

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION**

RICHARD and LINDA COY, Individually and On Behalf of All Others Similarly Situated,)	
)	
Plaintiffs,)	CIVIL ACTION NO.
)	
vs.)	CLASS ACTION COMPLAINT
)	
OPTEUM INC., ROBERT E. CAULEY, PETER R. NORDEN, JEFFREY J. ZIMMER, MARTIN J. LEVINE, KEVIN L. BESPOLKA, MAUREEN A. HENDRICKS, W. CHRISTOPHER MORTENSON, BUDFORD H. ORTALE, FLAGSTONE SECURITIES, LLC, and BB&T CAPITAL MARKETS,)	
)	<u>JURY TRIAL DEMANDED</u>
)	
)	
Defendants.)	

Plaintiffs, Richard and Linda Coy ("Plaintiffs"), allege the following based upon the investigation by Plaintiffs' counsel, which included, among other things, a review of the defendants' public documents, conference calls and announcements made by defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Opteum Inc. ("Opteum" or the "Company"), securities analysts' reports and advisories about the Company, and information readily available on the Internet, and Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION AND OVERVIEW

1. This is a federal class action on behalf of those who purchased or otherwise acquired Opteum's common stock pursuant or traceable to the Company's September 17, 2004

Initial Public Offering (the "IPO" or the "Offering") or the Company's December 16, 2004 Secondary Offering (the "Secondary Offering"), seeking to pursue remedies under the Securities Act of 1933 (the "Securities Act"), and including those who purchased or otherwise acquired the Company's common stock between November 3, 2005 and May 10, 2007, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. On May 10, 2007, the Company shocked investors when it reported its first quarter 2007 financial and operational results. The Company reported a \$12.2 million negative fair value adjustment to Opteum Financial Services, LLC's ("OFS") mortgage servicing rights, \$1.3 million in negative fair value adjustments to OFS's residuals, and \$8.8 million in asset write downs at OFS. Additionally, the Company revealed that nearly 50 percent of the Company's first quarter net loss, or \$37.4 million, was attributable to "a valuation allowance on OFS's deferred tax assets. Nearly 17.5% of the first quarter net loss was attributable to negative fair value adjustments to OFS's mortgage servicing rights and retained interests in securitizations. Slightly more than 10% of the first quarter net loss was attributable to asset write downs at OFS due in part to the Company's decision to exit the mortgage origination business." Also, the Company revealed that its \$18.0 million first quarter loss on mortgage banking activities included a \$14.1 million negative fair value adjustment to mortgage loans held for sale and interest rate lock commitments, a \$1.3 million negative fair value adjustment to retained interests in securitizations, and hedging losses of \$4.6 million.

3. On this news, shares of the Company's stock fell \$1.37 per share, or over 25 percent, to close on May 11, 2007 at \$4.08 per share, on unusually heavy trading volume.

4. The Complaint alleges that, in connection with the Company's IPO and Secondary

Offering, the defendants failed to disclose or indicate the following: (1) that the Company's interest costs at the time of the IPO and Secondary Offering were substantially increasing; (2) that as a result, the Company's various approaches to risk management did not provide investors reasonable protections against losses; and (3) that the Company lacked adequate internal and financial controls.

5. Additionally, throughout the Class Period, defendants failed to disclose additional material adverse facts about the Company's financial well-being, business relationships, and prospects. Specifically, defendants failed to disclose or indicate the following: (1) that the Company's integration of OFS was not proceeding according to plan; (2) that the Company's risk management controls and procedures were incompatible with OFS' risk management controls and procedures; (3) that OFS' loans were designed to produce short-term financial results, which would subject the Company to unreasonable long-term risk and expenses; (4) that the Company had improperly valued and monitored collateral; (5) that the Company had underreported its loan loss reserves; (6) that the Company's book value and projected cash flows were materially overstated; (7) that the Company had failed to adequately hedge its exposure to losses; (8) that the Company and OFS lacked adequate internal and financial controls; (9) that the Company's financial statements were not prepared in accordance with Generally Accepted Accounting Principles ("GAAP"); (9) that, as a result of the above, the Company's financial statements were false and misleading at all relevant times; and (10) that, as a result of the foregoing, the Company's guidance about its 2007 financial and operational results were lacking in any reasonable basis when made.

