.

21 5. IndyMac is the holding company for IndyMac Bank, F.S.B. (“IndyMac  
22 Bank”), a hybrid thrift/mortgage bank that originates mortgages in all 50 of the United  
23 States. Indymac Bank provides financing for the acquisition, development and  
24 improvement of single-family homes. IndyMac also provides financing secured by  
25 single-family homes and other banking products to facilitate consumers’ personal  
26 financial goals.

27 6. During the Class Period, defendants issued materially false and  
28 misleading statements regarding the Company’s business and financial results. As a

1 result of defendants' false statements, IndyMac stock traded at artificially inflated  
2 prices during the Class Period, reaching its Class Period high of \$24.55 per share in  
3 October 2007.

4 7. As the real estate and credit markets continued to soften in 2007,  
5 defendants repeatedly assured IndyMac investors that the Company had been very  
6 selective in its underwriting standards in the past and maintained adequate loss  
7 reserves and a strong capital base to weather the deteriorating real estate and credit  
8 markets.

9 8. Prior to the Class Period, IndyMac specialized in the Alt-A market, a  
10 category of loans that fell between prime and subprime borrowers. Alt-A loans  
11 typically involve borrowers with good credit scores but with less documentation of  
12 income and assets than is required for mortgages to be sold to government-sponsored  
13 enterprises ("GSEs") such as Fannie Mae or Freddie Mac. IndyMac further  
14 specialized in risky pay-option adjustable-rate loans ("Option ARMs"), which gave  
15 borrowers the option of paying so little that the loan balance rose. As the real estate  
16 market softened, defaults among Alt-A borrowers surged, especially Alt-A borrowers  
17 holding Option ARMs, and as a result the secondary market for these types of loans  
18 dried up as investors stopped buying such loans from lenders.

19 9. Prior to the Class Period, IndyMac further provided financing to  
20 homebuilders for residential construction. Builder construction loans were typically  
21 adjustable-rate loans with terms ranging from 12 to 24 months.

22 10. At the beginning of the Class Period in August 2007, given the climate  
23 change in the credit and real estate markets, IndyMac abruptly changed its business  
24 model and turned its focus to a GSE production model. IndyMac curtailed its  
25 production of Alt-A and other nontraditional mortgage products and instead began  
26 focusing its production on less-profitable prime loans that could be sold to GSEs or  
27 could be held as long-term investments. This shift in focus drastically reduced  
28 IndyMac's loan production.

1           11. As the housing and credit crisis deepened in the Fall of 2007, defendants  
2 repeatedly assured investors IndyMac was “safe and sound” and further downplayed  
3 and concealed IndyMac’s growing exposure to its nontraditional mortgage products.  
4 As a result, IndyMac’s stock continued to be artificially inflated due to defendants’  
5 false statements.

6           12. Specifically, defendants downplayed and concealed IndyMac’s growing  
7 exposure to non-performing assets, particularly loans in its Option-ARM and  
8 homebuilder construction portfolios. A non-performing asset or loan is a loan that is  
9 in default or close to being in default. IndyMac considers a loan to be non-performing  
10 if it has been delinquent in excess of 90 days. Despite the growing amount of non-  
11 performing loans on the Company’s balance sheet, defendants failed to timely provide  
12 adequate reserves to cover anticipated losses.

13           13. Additionally, defendants made numerous positive representations  
14 regarding the Company’s capital position to alleviate investors’ fears concerning the  
15 Company’s capital erosion. Defendants repeatedly represented that IndyMac had  
16 sufficient capital to remain “well capitalized” under regulatory guidelines. Given  
17 IndyMac’s status as a thrift, the Company’s bank unit is required to maintain a risk-  
18 based capital ratio of 10% in order to be defined as “well capitalized” by federal  
19 regulators – the Office of Thrift Supervision. This ratio is based upon a company’s  
20 asset quality and loan-loss reserve coverage.

21           14. On May 12, 2008, IndyMac announced its first quarter 2008 financial  
22 results in a release which stated in part:

23           IndyMac Bancorp, Inc. (“Indymac(R)” or the “Company”), the holding  
24 company for IndyMac Bank, F.S.B. (“Indymac Bank(R)”), today  
25 ***reported a net loss of \$184.2 million, or (\$2.27) per share, for the first***  
26 ***quarter of 2008, compared with net earnings of \$52.4 million, or \$0.70***  
27 ***per share, in the first quarter of 2007.*** The net loss and the loss per  
28 share for the first quarter of 2008 both represented improvements of 64

1 percent from the net loss and loss per share reported for the fourth  
2 quarter of 2007. . . .

3 “While many others in the mortgage finance industry saw  
4 worsening losses during the first quarter given the current state of the  
5 housing and credit markets, we achieved a 64 percent reduction in our  
6 net loss from last quarter as we took the appropriate steps in the second  
7 half of last year to get the bulk of our credit costs behind us,” stated  
8 Michael W. Perry, Indymac’s Chairman and CEO. ***“Last quarter, we  
9 took major write-downs and established significant credit reserves in  
10 the fourth quarter of 2007, absorbing \$863 million in total pre-tax  
11 credit provisions/costs during that quarter and building our total credit  
12 reserves for future losses by 71 percent during the quarter to \$2.4  
13 billion at December 31, 2007, a four-fold increase from \$619 million at  
14 December 31, 2006.*** With those reserves in place, we were able to  
15 reduce our total credit provisions/costs to \$249 million in the first quarter  
16 of 2008, a 71 percent reduction from last quarter, allowing us to reduce  
17 our overall net loss this quarter. It is important to also understand that 24  
18 percent of our first quarter loss is from staff reduction severance and  
19 office closing costs, and another 22 percent is from business activities  
20 that we have permanently closed and where losses are expected to  
21 diminish over time, such as homebuilder construction lending, home  
22 equity lending and our conduit channel.

23 ***“We also continued to build our total credit reserves to \$2.7  
24 billion, a 13 percent increase over last quarter and more than a three-  
25 fold increase over \$813 million in Q1-07.*** Actual realized credit losses  
26 during the first quarter totaled \$334 million, such that the Company’s  
27 total reserves at March 31, 2008 equate to 8.0 times current quarterly  
28 realized credit losses. Excluding non-investment grade and residual

1 securities, total Q1-08 realized credit losses were \$178 million, and the  
2 total related credit reserve at March 31 was \$1.3 billion, or 7.2 times the  
3 realized credit losses in the first quarter.

4 *“As I have been saying for the past year,” continued Mr. Perry,*  
5 *“safety and soundness remains our highest priority during these*  
6 *challenging times, and we finished the first quarter again in a solid*  
7 *overall financial position.* Our capital levels continue to exceed the  
8 levels defined as ‘well capitalized’ by our regulators. To supplement the  
9 \$676 million of equity capital we prudently raised in 2007, we  
10 recommenced raising equity capital through our Direct Stock Purchase  
11 Plan (DSPP) on February 26, 2008 and raised \$39 million in new equity  
12 through March 31, 2008. *We are continuing to raise capital nearly*  
13 *every business day through the DSPP and have raised \$97 million*  
14 *through this program year to date through May 9. At March 31, 2008,*  
15 *Indymac Bank’s Tier 1 ‘core’ capital ratio was 5.74 percent, our Tier 1*  
16 *risk-based ratio was 9.00 percent, and our total risk-based capital ratio*  
17 *was 10.26 percent, above the ‘well-capitalized’ regulatory levels of 5.00*  
18 *percent, 6.00 percent and 10.00 percent, respectively.*

19 *“With respect to profitability, we do not expect that Indymac will*  
20 *be able to return to overall profitability until the current decline in*  
21 *home prices decelerates.* As it is uncertain that this will happen in 2008,  
22 we are not currently forecasting a return to profitability this year. With  
23 that said, we are forecasting continued improvement in our performance  
24 and declining quarterly losses for the remainder of 2008, with a \$20  
25 million loss projected for the fourth quarter, which would be a 96 percent  
26 reduction from Q4-07 and an 89 percent reduction from Q1-08. With  
27 respect to our key business segments, we are forecasting that our  
28 mortgage banking business (including mortgage production and

1 servicing) will be profitable in the second quarter and thereafter. We are  
2 forecasting that our thrift segment (including our MBS, SFR whole loan  
3 and consumer construction portfolios) will become profitable in the third  
4 quarter and that our overall business, excluding discontinued activities,  
5 will be close to breakeven by the third quarter and have a small profit for  
6 the second half of 2008. The net loss from discontinued business  
7 activities is projected to decline from \$40 million in Q1-08 to roughly  
8 \$23 million in Q4-08.

9 \* \* \*

10 *“We do not at this time forecast a return to overall profitability*  
11 *in 2008 given current market conditions,* but we do forecast  
12 significantly declining losses each quarter for the balance of the year, as  
13 our restructuring charges abate, credit provisions/costs and losses from  
14 discontinued operations decline, and the profits from our new business  
15 model grow,” concluded Mr. Perry.

16 (Footnote omitted.)

17 15. On May 12, 2008, after releasing its first quarter 2008 results, IndyMac  
18 held a conference call with investors and analysts to discuss those results:

19 [PERRY]: On the negative side, we do not expect IndyMac to  
20 return to overall profitability realistically until these home price declines  
21 start to decelerate. As it clearly is uncertain when that will happen, we’re  
22 not forecasting conservatively a return to profitability in ‘08, but as I  
23 said, the losses will be down substantially and manageable.

24 \* \* \*

25 On the capital front, on the positive side, we remain well  
26 capitalized on all three capital ratios. We’ll walk through the capital  
27 ratios in just a minute pretty extensively.

1           We did contribute \$88 million from the holding company to the  
2 bank during the first quarter to remain well capitalized, and we are  
3 forecasting being well capitalized and improving our capital ratios  
4 throughout 2008.

5           On the negative side, because we're one of the few pure mortgage  
6 bankers out there, and because of the significant hits we've taken, our  
7 capital ratios clearly have been depleted, and you're limited to one times  
8 your regulatory core Tier 1 capital in capitalized servicing, and we hit  
9 that cap a little bit in the fourth quarter, and a lot more in the first  
10 quarter. The bottom line is as a result, it's causing us to deduct \$117  
11 million, essentially if you're over the one-time cap you have to deduct  
12 the servicing asset dollar for dollar from all of your capital ratios.

13           The bottom line is we think that's a little perverse given the fact  
14 that we have earned strong hedge returns for years, and that asset, and  
15 it's our best performing asset. But it is what it is, and it's affecting our  
16 capital in the first quarter.

17           Also, as a result of our loss, the servicing cap penalty and also we  
18 have loan loss reserves, general loan loss reserves, that are only allowed  
19 to be counted to capital equal to 1.25% of your total assets and we have  
20 about double that amount.

21           So as a result of that, our total risk-based capital ratio was  
22 relatively close to the well capitalized minimum. It was 10.26. The ratio  
23 there is 10. Clearly, there are scenarios in this environment where we  
24 could not be well capitalized and end up being adequately capitalized for  
25 a short period of time.

26           The last issue here, which is not a new issue, ever since we  
27 became a thrift back in 2000, we've always informally agreed to keep a  
28 higher capital ratio than the 5 and the 10, and we're working our way

1 back up to that. Right now our current plan shows that we will get our  
2 capital ratios back up to 7 and 11 by the end of the year.

3 \* \* \*

4 The negative is that our non-performing assets have continued to  
5 rise, much like all thrifts. Non-performing single family loans take a long  
6 time to work through your balance sheet. They don't become non-  
7 performers until 90 days and you often can't foreclose on those  
8 properties for many months later, and then we're selling as soon as we  
9 get possession of the property, we're getting those REOs off our books  
10 within six months or less.

11 But because of the cycle time that it takes to move through a  
12 single-family non-performer, you can see that our non-performers have  
13 grown to 6.51% at March 31st, but that rate is slowing. That rate of  
14 increase from the fourth quarter to the first quarter was 39%, down from  
15 an 82% increase from the third to the fourth, and we're projecting that  
16 MPA growth rate to continue decline to 21% in the second quarter to 6%  
17 in the third, and basically be flat in the fourth and then decline from there  
18 and I think we've been pretty accurate at forecasting those NPAs.

19 16. On this news, IndyMac's stock dropped to close at \$2.32 per share on  
20 May 13, 2008 from \$3.43 per share on May 9, 2008, on high volume – a two-day  
21 decline of \$1.11 per share, or 32%, and a decline of 91% from \$24.55 per share on  
22 October 2, 2007. This is the lowest price IndyMac's stock has traded at since 1992.

23 17. The true facts, which were known by the defendants but concealed from  
24 the investing public during the Class Period, were as follows:

25 (a) The Company was not adequately reserving for its losses on  
26 mortgage-related assets in violation of generally accepted accounting principles  
27 (“GAAP”), causing its financial results to be materially misstated;

28

1 (b) The Company had far greater exposure to anticipated losses and  
2 defaults concerning its book of business related to its homebuilder and Option ARM  
3 portfolio than it had previously disclosed;

4 (c) The Company's capital base was not adequate enough to withstand  
5 the significant deterioration in the credit and real estate markets and could jeopardize  
6 the Company's status as "well capitalized";

7 (d) IndyMac had not adequately reserved for Option ARMs, the terms  
8 of which provided that during the initial term of the loan borrowers could pay only as  
9 much as they desired with any underpayment being added to the loan balance, which  
10 loans would become toxic (for both IndyMac and the borrowers) once housing prices  
11 stopped increasing at a rapid rate; and

12 (e) Given the Company's exposure to the increased volatility in the  
13 credit and real estate markets, the Company had no reasonable basis to make  
14 projections about its earnings. As a result, the Company's projections issued during  
15 the Class Period about its earnings for 2007 and 2008 were at a minimum reckless.

16 18. As a result of defendants' false statements, IndyMac's stock traded at  
17 inflated levels during the Class Period. However, after the above revelations seeped  
18 into the market, the Company's shares were hammered by massive sales, sending  
19 them down more than 91% from their price before these disclosures.

## 20 THE PARTIES

21 19. Plaintiff John Folsom purchased IndyMac common stock as described in  
22 the attached certification and was damaged thereby.

23 20. Defendant IndyMac operates as the holding company for IndyMac Bank,  
24 a thrift/mortgage bank, which provides mortgage products and services in the United  
25 States. Indymac Bank provides financing for the acquisition, development, and  
26 improvement of single-family homes. The Company also provides financing secured  
27 by single-family homes and other banking products to facilitate consumers' personal  
28 financial goals. The Company facilitates the acquisition, development, and

1 improvement of single-family homes through the electronic mortgage information and  
2 transaction system platform that automates underwriting, risk-based pricing and rate  
3 locking via the Internet at the point of sale. The Company operates in two segments,  
4 Mortgage Banking and Thrift. IndyMac is headquartered in Pasadena, California.

5 21. Defendant Michael W. Perry (“Perry”) is, and at all relevant times was,  
6 Chairman of the Board, a director and Chief Executive Officer (“CEO”) of IndyMac  
7 and IndyMac Bank. Perry participated in the issuance of improper statements,  
8 including the preparation of the improper press releases and SEC filings.

9 22. Defendant A. Scott Keys (“Keys”) was, at relevant times, Executive Vice  
10 President and Chief Financial Officer (“CFO”) of IndyMac, until April 25, 2008,  
11 when defendant Keys took a medical leave of absence. Keys participated in the  
12 issuance of improper statements, including the preparation of the improper press  
13 releases and SEC filings.

14 23. Defendants Perry and Keys (the “Individual Defendants”), because of  
15 their positions with the Company, possessed the power and authority to control the  
16 contents of IndyMac’s quarterly reports, press releases and presentations to securities  
17 analysts, money and portfolio managers and institutional investors, *i.e.*, the market.  
18 They were provided with copies of the Company’s reports and press releases alleged  
19 herein to be misleading prior to or shortly after their issuance and had the ability and  
20 opportunity to prevent their issuance or cause them to be corrected. Because of their  
21 positions with the Company, and their access to material non-public information  
22 available to them but not to the public, the Individual Defendants knew that the  
23 adverse facts specified herein had not been disclosed to and were being concealed  
24 from the public and that the positive representations being made were then materially  
25 false and misleading. The Individual Defendants are liable for the false statements  
26 pleaded herein at ¶¶ 27, 29-32, 36-39 and 41-42.

1                                   **FRAUDULENT SCHEME AND COURSE OF BUSINESS**

2           24. Defendants are liable for: (i) making false statements; or (ii) failing to  
3 disclose adverse facts known to them about IndyMac. Defendants’ fraudulent scheme  
4 and course of business that operated as a fraud or deceit on purchasers of IndyMac  
5 common stock was a success, as it: (i) deceived the investing public regarding  
6 IndyMac’s prospects and business; (ii) artificially inflated the price of IndyMac  
7 common stock; and (iii) caused plaintiff and other members of the Class to purchase  
8 IndyMac common stock at inflated prices.

9                                   **BACKGROUND**

10           25. Defendant IndyMac operates as the holding company for IndyMac Bank,  
11 a thrift/mortgage bank, which provides mortgage products and services in the United  
12 States. Indymac Bank provides financing for the acquisition, development, and  
13 improvement of single-family homes. The Company also provides financing secured  
14 by single-family homes and other banking products to facilitate consumers’ personal  
15 financial goals. The Company facilitates the acquisition, development, and  
16 improvement of single-family homes through the electronic mortgage information and  
17 transaction system platform that automates underwriting, risk-based pricing and rate  
18 locking via the Internet at the point of sale. Indymac Bank offers mortgage products  
19 and services that are tailored to meet the needs of both consumers and mortgage  
20 professionals. The Company operates in two segments, Mortgage Banking and Thrift.