6. As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's common stock, Plaintiffs and other Class Members have

suffered significant losses and damages.

JURISDICTION AND VENUE

7. The claims asserted herein arise under and pursuant to Sections 11, 12(a)(2), and 15 of the Securities Act (15 U.S.C. §§ 77k and 77o), and under and pursuant to Sections 10(b) and 20(a) of the Exchange Act, (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

8. This Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the Securities Act (15 U.S.C. § 77v) and pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

9. Venue is proper in this Judicial District pursuant to Section 22 of the Securities Act and pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this Judicial District. Additionally, the Company's principal executive offices are located within this Judicial District.

10. In connection with the acts, conduct and other wrongs alleged in this Complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

11. Plaintiffs, Richard and Linda Coy, as set forth in the accompanying certification, incorporated by reference herein, purchased Opteum's common stock at artificially inflated prices during the Class Period and have been damaged thereby.

12. Defendant Opteum is a Maryland corporation with its principal place of business

located at 3305 Flamingo Drive, Vero Beach, Florida.

13. Defendant Robert A. Cauley ("Cauley") was, at all relevant times, the Company's Chief Financial Officer ("CFO"), Chief Investment Officer, Senior Executive Vice President, and Vice-Chairman of the Board of Directors.

14. Defendant Peter R. Norden ("Norden") was, at all relevant times, the Company's Senior Executive Vice President and a member of the Board of Directors. Defendant Norden was also the President of OFS.

15. Defendant Jeffrey J. Zimmer ("Zimmer") was, at all relevant times, the Company's Chief Executive Officer ("CEO") and Chairman of the Board of Directors.

16. Defendant Martin J. Levine ("Levine") was, at all relevant times, the Company's Executive Vice President, as well as OFS' Chief Operations Officer.

17. Defendant Kevin L. Bespolka ("Bespolka") was, at all relevant times, a member of the Company's Board of Directors.

18. Defendant Maureen A. Hendricks ("Hendricks") was, at all relevant times, a member of the Company's Board of Directors.

19. Defendant W. Christopher Mortenson ("Mortenson") was, at all relevant times, a member of the Company's Board of Directors.

20. Defendant Buford H. Ortale ("Ortale") was, at all relevant times, a member of the Company's Board of Directors.

21. Defendants Cauley, Norden, Zimmer, Levine, Bespolka, Hendricks, Mortenson, and Ortale are collectively referred to hereinafter as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of Opteum's reports to the SEC, press releases and presentations to securities

analysts, money and portfolio managers and institutional investors, i.e., the market. Each defendant was provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and misleading. The Individual Defendants are liable for the false statements pleaded herein, as those statements were each "group-published" information, the result of the collective actions of the Individual Defendants.

22. Defendants Flagstone Securities, LLC ("Flagstone") and BB&T Capital Markets ("BB&T") were lead underwriters of the Company's IPO and Secondary Offering. Defendants Flagstone and BB&T served as financial advisors and assisted in the preparation of Opteum's IPO and Secondary Offering materials. Defendants Flagstone and BB&T are collectively referred to hereinafter as the "Underwriter Defendants."

SUBSTANTIVE ALLEGATIONS

Background

23. Opteum is a REIT which operates an integrated mortgage-related investment portfolio and a mortgage origination platform. As of September 28, 2007, the Company changed its name to Bimini Capital Management Inc.

Materially False and Misleading Statements Made in its IPO Registration Statement

24. On September 17, 2004 the Company conducted its IPO. In connection with its IPO, the Company filed a Registration Statement and Prospectus (collectively referred to as the

"Registration Statement") with the SEC. The IPO was a financial success for the Company, as it raised \$72.5 million in gross proceeds by selling 5 million shares of stock to investors at a price of \$14.50 per share.

25. Regarding the Company's differentiation and asset acquisition strategy, the Registration Statement, in relevant part, stated:

We seek to differentiate ourselves from other mortgage portfolio managers through our approach to risk management. We invest in a limited universe of mortgage related securities, primarily those issued by Fannie Mae, Freddie Mac and Ginnie Mae. Payment of principal and interest underlying securities issued by Ginnie Mae is guaranteed by the U.S. Government. Fannie Mae and Freddie Mac mortgage related securities are guaranteed as to payment of principal and interest by the respective agency issuing the security. We seek to manage the risk of prepayments of the underlying mortgages by creating a diversified portfolio with a variety of prepayment characteristics. Finally, we seek to address interest rate risks by managing the interest rate indices and borrowing periods of our debt, as well as through hedging against interest rate changes.