21           26. On June 27, 2007, IndyMac introduced the *IMBreport*, a blogging arena  
22 within IndyMac’s website, set up for the benefit of its shareholders “for the free  
23 exchange of information.”

24                                   **DEFENDANTS’ FALSE AND MISLEADING**  
25                                   **STATEMENTS ISSUED DURING THE CLASS PERIOD**

26           27. On August 16, 2007, the *IMBreport* issued a blog entitled “S&P Affirms  
27 Indymac’s Stable Outlook and Investment Grade Rating,” which stated in part:  
28

1 Standard & Poor's affirmed Indymac's stable outlook and  
2 investment grade rating today, August 16th, 2007. While we don't rely  
3 on these ratings to fund ourselves (because we fund our business  
4 predominantly with deposits and Federal Home Loan Bank Advances)  
5 we think the below excerpt from S&P's report clearly speaks to our  
6 strong financial position:

7 "Unlike many of its competitors in the mortgage finance sector,  
8 Indymac has depository funding and access to FHLB advances, which  
9 provide it with continued access to readily available sources of  
10 unsecured liquidity. In addition, Indymac has managed its secured  
11 funding prudently to avoid margin or collateral calls from its lenders."

12 "The deteriorating liquidity environment persuaded management  
13 to both decrease its origination targets and shift its production mix to be  
14 weighted heavily toward agency eligible loans. This allows loans to be  
15 sold directly to the agencies, thus reducing Indymac's need to fund  
16 them."

17 28. Upon this positive news, IndyMac's shares jumped \$2.26 per share to  
18 close at \$22.36 per share on August 17, 2007 – a one-day increase of 11% on high  
19 volume.

20 29. On August 22, 2007, IndyMac issued a press release entitled "Indymac  
21 Announces Return to the Prime Jumbo Home Loan Market," which stated in part:

22 IndyMac Bank, F.S.B. ("Indymac Bank(R)" or "Indymac(R)"), the  
23 principal subsidiary of IndyMac Bancorp, Inc., today announced it is  
24 once again originating prime, single-family residential, full-  
25 documentation jumbo loans after temporarily reducing the origination of  
26 this product due to current illiquidity in the secondary market.

27 "*Given our strong financial position, we are fully committed to*  
28 *the market for prime jumbo home loans,*" commented Michael W.

1 Perry, Indymac’s Chairman and CEO. “Until the secondary market  
2 recovers, we plan to retain this product in our investment portfolio at  
3 what we believe will be attractive returns.”

4 30. On August 28, 2007, IndyMac issued a press release entitled “Indymac  
5 Expands Its Retail Lending Group Nationwide – Hires Over 600 Former American  
6 Home Mortgage Retail Lending Professionals,” which stated in part:

7 Indymac Bank, F.S.B. (“Indymac Bank(R)” or the “Company”),  
8 the principal subsidiary of Indymac Bancorp, Inc. (“Indymac(R)”), today  
9 announced that it has hired over 600 former American Home Mortgage  
10 Investment Corp. (“AHM” or “American Home”) retail lending  
11 professionals who were recently terminated by them. These retail lending  
12 professionals specialize in prime conforming, FHA/VA and other agency  
13 eligible single-family mortgage products. The Company is in discussions  
14 to hire additional former AHM employees and anticipates that it will end  
15 up hiring 750 to 850 former AHM employees in total.

16 \* \* \*

17 These recent moves will bring our total RLG workforce to almost 1,500  
18 employees, up from 13 one year ago. In this market, we made a prudent  
19 trade by cutting out roughly \$5 billion per quarter of low margin, Alt-A  
20 conduit business to make room for growth in higher margin retail  
21 business, and we anticipate the total quarterly loan production of the  
22 RLG will reach roughly \$1.5 billion by the fourth quarter of this year.”

23 \* \* \*

24 Commenting on Indymac’s overall operations in light of current  
25 conditions in the secondary market for mortgages, Michael W. Perry,  
26 Chairman and CEO, stated, “We are very fortunate to be structured as a  
27 federally-insured depository with all of our assets and loan production  
28 harbored within Indymac Bank. With this structure, more than 90% of

1 our funding is currently composed of deposits, Federal Home Loan Bank  
2 advances, long term debt and equity, and *Indymac has limited exposure*  
3 *to the current market-related liquidity issues that many other mortgage*  
4 *lenders are experiencing*. We had \$3.5 billion of operating liquidity at  
5 June 30, 2007, and we expect that our operating liquidity will be over \$4  
6 billion at September 30 as we continue to grow our deposit base.  
7 Nonetheless, we have rapidly shifted the mix of our mortgage production  
8 in light of the current secondary market. Whereas in Q207 40 percent of  
9 our production was sold to the GSEs, the SFR permanent mortgage loans  
10 we are originating today are 90 percent GSE-eligible. In addition, we  
11 continue to originate high quality jumbo mortgages through all our  
12 channels.

13 “While we project that our overall mortgage volumes will be  
14 down substantially in the fourth quarter as we and all lenders have  
15 tightened guidelines, our fourth quarter mortgage banking revenue  
16 margins are presently forecasted to increase. That said, while we have  
17 significantly staffed up our retail lending platform, which we expect will  
18 quickly contribute to profitability, we will need to carefully monitor our  
19 overall production volumes to see where they settle in light of mortgage  
20 market conditions and ensure that our overall staffing levels are in  
21 alignment with our production levels.”

22 31. On September 7, 2007, Perry addressed a letter to IndyMac shareholders,  
23 which stated in part:

24 Dear shareholders and other Indymac stakeholders:

25 Yesterday, we paid the third quarter dividend on our common  
26 stock of \$0.50 per share, and, as we are two-thirds of the way through  
27 the third quarter, I wanted to take this opportunity to update you on our  
28 current performance.

1           In our second quarter earnings release, we said that the second half  
2 of 2007 and 2008 would continue to be challenging for the mortgage and  
3 housing markets and for Indymac. In fact, the mortgage and housing  
4 markets are very difficult, and the private secondary markets have  
5 significantly worsened. The illiquidity in the secondary markets, and  
6 consequent significant and abrupt spread widening for all mortgage  
7 products except those saleable to the GSEs, have negatively impacted the  
8 profitability of our mortgage production division. As a result, *we*  
9 *currently expect that Indymac will report earnings for the third quarter*  
10 *in a range of breakeven to a loss of \$0.50 per share, driven mainly by*  
11 *the spread widening and a continued high level of credit costs.* It  
12 should be noted that the impacts of spread widening and increased credit  
13 costs have been recorded almost exclusively as unrealized fair value  
14 adjustments as opposed to actual losses realized on the disposition of  
15 assets. As such, future gains could be realized on these assets if market  
16 conditions improve. We do anticipate that this quarter will represent the  
17 trough for our earnings during this current down cycle, as we have  
18 largely converted our mortgage production to a GSE-eligible model,  
19 which is not susceptible to the kind of spread widening we have  
20 experienced this quarter. *Therefore, it is unlikely we will get hit with*  
21 *both the negative impact of extraordinary spread widening and higher*  
22 *than normal credit costs in future periods as we have been this quarter.*

23           Given our current earnings forecast for the quarter and the  
24 payment of the dividend, we expect that we will end the quarter with  
25 book value per share of approximately \$27.00. We also expect to end the  
26 quarter with roughly \$35 billion in total assets; operating liquidity of  
27 \$5.0 billion versus \$3.5 billion at June 30, 2007 (we currently have no  
28 extendable, asset-backed commercial paper liabilities outstanding and

1 expect to have no reverse repurchase borrowings at quarter-end); and  
2 Tier 1 core and risk-based capital ratios of roughly 7.75 percent and 11.5  
3 percent, respectively, with both ratios being in excess of “well-  
4 capitalized” regulatory standards.

5 Although there is still a great deal of uncertainty in the mortgage  
6 and housing markets such that earnings remain very difficult to forecast  
7 with any degree of accuracy, ***I do expect Indymac to be solidly***  
8 ***profitable in both Q4-07 and in 2008.*** Given the current operating  
9 environment and our anticipated earnings performance, I believe it is  
10 prudent to assess our current common stock dividend payout, and ***I plan***  
11 ***to recommend to the Board of Directors that we reduce our quarterly***  
12 ***dividend payout to \$0.25 per share for the time being.*** Our Board of  
13 Directors will still need to evaluate and approve this proposed dividend  
14 level at its regularly scheduled meeting after the end of the third quarter.  
15 ***At this level, I believe that our dividend payout will be at a more***  
16 ***normal ratio to earnings for a thrift. I also believe that we will be able***  
17 ***to sustain this level of dividend payout through the current down cycle***  
18 ***for the mortgage and housing markets, which is presently forecasted to***  
19 ***worsen before it gets better.***

20 32. On November 6, 2007, IndyMac reported its third quarter 2007 financial  
21 results in a release which stated in part:

22 IndyMac Bancorp, Inc. (“Indymac(R)” or the “Company”), the holding  
23 company for IndyMac Bank, F.S.B. (“Indymac Bank(R)”), today  
24 ***reported a net loss of \$202.7 million, or (\$2.77) per share, for the third***  
25 ***quarter of 2007,*** compared with net earnings of \$86.2 million, or \$1.19  
26 per share, in the third quarter of 2006.

27 \* \* \*

1 Third Quarter Results Reflect Continued Unprecedented Market  
2 Conditions

3 “We are clearly disappointed with this quarter’s results, which  
4 were driven by deteriorating mortgage delinquencies and a declining  
5 housing market combined with an unprecedented collapse in the  
6 secondary market for non-GSE loans and securities . . . Indymac’s  
7 primary business,” stated Michael W. Perry, Chairman and CEO. “While  
8 this loss is substantially higher than we had been forecasting, it was  
9 clearly not unexpected given the magnitude of the losses being reported  
10 by others in our industry and the recent decline in our stock price. No  
11 one in the mortgage industry came away unscathed in the quarter, and  
12 we took \$575 million, or \$4.79 per share, in combined credit costs and  
13 spread widening charges. This led to only our second quarterly loss in  
14 the past 15 years since the current management team began running  
15 Indymac (the first loss was in Q4-98 during the global liquidity crisis).  
16 *However, as I said last quarter, safety and soundness is our highest*  
17 *priority during these challenging times, and, in this respect, we*  
18 *finished the quarter in a very strong overall financial position.*

19 “Indymac has not repurchased any shares since 2002, and, in fact,  
20 we have prudently raised \$644 million of equity capital in 2007 alone,  
21 enabling us to finish the quarter with Tier 1 core and total risk-based  
22 capital ratios of 7.48 percent and 11.79 percent, respectively, *a*  
23 *significant cushion of \$823 million and \$361 million above the ‘well-*  
24 *capitalized’ regulatory levels of 5.00 percent and 10.00 percent as of*  
25 *September 30, 2007* and higher than our capital levels at December 31,  
26 2006.

27 “*We prudently increased our total credit reserves by \$441*  
28 *million, or 47 percent, to \$1.39 billion in the third quarter.* These

1 reserves now equal 56 percent of Indymac Bank’s \$2.48 billion in total  
2 capital, up from 38 percent at the end of last quarter. Actual charge-offs  
3 taken during the quarter totaled \$146 million, such that the Company’s  
4 total reserves equate to 9.5 times current quarterly charge-offs.  
5 Excluding non-investment grade and residual securities, total Q3-07  
6 charge-offs were \$55 million, and the total related credit reserve at  
7 September 30 was \$553 million, or 10 times the charge-off amount. It  
8 should also be noted that 74 percent of current period credit costs related  
9 to credit losses anticipated in future periods.

10 \* \* \*

#### 11 Looking Ahead

12 “While it is clearly disappointing that our stock is down 72 percent  
13 this year . . . and all of us at Indymac have been impacted by this along  
14 with our shareholders . . . we are not down and out, and our company  
15 remains intact, where many others have failed,” continued Mr. Perry.  
16 “We have learned some tough lessons, taken some significant steps to  
17 address the radically changed environment, and we are executing on an  
18 action plan that continues to focus on safety and soundness, maintaining  
19 strong liquidity, preserving our capital, implementing our new  
20 production model and emphasizing a return to profitability. Nonetheless,  
21 it remains extremely difficult to provide an earnings forecast for the  
22 fourth quarter and into 2008 given continued uncertainties about the  
23 length and depth of the downturn in the housing and mortgage markets  
24 and the abrupt and significant change we have made in our production  
25 model in becoming a GSE lender. *However, we do believe we will see*  
26 *significant improvement in the fourth quarter in credit costs and losses*  
27 *from spread widening, given the large reserves we established this*  
28 *quarter and because the new loans we are now originating are*

1 *predominantly those eligible for sale to the GSEs, whereas the vast*  
2 *majority of the loans causing the Q3-07 losses are in loan types that*  
3 *have been cut from our guidelines.* In addition, we are rapidly making  
4 the transition from being primarily an Alt-A lender to being a GSE  
5 lender, and we are seeing our mortgage production volumes pick up.  
6 While our October rate locks of \$8 billion are down 12 percent from the  
7 monthly average for Q4-06, they are up 51 percent from September.  
8 Excluding conduit rate locks, which business has now been discontinued,  
9 October's rate locks are up 40 percent over the monthly average for Q4-  
10 06. Our mortgage production growth has been achieved despite the fact  
11 that roughly two-thirds of our Q1-07 production has been eliminated  
12 through guideline cuts, which have been made based on both credit and  
13 secondary market liquidity issues. With our pipeline back up to \$9.8  
14 billion as of October 31 from a low of \$7.4 billion in September, I expect  
15 that our new, more GSE-oriented mortgage production business will be  
16 profitable in Q4-07, excluding credit costs from discontinued products  
17 and start-up costs from our retail lending initiative. We expect that retail  
18 lending will be profitable in Q1-08.

19 "As I look ahead to Q4-07 and 2008, given current industry  
20 conditions, a continued elevated level of credit costs from discontinued  
21 products and uncertain loan volumes and margins under our new  
22 production model, *Indymac could be modestly profitable, or we could*  
23 *struggle and have additional losses, although we believe any quarterly*  
24 *losses would likely be substantially lower than the Q3-07 loss.* In that  
25 respect, we believe that with our stock price at its current level relative to  
26 our September 30 book value of \$24.31 per share, the market expects a  
27 bigger erosion in our book value than we believe is realistic at this time.  
28 *The bottom line is that we have strong capital, reserves and liquidity to*

1        *see us through this industry downturn.* I can assure all of our  
2        stakeholders that we will be working tirelessly to safely restore Indymac  
3        to its past levels of performance, and we remain confident that our long  
4        term returns on capital will be at or above 15 percent once this current  
5        down cycle ends.”

6 (Footnote omitted.)

7        33. This was part of a series of partial disclosures and revelations concerning  
8        the truth about IndyMac’s business operations, finances, business metrics, and future  
9        business and financial prospects. Nonetheless, IndyMac’s stock continued to trade at  
10       artificially inflated levels as this revelation, along with the ones made during the  
11       remainder of the Class Period, was accompanied by denials and continued  
12       misrepresentations by defendants. Upon this partial disclosure, IndyMac’s stock  
13       dropped \$1.69 per share on November 7, 2007, to close at \$11.08 per share, a two-day  
14       decline of 13% on volume extremely high volume.

15       34. Thereafter, in the next couple of months, as more of the truth about  
16       IndyMac’s financials and business outlook emerged, more of the artificial inflation in  
17       the Company’s stock came out and the stock dropped even more.

18       35. On December 5, 2007, IndyMac issued a response to a shareholder’s  
19       suggestion on the Company’s blog.

20       36. On December 6, 2007, IndyMac filed a Form 8-K, providing a copy of  
21       the shareholder’s suggestion and defendant Perry’s response, which stated in part:

22       **Shareholder’s Suggestion:**

23                The previous suggestion addressed the purchase of Indymac stock  
24       by Indymac insiders. The current suggestion states that “the repurchasing  
25       of shares [by Indymac] at these deflated prices would send an even  
26       stronger message, not just about the viability if IMB, but about how it  
27       feels about itself as a sound investment. Later, as footing is regained and  
28

1 profit realized, the raising of more capital from additional offerings can  
2 resume.”

3 **Mike Perry’s Response:**

4 Thank you for your suggestion. In normal times, your suggestion  
5 (repurchasing shares with our capital cushion) . . . would be exactly the  
6 right thing to do, given how far below book value our shares presently  
7 trade.

8 These are not normal times. I attended the annual National  
9 Housing Forum (hosted by the Office of Thrift Supervision) on Monday  
10 of this week in Washington DC. Clearly, the housing and mortgage  
11 markets are very tough right now, and no one is able to forecast when  
12 things will get better. One of the speakers said, “this current housing and  
13 mortgage market is a once in 100 year event”.