We have implemented a risk-based capital methodology patterned on the general principles underlying the proposed risk-based capital standards for internationally active banks of the Basel Committee on Banking Supervision, commonly referred to as the Basel II Accord. The Basel II Accord encourages banks to develop methods for measuring the risks of their banking activities to determine the amount of capital required to support those risks. *Similarly, we use our methodology to calculate an internally generated risk measure for each asset in our portfolio. This measure is then used to establish the amount of leverage we use. We expect our risk management program to reduce our need to use hedging techniques.* [Emphasis added.]

* * *

The primary assets in our current portfolio of mortgage related securities are fixed-rate mortgage-backed securities, floating rate collateralized mortgage obligations, adjustable-rate mortgage-backed securities, hybrid adjustable-rate mortgage-backed securities and balloon maturity mortgage-backed securities. *The mortgage related securities we acquire are obligations issued by*

federal agencies or federally chartered entities, primarily Fannie Mae, Freddie Mac and Ginnie Mae.

We seek to manage the effects on our income of prepayments of the mortgage loans underlying our securities at a rate materially different than anticipated. *Our diversified portfolio includes securities with prepayment characteristics that we expect to result in slower prepayments, such as pools of mortgage-backed securities collateralized by mortgages with low loan balances, mortgages originated under Fannie Mae's Expanded Approval Program or agency pools collateralized by loans against investment properties.*

* * *

We have created and will maintain a diversified portfolio to avoid undue geographic, loan originator, and other types of concentrations. *By maintaining essentially all of our assets in government or government-sponsored or chartered enterprises and government or federal agencies, which may include an implied guarantee of the federal government as to payment of principal and interest, we believe we can significantly reduce our exposure to losses from credit risk.* We intend to acquire assets that will enable us to be exempt from the Investment Company Act. [Emphasis added.]

26. With regard to the Company's strategies for countering market risk, the Registration Statement, in relevant part, stated:

We believe the primary risk inherent in our investments is the effect of movements in interest rates. This arises because the changes in interest rates on our borrowings will not be perfectly coordinated with the effects of interest rate changes on the income from, or value of, our investments. *We therefore follow an interest rate risk management program designed to offset the potential adverse effects resulting from the rate adjustment limitations on our mortgage related securities. We seek to minimize differences between interest rate indices and interest rate adjustment periods of our adjustable-rate mortgage-backed securities and related borrowings by matching the terms of assets and related liabilities both as to maturity and to the underlying interest rate index used to calculate interest rate charges.*

Our interest rate risk management program encompasses a number of procedures, including the following:

- *monitoring and adjusting, if necessary, the interest rate sensitivity of our mortgage related securities* compared with the interest rate sensitivities of our borrowings.
- *attempting to structure our repurchase agreements that fund our purchases of adjustable-rate mortgage-backed securities to have a range of different maturities and interest rate adjustment periods.* We attempt to structure these repurchase agreements to match the reset dates on our adjustable-rate mortgage-backed securities. At June 30, 2004, the weighted average months to reset of our adjustable-rate mortgage-backed securities was 4.6 months and the weighted average reset on the corresponding repurchase agreements was 3.8 months; and
- *actively managing, on an aggregate basis, the interest rate indices and interest rate adjustment periods of our mortgage related securities compared to the interest rate indices and adjustment periods of our borrowings.* Our liabilities under our repurchase agreements are all LIBOR-based, and we select our adjustable-rate mortgage-backed securities to favor LIBOR indexes. As of June 30, 2004, over 79% of our adjustable-rate mortgage-backed securities were LIBOR-based.

As a result, we expect to be able to adjust the average maturities and reset periods of our borrowings on an ongoing basis by changing the mix of maturities and interest rate adjustment periods as borrowings mature or are renewed. Through the use of these procedures, we attempt to reduce the risk of differences between interest rate adjustment periods of our adjustable-rate mortgage-backed securities and our related borrowings.