14 Indymac Bank’s business model is in the eye of this storm. Our  
15 business is solely focused on financing USA homes, and we sell most of  
16 our loans into the secondary market (and not only is the private  
17 secondary market virtually closed . . . now the GSEs have their own  
18 issues and are raising rates and cutting product guidelines). *Given this  
19 and declining home sales and prices and rising delinquencies and  
20 foreclosures, we suffered a loss in the 3rd quarter and will suffer a loss  
21 in the 4th quarter (likely a significantly reduced one in relation to  
22 Q307)*. At present, while I do expect to continue to narrow our loss each  
23 quarter . . . it is difficult to predict when we will return to profitability.  
24 Hopefully, if all goes well, *we can return to modest profitability  
25 sometime in the 2nd half of 2008.*

26 In this environment (until we can “see some light at the end of the  
27 tunnel”), maintaining strong capital and liquidity levels is paramount. So,  
28 unfortunately, not only are we not in a position to repurchase

1 shares . . . even though we have a strong capital cushion today (e.g., we  
2 raised \$68.8 million in common equity in October at an average price of  
3 \$19.40 per share) . . . we are looking to raise additional capital right now.  
4 As we have said previously, we are considering a variety of capital  
5 raising alternatives, including potentially raising capital through some  
6 sort of convertible debt or preferred offering that is privately placed with  
7 one or more investors . . . although we are exploring every option  
8 possible to raise our capital levels, including shrinking our balance sheet  
9 and cutting our common stock dividend. With the above said, there is no  
10 guarantee in this market that we can get anything done on acceptable  
11 terms.

12 I know it is counterintuitive, but in this present environment . . .  
13 the best way to preserve (and eventually grow) shareholder value is to  
14 maintain strong capital levels and liquidity . . . even if that results in  
15 some short-term dilution.

16 Mike

17 ***P.S. Even after a 4th quarter loss, we expect our capital and liquidity***  
18 ***levels at 12/31/07 to be strong and roughly the same as at 9/30/07.***

19 37. On January 15, 2008, IndyMac filed a Form 8-K with the SEC that  
20 contained the contents of an e-mail from Perry to all IndyMac employees, which  
21 stated in part:

22 To all Indymac employees:

23 Indymac has five key execution priorities for 2008, which I sent  
24 out at the end of last year to all Indymac employees and which is  
25 attached. The fourth of our five priorities speaks directly to our  
26 profitability and cost efficiency and states that we must “right-size our  
27 costs and implement process changes to make our new production model  
28 profitable ASAP”. Related to this priority, I am writing you with some

1 tough news, which should come as no surprise to anyone. Today, we are  
2 announcing a reduction in our global workforce of 2,403 people, or 24%  
3 of our overall workforce, spread throughout the company, including a  
4 27% reduction in staff with our outsourced and temporary vendors,  
5 mainly in India. This action is clearly painful, but it is necessary in our  
6 drive to return Indymac to profitability soon.

7 Last year we reduced our global workforce by roughly 1,600  
8 through a successful voluntary resignation and severance program in  
9 September, significant reductions in our outsourced and temporary  
10 workforce and some targeted layoffs during the year. At the same time,  
11 we also took advantage of the mortgage market disruption to build a  
12 retail lending platform from almost nothing a year ago to a group of  
13 almost 2,200 professionals today. Net / net, we ended 2007 with a  
14 workforce of 9,938, up from 8,775 at the end of 2006, all during a time  
15 when more than 200 mortgage companies failed and an estimated  
16 100,000+ mortgage industry jobs were eliminated.

17 When I discussed the results of the voluntary resignation and  
18 severance program in an email to all of you on October 12, I stated, “I  
19 believe that we are largely done with staff reductions at this time except  
20 for some small, targeted layoffs over the next 30 days . . . unless, of  
21 course, the mortgage market takes another turn for the worse.” The  
22 reality is that since October 12 conditions have gotten worse in our  
23 industry. The private secondary market remains virtually frozen, and the  
24 market suffered another setback in November, as the GSEs reported  
25 large losses and indicated that they are capital-constrained, with the  
26 result that they had to further tighten their own guidelines.

27 While Indymac continues to have a significant capital cushion and  
28 strong liquidity, we need to make sure that that remains the case going

1 forward, and, therefore, we have needed to take steps to make sure that  
2 our balance sheet does not grow significantly as a result of non-GSE  
3 loans (primarily plain vanilla, prime jumbo home loans) that we  
4 originate but cannot sell in the secondary market. Therefore, we were  
5 forced to undertake another round of additional guideline cuts in the  
6 products we offer. As a result, our pipeline fell 28% in December, from  
7 \$10.7 billion at 11/30 to \$7.7 billion at 12/31, and we have had to trim  
8 our forecast for 2008 volume to \$43 billion, compared to \$78 billion in  
9 2007 and \$92 billion in 2006.

10 In light of these market conditions, this action to further right-size  
11 our costs is a necessary step in our drive to return Indymac to  
12 profitability soon.

13 38. On February 12, 2008, IndyMac reported its fourth quarter 2007 financial  
14 results in a release which stated in part:

15 IndyMac Bancorp, Inc. (“Indymac(R)” or the “Company”), the holding  
16 company for IndyMac Bank, F.S.B. (“Indymac Bank(R)”), today  
17 *reported a net loss of \$509.1 million, or (\$6.43) per share, for the*  
18 *fourth quarter of 2007, compared with net earnings of \$72.2 million,*  
19 *or \$0.97 per share, in the fourth quarter of 2006. For the full year,*  
20 *Indymac reported a net loss of \$614.8 million, or (\$8.28) per share,*  
21 *Indymac’s first annual loss in its 23-year history, compared with net*  
22 *earnings of \$342.9 million, or \$4.82 per share, in 2006.*

23 \* \* \*

24 “Consistent with nearly every other large financial institution in  
25 the mortgage lending and securitization business, as a result of the  
26 rapidly deteriorating housing and mortgage markets, we took major  
27 write-downs and established significant credit reserves and recognized a  
28 significant loss in the fourth quarter,” stated Michael W. Perry,

1 Indymac’s Chairman and CEO. *“We absorbed \$863 million in total pre-*  
2 *tax credit provisions/costs during the quarter, and this led to our*  
3 *quarterly loss of \$509 million. These credit provisions/costs allowed us*  
4 *to build our total credit reserves for future losses by 71 percent during*  
5 *the quarter to \$2.4 billion at December 31, 2007, a four-fold increase*  
6 *from \$619 million at December 31, 2006.* Actual charge-offs taken  
7 during the quarter totaled \$179 million, such that the Company’s total  
8 reserves equate to 13.3 times current quarterly charge-offs. Excluding  
9 non-investment grade and residual securities, total Q4-07 charge-offs  
10 were \$99 million, and the total related credit reserve at December 31 was  
11 \$1.1 billion, or 11.3 times the charge-off amount in the fourth quarter of  
12 2007. While we do expect our charge-offs to increase substantially in  
13 2008 over 2007, *we believe that the credit reserves we have now built*  
14 *up are sufficient to absorb these charge-offs such that we are currently*  
15 *forecasting that our total credit provisions/costs in 2008 will be roughly*  
16 *\$372 million, down from \$1.45 billion in 2007, which we believe will*  
17 *have a significant positive impact on our drive to return Indymac to*  
18 *profitability in 2008.”*

19 “As I said during 2007,” continued Mr. Perry, “safety and  
20 soundness remains our highest priority during these challenging times,  
21 and, notwithstanding our fourth quarter loss, we finished the quarter in a  
22 solid overall financial position. *Our capital levels continue to exceed the*  
23 *levels defined as ‘well capitalized’ by our regulators* by virtue of the  
24 fact that Indymac has not repurchased any shares since 2002, and we  
25 prudently raised \$676 million of equity capital in 2007 - \$500 million of  
26 bank perpetual preferred stock with an 8.5 percent coupon in the second  
27 quarter, \$146 of common equity (at an average price of \$20 per share in  
28 the third and fourth quarters) and \$30 million in holding company trust

1 preferred. As a result, at December 31, 2007 Indymac Bank's core  
2 capital ratio was 6.24 percent and our total risk-based capital ratio was  
3 10.50 percent, above the 'well-capitalized' regulatory levels of 5.00  
4 percent and 10.00 percent, respectively. We also continued to maintain  
5 our total operating liquidity in excess of \$6 billion at the end of the  
6 fourth quarter, close to our all-time high level. Our strong liquidity is  
7 enabled by the fact that virtually all of Indymac's business is conducted  
8 and assets are held within Indymac Bank. As a result, we are 100 percent  
9 funded with deposits (approximately 95 percent of our deposits are fully  
10 insured by the FDIC), FHLB advances, long-term debt and equity, and  
11 we have no market funding sources (no commercial paper or reverse  
12 repurchase borrowings).

13 (Footnote omitted.)

14 39. Subsequent to issuing its fourth quarter 2007 results, IndyMac issued its  
15 2007 shareholder letter, which stated in part:

16 2007 in Review

17 As a Federal thrift and major USA home lender, with a sector-  
18 specific business model entering this crisis period that was focused  
19 primarily on non-GSE mortgage banking (Alt-A lending, securitization  
20 and servicing) and home construction lending, Indymac bore the brunt of  
21 the crisis as it worsened throughout the year. The magnitude and rapidity  
22 of the deterioration of the housing and mortgage markets was disturbing  
23 and shocking to almost everyone, including Indymac, other financial  
24 institutions and our government. *As objective evidence of this decline's*  
25 *severity, our non-performing assets (NPAs), which were only \$184*  
26 *million (or 0.63% of assets) at December 31, 2006 increased eight-fold*  
27 *to \$1.51 billion (or 4.61% of assets) at December 31, 2007 and are*  
28

1 *projected to peak at between 7.5% and 8.0% of assets in the second*  
2 *half of 2008.*

### 3 Impact of the Credit Crisis on Indymac

4 As a result of this increase in NPAs, combined with a decline in  
5 delinquency “cure rates” and an increase in expected loss severities on  
6 the disposition of non-performing loans and REO due to the declining  
7 housing market and economy, Indymac, like many financial institutions,  
8 took a major step in bolstering its credit reserves in the 3rd quarter,  
9 taking credit provisions/costs of \$408 million pre-tax, roughly four-fold  
10 higher than the 2nd quarter, and increasing our credit reserves 47% in  
11 just one quarter to \$1.39 billion.

12 As credit trends continued to deteriorate in the 4th quarter, we  
13 undertook another review of all of our loan portfolios, including our  
14 delinquency roll-rates and loss severities . . . even hiring a nationally  
15 recognized consulting firm to independently review our subdivision and  
16 consumer construction portfolios. It is somewhat of an  
17 oversimplification, but essentially, for our consumer loan portfolios, we  
18 took the last four months of 2007 delinquency roll rates (which were  
19 horrible) and assumed these rates would continue through Q3-08 and  
20 then gradually drop to 70% of these rates by the end of 2009.  
21 Additionally, our forecast models factored in an additional 8-10% house  
22 price depreciation from today’s levels, consistent with the Moody’s  
23 Economy.com forecast. *As a result, we more than doubled our credit*  
24 *provisions/costs again in the 4th quarter to \$863 million, increasing*  
25 *our total credit reserves an additional 71% from the 3rd quarter to \$2.4*  
26 *billion at December 31, 2007* (with \$1.1 billion related to loans and REO  
27 and the other \$1.3 billion consisting of gross credit reserves imbedded in  
28 non-investment grade and residual securities). For the full year of 2007,

1 we took \$1.45 billion in pre-tax credit provisions/costs, by far larger than  
2 Indymac has taken in its entire history. Importantly, of this \$1.45 billion,  
3 only \$483 million represented losses actually realized in 2007, consisting  
4 of \$200 million in loan charge-offs, \$46 million in REO write-downs and  
5 \$237 million of realized credit losses on non-investment grade and  
6 residual securities. In other words, \$970 million pre-tax (or \$591 million  
7 after-tax) of Indymac's credit provisions/costs in 2007 are related to  
8 losses that were not realized in 2007, but which we project to realize in  
9 2008, 2009 and beyond.

10 Based on the establishment of these unprecedented credit reserves  
11 and, to a lesser extent, on the collapse of our non-GSE mortgage banking  
12 business, Indymac lost \$609 million for the year, the first annual loss in  
13 our 23-year history. As a result of this loss and panic market conditions  
14 for anything or anyone involved in mortgages, Indymac lost \$2.8 billion,  
15 or 85%, of its market capitalization in 2007. The only good news is that,  
16 even with this significant loss, we remain in a fundamentally sound  
17 financial position as a result of raising \$676 million in equity capital in  
18 2007: \$500 million of bank perpetual preferred stock with an 8.5%  
19 coupon in the 2nd quarter, \$146 million of common equity (at an average  
20 price of \$20 per share in the 3rd and 4th quarters) and \$30 million of  
21 Subsequent to the February 12, 2008 press release, IndyMac holding  
22 company trust preferred securities. Our capital levels continue to exceed  
23 the levels defined as "well capitalized" by our regulators. At year end,  
24 Indymac's core capital ratio was 6.24%, and our total risk-based capital  
25 ratio was 10.50%, down from 7.39% and 11.72% at December 31, 2006.  
26 In addition to maintaining strong capital, Indymac now has \$2.4 billion  
27 in credit reserves, or four times the \$619 million it had at December 31,  
28 2006, which puts us in a strong position to return to profitability sooner

1 than later. *Indeed, based on our new business model (which I discuss*  
2 *more thoroughly below), we are forecasting a small profit in 2008,*  
3 *even including the Q1-08 staff reduction and office closing costs, and*  
4 *we believe we can maintain our “well-capitalized” capital ratios even*  
5 *under worsening industry conditions.*

6 \* \* \*

7 Looking Ahead

8 The first part of our 2008 plan is to continue with the conversion  
9 of our production model to the current realities of a tough housing  
10 market and the absence of a non-GSE secondary market and demonstrate  
11 that Indymac can be profitable with this production model. Second, we  
12 plan to achieve a \$1.1 billion reduction in our credit provisions/costs  
13 from 2007, which would be the most significant factor contributing to  
14 our return to profitability in 2008. Third, our goal is to reduce our  
15 operating expenses, excluding REO costs, year-over-year by 29%  
16 starting in Q2-08. Finally, we are committed to remaining a safe and  
17 sound financial institution with strong levels of capital and liquidity.  
18 With that said, we want to try and avoid raising capital externally right  
19 now given our current stock price relative to book value per share, as any  
20 capital raised would be highly dilutive to existing shareholders (and we  
21 don't have either the diversified business model or the “name brand” of  
22 major financial institutions who are raising capital from foreign  
23 government funds and others). As a result, we have to manage our  
24 balance sheet very carefully during this period.

25 Let's look at each element of our 2008 plan in greater detail.

26 \* \* \*

27 Credit Costs



1           our balance sheet by roughly \$4.6 billion, or 14%, from December 31,  
2           2007 via the production cuts discussed above, some modest AAA MBS  
3           sales, increasing the speed at which we sell loans to the GSEs and  
4           normal portfolio runoff, we project that we can “raise” / “free up”  
5           roughly \$400 million of additional capital (an amount that is substantial  
6           in relation to the current market value of the entire company today), and  
7           we believe we can accomplish this without “fire-selling” either the entire  
8           company or our reverse mortgage business, which should be a  
9           tremendous long-term asset for our shareholders. Based on these  
10          strategies and assuming our current financial projections for 2008, we  
11          expect our capital ratios to grow to over 7.25% core and 12.00% total  
12          risk based by year-end.

13 (Footnote omitted.)

14           40.    Upon this news, shares in the Company’s stock dropped from a high of  
15           \$8.30 per share on February 11, 2008 to as low as \$6.80 per share – a decline of \$1.50  
16           per share or 18% on high volume – before closing up at \$8.24 per share on February  
17           12, 2008, based upon defendants’ positive statements about the Company being able  
18           to return to profitability in the second half of 2008.

19           41.    On March 11, 2008, IndyMac filed a Form 8-K with the SEC that  
20           contained a release entitled “IndyMac Bancorp, Inc. Statement Dated March 11, 2008  
21           on the Impact of the Current State of the Capital Markets to the Company’s First  
22           Quarter 2008 Forecast,” which stated in part:

23                   As has been widely publicized, the capital markets in recent days  
24                   have taken another turn for the worse with credit spreads widening  
25                   significantly due to panic market conditions caused by uncertainty in the  
26                   U.S. housing and mortgage markets, renewed margin calls by Wall  
27                   Street repo lenders on mortgage REITs and hedge funds, and other  
28                   economic and financial uncertainties. Spreads on everything from

1 relatively risk-free instruments such as Fed Funds to LIBOR and U.S.  
2 Treasuries to Fannie Mae and Freddie Mac mortgage-backed securities  
3 (“MBS”) have widened substantially to at or near all-time historic levels.  
4 Spreads between Treasuries and other instruments, in particular, non-  
5 GSE mortgage assets, are difficult to ascertain, given the fact that there  
6 are virtually no new non-GSE mortgage securities issuances and the only  
7 resale activity is a handful of distressed sales. As a result, the financial  
8 impact of this spread widening on Indymac is difficult to estimate at this  
9 time, but it is expected to have a negative effect on the value of IMB’s  
10 MBS portfolio, and therefore on the first quarter 2008 forecast presented  
11 to shareholders on February 12, 2008. *We believe that most of any*  
12 *potential negative financial impact in the first quarter of 2008 is not*  
13 *warranted by the present underlying performance and/or ratings of*  
14 *these assets and therefore any unrealized losses will likely reverse and*  
15 *have a positive financial impact in subsequent quarters, either when*  
16 *spreads tighten or over time via an increased asset yield.* As of  
17 December 31, 2007, approximately 83% of Indymac’s MBS portfolio is  
18 classified as ‘Available for Sale’. This means that any potential  
19 unrealized write-down on this portion of the portfolio will flow through  
20 the ‘Other Comprehensive Income’ component of equity and will not  
21 affect either earnings or regulatory capital. As of December 31, 2007,  
22 approximately 17% of the MBS portfolio is classified as ‘Trading’ and  
23 any potential unrealized write-down on this portion of the portfolio will  
24 directly affect earnings and capital. None of Indymac’s AAA non-agency  
25 (Alt-a prime jumbo) MBS (over 86% of our total MBS portfolio) has  
26 been downgraded, and the performance of these securities has been  
27 reviewed several times in the past year by the major rating agencies.  
28 Lastly, Indymac has the intent and ability to continue to hold these assets

1 to recovery as a result of funding its balance sheet with deposits, FHLB  
2 advances, long-term debt and equity.

3 42. On April 30, 2008, defendant Perry sent an e-mail to the Company's  
4 employees reporting that defendant Keys had requested and taken a medical leave of  
5 absence effective April 25, 2008. The e-mail further provided an update on estimated  
6 first quarter financial results. A copy of the e-mail was posted on the Company's  
7 blog. Additionally, IndyMac provided a copy of the e-mail in a Form 8-K filed with  
8 the SEC on May 1, 2008. The e-mail provided in part:

9 **Update on the 1st Quarter**

10 Given the decline in our stock price, some people have questioned  
11 Indymac's survivability in the current environment. I am here to tell you  
12 that I believe we have turned a corner and that our business is improving:

- 13 1. Our loss for Q108 will decline by roughly 50% to 65%  
14 from Q407, and roughly 25% of this loss is coming from  
15 one-time severance and office closing costs.
- 16 2. Our credit costs in Q108 will be down roughly fourfold  
17 from the \$863 million we had in Q407.
- 18 3. Our operating liquidity remains strong at roughly \$4  
19 billion, about the same as a year ago, but our liquidity  
20 needs are significantly lower now than last year, as last year  
21 we had roughly three times the mortgage production as we  
22 currently have and our current production is far more  
23 liquid.
- 24 4. We raised over \$670 million in new capital in 2007, in  
25 advance of the current crisis and the major capital raises  
26 recently completed by other financial institutions impacted  
27 by the crisis, and we continue raising capital every day  
28 through our Direct Stock Purchase Plan (DSPP). Since

1                   recommencing the DSPP on February 26, we have raised  
2                   \$84 million in new capital through today, including \$45  
3                   million in the first month of Q208 alone.

4                   5.     While mortgage production is a struggle in the current  
5                   environment, we continue to successfully convert our  
6                   production to a GSE/FHA/VA model, and we produced  
7                   nearly \$10 billion in new mortgage loans in Q108 with  
8                   greatly improved credit quality and with 85% to 90% now  
9                   being saleable to the GSEs/FHA/VA. We are now  
10                  achieving profitability with this new production model,  
11                  with all of our 9 regional wholesale centers and 104 of our  
12                  152 retail lending branches being profitable in March.

13                  6.     Our forecasts show continued declines in credit costs and in  
14                  our overall losses each quarter for the remainder of the  
15                  year.

16                  43.    On May 12, 2008, IndyMac announced its first quarter 2008 financial  
17 results in a release which stated in part:

18                  IndyMac Bancorp, Inc. (“Indymac(R)” or the “Company”), the holding  
19                  company for IndyMac Bank, F.S.B. (“Indymac Bank(R)”), today  
20                  ***reported a net loss of \$184.2 million, or (\$2.27) per share, for the first***  
21                  ***quarter of 2008, compared with net earnings of \$52.4 million, or \$0.70***  
22                  ***per share, in the first quarter of 2007.*** The net loss and the loss per  
23                  share for the first quarter of 2008 both represented improvements of 64  
24                  percent from the net loss and loss per share reported for the fourth  
25                  quarter of 2007. . . .

26                  “While many others in the mortgage finance industry saw  
27                  worsening losses during the first quarter given the current state of the  
28                  housing and credit markets, we achieved a 64 percent reduction in our

1 net loss from last quarter as we took the appropriate steps in the second  
2 half of last year to get the bulk of our credit costs behind us,” stated  
3 Michael W. Perry, Indymac’s Chairman and CEO. ***“Last quarter, we***  
4 ***took major write-downs and established significant credit reserves in***  
5 ***the fourth quarter of 2007, absorbing \$863 million in total pre-tax***  
6 ***credit provisions/costs during that quarter and building our total credit***  
7 ***reserves for future losses by 71 percent during the quarter to \$2.4***  
8 ***billion at December 31, 2007, a four-fold increase from \$619 million at***  
9 ***December 31, 2006.*** With those reserves in place, we were able to  
10 reduce our total credit provisions/costs to \$249 million in the first quarter  
11 of 2008, a 71 percent reduction from last quarter, allowing us to reduce  
12 our overall net loss this quarter. It is important to also understand that 24  
13 percent of our first quarter loss is from staff reduction severance and  
14 office closing costs, and another 22 percent is from business activities  
15 that we have permanently closed and where losses are expected to  
16 diminish over time, such as homebuilder construction lending, home  
17 equity lending and our conduit channel.

18 ***“We also continued to build our total credit reserves to \$2.7***  
19 ***billion, a 13 percent increase over last quarter and more than a three-***  
20 ***fold increase over \$813 million in Q1-07.*** Actual realized credit losses  
21 during the first quarter totaled \$334 million, such that the Company’s  
22 total reserves at March 31, 2008 equate to 8.0 times current quarterly  
23 realized credit losses. Excluding non-investment grade and residual  
24 securities, total Q1-08 realized credit losses were \$178 million, and the  
25 total related credit reserve at March 31 was \$1.3 billion, or 7.2 times the  
26 realized credit losses in the first quarter.

27 ***“As I have been saying for the past year,” continued Mr. Perry,***  
28 ***“safety and soundness remains our highest priority during these***

1 *challenging times, and we finished the first quarter again in a solid*  
2 *overall financial position.* Our capital levels continue to exceed the  
3 levels defined as ‘well capitalized’ by our regulators. To supplement the  
4 \$676 million of equity capital we prudently raised in 2007, we  
5 recommenced raising equity capital through our Direct Stock Purchase  
6 Plan (DSPP) on February 26, 2008 and raised \$39 million in new equity  
7 through March 31, 2008. *We are continuing to raise capital nearly*  
8 *every business day through the DSPP and have raised \$97 million*  
9 *through this program year to date through May 9. At March 31, 2008,*  
10 *Indymac Bank’s Tier 1 ‘core’ capital ratio was 5.74 percent, our Tier 1*  
11 *risk-based ratio was 9.00 percent, and our total risk-based capital ratio*  
12 *was 10.26 percent, above the ‘well-capitalized’ regulatory levels of 5.00*  
13 *percent, 6.00 percent and 10.00 percent, respectively.*

14 *“With respect to profitability, we do not expect that Indymac will*  
15 *be able to return to overall profitability until the current decline in*  
16 *home prices decelerates.* As it is uncertain that this will happen in 2008,  
17 we are not currently forecasting a return to profitability this year. With  
18 that said, we are forecasting continued improvement in our performance  
19 and declining quarterly losses for the remainder of 2008, with a \$20  
20 million loss projected for the fourth quarter, which would be a 96 percent  
21 reduction from Q4-07 and an 89 percent reduction from Q1-08. With  
22 respect to our key business segments, we are forecasting that our  
23 mortgage banking business (including mortgage production and  
24 servicing) will be profitable in the second quarter and thereafter. We are  
25 forecasting that our thrift segment (including our MBS, SFR whole loan  
26 and consumer construction portfolios) will become profitable in the third  
27 quarter and that our overall business, excluding discontinued activities,  
28 will be close to breakeven by the third quarter and have a small profit for

1 the second half of 2008. The net loss from discontinued business  
2 activities is projected to decline from \$40 million in Q1-08 to roughly  
3 \$23 million in Q4-08.

4 \* \* \*

5 *“We do not at this time forecast a return to overall profitability*  
6 *in 2008 given current market conditions,* but we do forecast  
7 significantly declining losses each quarter for the balance of the year, as  
8 our restructuring charges abate, credit provisions/costs and losses from  
9 discontinued operations decline, and the profits from our new business  
10 model grow,” concluded Mr. Perry.

11 (Footnote omitted.)

12 44. On May 12, 2008, after releasing its first quarter 2008 results, IndyMac  
13 held a conference call with investors and analysts to discuss the Company’s first  
14 quarter results:

15 [PERRY]: On the negative side, we do not expect IndyMac to  
16 return to overall profitability realistically until these home price declines  
17 start to decelerate. As it clearly is uncertain when that will happen, we’re  
18 not forecasting conservatively a return to profitability in ‘08, but as I  
19 said, the losses will be down substantially and manageable.

20 \* \* \*

21 On the capital front, on the positive side, we remain well  
22 capitalized on all three capital ratios. We’ll walk through the capital  
23 ratios in just a minute pretty extensively.

24 We did contribute \$88 million from the holding company to the  
25 bank during the first quarter to remain well capitalized, and we are  
26 forecasting being well capitalized and improving our capital ratios  
27 throughout 2008.



1           The negative is that our non-performing assets have continued to  
2 rise, much like all thrifts. Non-performing single family loans take a long  
3 time to work through your balance sheet. They don't become non-  
4 performers until 90 days and you often can't foreclose on those  
5 properties for many months later, and then we're selling as soon as we  
6 get possession of the property, we're getting those REOs off our books  
7 within six months or less.

8           But because of the cycle time that it takes to move through a  
9 single-family non-performer, you can see that our non-performers have  
10 grown to 6.51% at March 31st, but that rate is slowing. That rate of  
11 increase from the fourth quarter to the first quarter was 39%, down from  
12 an 82% increase from the third to the fourth, and we're projecting that  
13 MPA growth rate to continue decline to 21% in the second quarter to 6%  
14 in the third, and basically be flat in the fourth and then decline from there  
15 and I think we've been pretty accurate at forecasting those NPAs.

16       45.   On this news, IndyMac's stock dropped to close at \$2.32 per share on  
17 May 13, 2008 from \$3.43 per share on May 9, 2008, on high volume – a two-day  
18 decline of \$1.11 per share, or 32%, and a decline of 91% from \$24.55 per share on  
19 October 2, 2007. This is the lowest price IndyMac's stock has traded at since 1992.

20       46.   The true facts, which were known by the defendants but concealed from  
21 the investing public during the Class Period, were as follows:

22           (a)   The Company was not adequately reserving for its losses on  
23 mortgage-related assets in violation of GAAP, causing its financial results to be  
24 materially misstated;

25           (b)   The Company had far greater exposure to anticipated losses and  
26 defaults concerning its book of business related to its homebuilder and Option ARM  
27 portfolio than it had previously disclosed;

28

1 (c) The Company's capital base was not adequate enough to withstand  
2 the significant deterioration in the credit and real estate markets and could jeopardize  
3 the Company's status as "well capitalized";

4 (d) IndyMac had not adequately reserved for Option ARMs, the terms  
5 of which provided that during the initial term of the loan borrowers could pay only as  
6 much as they desired with any underpayment being added to the loan balance, which  
7 loans would become toxic (for both IndyMac and the borrowers) once housing prices  
8 stopped increasing at a rapid rate; and

9 (e) Given the Company's exposure to the increased volatility in the  
10 credit and real estate markets, the Company had no reasonable basis to make  
11 projections about its earnings. As a result, the Company's projections issued during  
12 the Class Period about its earnings for 2007 and 2008 were at a minimum reckless.

### 13 **LOSS CAUSATION/ECONOMIC LOSS**

14 47. By misrepresenting IndyMac's financial position, the defendants  
15 presented a misleading picture of the Company's business and prospects. Thus,  
16 instead of truthfully disclosing during the Class Period that IndyMac's business was  
17 not as healthy as represented, IndyMac falsely concealed the extent of its exposure to  
18 its homebuilder loans and its Option ARMs.

19 48. These claims of profitability caused and maintained the artificial inflation  
20 in IndyMac's stock price throughout the Class Period and until the truth about its  
21 future earnings was revealed to the market.

22 49. Defendants' false and misleading statements had the intended effect and  
23 caused IndyMac's stock to trade at artificially inflated levels throughout the Class  
24 Period, reaching as high as \$24.55 per share in October 2007.

25 50. The truth about IndyMac's business operations, finances, business  
26 metrics, and future business and financial prospects began to enter the market with a  
27 series of partial disclosures and revelations beginning in November 2007, which were  
28 accompanied by denials and continuing misrepresentations by defendants. As a result,

1 the artificial inflation in IndyMac's stock price did not come out of the stock all at  
2 once, rather the artificial price inflation came out over time, in bits, pieces, and spurts  
3 as the stock continued to trade at artificially inflated, albeit lower, prices through May  
4 2008.

5 51. As a result of defendants' false statements, IndyMac's stock traded at  
6 inflated levels during the Class Period. However, after the above revelations seeped  
7 into the market, the Company's shares were hammered by massive sales, sending  
8 them down more than 91% from their price before these disclosures.

### 9 **COUNT I**

#### 10 **For Violation of §10(b) of the 1934 Act and Rule 10b-5** 11 **Against All Defendants**

12 52. Plaintiff incorporates ¶¶1-51 by reference.

13 53. During the Class Period, defendants disseminated or approved the false  
14 statements specified above, which they knew or deliberately disregarded were  
15 misleading in that they contained misrepresentations and failed to disclose material  
16 facts necessary in order to make the statements made, in light of the circumstances  
17 under which they were made, not misleading.

18 54. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- 19 (a) employed devices, schemes and artifices to defraud;
- 20 (b) made untrue statements of material facts or omitted to state  
21 material facts necessary in order to make the statements made, in light of the  
22 circumstances under which they were made, not misleading; or
- 23 (c) engaged in acts, practices and a course of business that operated as  
24 a fraud or deceit upon plaintiff and others similarly situated in connection with their  
25 purchases of IndyMac common stock during the Class Period.

26 55. Plaintiff and the Class have suffered damages in that, in reliance on the  
27 integrity of the market, they paid artificially inflated prices for IndyMac common  
28 stock. Plaintiff and the Class would not have purchased IndyMac common stock at

1 the prices they paid, or at all, if they had been aware that the market prices had been  
2 artificially and falsely inflated by defendants' misleading statements.

3 **COUNT II**

4 **For Violation of §20(a) of the 1934 Act**  
5 **Against All Defendants**

6 56. Plaintiff incorporates ¶¶1-55 by reference.

7 57. The Individual Defendants acted as controlling persons of IndyMac  
8 within the meaning of §20(a) of the 1934 Act. By reason of their positions with the  
9 Company, and their ownership of IndyMac stock, the Individual Defendants had the  
10 power and authority to cause IndyMac to engage in the wrongful conduct complained  
11 of herein. IndyMac controlled the Individual Defendants and all of its employees. By  
12 reason of such conduct, defendants are liable pursuant to §20(a) of the 1934 Act.

13 **CLASS ACTION ALLEGATIONS**

14 58. Plaintiff brings this action as a class action pursuant to Rule 23 of the  
15 Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise  
16 acquired IndyMac common stock during the Class Period (the "Class"). Excluded  
17 from the Class are defendants.

18 59. The members of the Class are so numerous that joinder of all members is  
19 impracticable. The disposition of their claims in a class action will provide substantial  
20 benefits to the parties and the Court. IndyMac has over 100 million shares of common  
21 stock outstanding, owned by hundreds if not thousands of persons.

22 60. There is a well-defined community of interest in the questions of law and  
23 fact involved in this case. Questions of law and fact common to the members of the  
24 Class which predominate over questions which may affect individual Class members  
25 include:

- 26 (a) whether the 1934 Act was violated by defendants;
- 27 (b) whether defendants omitted and/or misrepresented material facts;

1 (c) whether defendants' statements omitted material facts necessary to  
2 make the statements made, in light of the circumstances under which they were made,  
3 not misleading;

4 (d) whether defendants knew or deliberately disregarded that their  
5 statements were false and misleading;

6 (e) whether the price of IndyMac common stock was artificially  
7 inflated; and

8 (f) the extent of damage sustained by Class members and the  
9 appropriate measure of damages.

10 61. Plaintiff's claims are typical of those of the Class because plaintiff and  
11 the Class sustained damages from defendants' wrongful conduct.

12 62. Plaintiff will adequately protect the interests of the Class and has retained  
13 counsel who are experienced in class action securities litigation. Plaintiff has no  
14 interests which conflict with those of the Class.

15 63. A class action is superior to other available methods for the fair and  
16 efficient adjudication of this controversy.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, plaintiff prays for judgment as follows:

19 A. Declaring this action to be a proper class action pursuant to Fed. R. Civ.  
20 P. 23;

21 B. Awarding plaintiff and the members of the Class damages, including  
22 interest;

23 C. Awarding plaintiff's reasonable costs and attorneys' fees; and

24 D. Awarding such equitable/injunctive or other relief as the Court may deem  
25 just and proper.

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**JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: June 11, 2008

COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
DARREN J. ROBBINS  
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