* * *

As a further means of protecting our portfolio against the effects of major interest rate changes we may employ a limited hedging strategy under which we purchase interest rate cap contracts (under which we would generally be entitled to payment if interest rate indices exceed the agreed rates) or rate lock or other guaranteed financing contracts (under which we would pay a fee to guarantee certain lines of borrowing at certain rates or for certain periods of time). *Under these contracts we would generally only be at risk for the fees paid. These contracts are intended to protect us from significant increases in interest rates.* [Emphasis added.]

27. Finally, regarding the Company's "Asset Tests," the Registration Statement, in

relevant part, stated:

At the close of each quarter of our taxable year, we must satisfy four tests relating to the nature and diversification of our assets:

- at least 75% of the value of our total assets must be represented by qualified real estate assets, cash, cash items and government securities;
- not more than 25% of our total assets may be represented by securities, other than those securities included in the 75% asset test;
- of the investments included in the 25% asset class, the value of any one issuer's securities may not exceed 5% of the value of our total assets, and we generally may not own more than 10% by vote or value of any one issuer's outstanding securities, in each case except with respect to securities of any qualified REIT subsidiaries or taxable REIT subsidiaries and in the case of the 10% value test except with respect to "straight debt" having specified characteristics; and
- the value of the securities we own in any taxable REIT subsidiaries, in the aggregate, may not exceed 20% of the value of our total assets.

Qualified real estate assets include interests in mortgages on real property to the extent the principal balance of a mortgage does not exceed the fair market value of the associated real property, regular or residual interests in a REMIC (except that, if less than 95% of the assets of a REMIC consists of "real estate assets" (determined as if we held such assets), we will be treated as holding directly our proportionate share of the assets of such REMIC), and shares of other REITs. Non-REMIC CMOs, however, generally do not qualify as qualified real estate assets for this purpose.

* * *

We believe that all or substantially all of the mortgage related securities that we own are and will be qualifying assets for purposes of the 75% asset test. However, to the extent that we own non-REMIC CMOs or other debt instruments secured by mortgage loans (rather than by real property) or debt securities issued by other REITs or C corporations that are not secured by mortgages on real property, those securities will not be qualifying assets for purposes of the 75% asset test. ***We will monitor the status of our assets for purposes of the various asset tests and will seek to***

manage our portfolio to comply at all times with such tests.
[Emphasis added.]

28. The statements contained in ¶¶ 25 – 27 were materially false and misleading when made because defendants failed to disclose or indicate the following: (1) that the Company's interest costs at the time of the IPO were substantially increasing; (2) that as a result, the Company's various approaches to risk management did not provide investors reasonable protections against losses; and (3) that the Company lacked adequate internal and financial controls.

**Materially False and Misleading
Statements Made in its Secondary Offering Prospectus**

29. On December 16, 2004, the Company completed a Secondary Offering. In connection with this Secondary Offering, the Company filed a Prospectus (referred to as the "Prospectus") with the SEC. The Secondary Offering was also a financial success for the Company, as it was able to raise an additional \$62 million in gross proceeds by selling 4 million shares to investors at a price of \$15.50 per share.

30. Regarding the Company's differentiation and asset acquisition strategy, the Prospectus, in relevant part, stated:

We seek to differentiate our company from other mortgage portfolio managers through our approach to risk management. We invest in a limited universe of mortgage related securities, primarily those issued by Fannie Mae, Freddie Mac and Ginnie Mae. Payment of principal and interest underlying securities issued by Ginnie Mae is guaranteed by the U.S. Government. Fannie Mae and Freddie Mac mortgage related securities are guaranteed as to payment of principal and interest by the respective agency issuing the security. We seek to manage the risk of prepayments of the underlying mortgages by purchasing securities with prepayment characteristics that we expect to result in slower prepayments, such as pools of mortgage-backed securities collateralized by mortgages with low loan balances, mortgages originated under Fannie Mae's

Expanded Approval Program or agency pools collateralized by loans against investment properties.

The primary assets in our current portfolio of mortgage related securities are fixed-rate mortgage-backed securities, floating rate collateralized mortgage obligations, adjustable-rate mortgage-backed securities, hybrid adjustable-rate mortgage-backed securities and balloon maturity mortgage-backed securities. The mortgage related securities we acquire are obligations issued by federal agencies or federally chartered entities, primarily Fannie Mae, Freddie Mac and Ginnie Mae.

We have created and will maintain a diversified portfolio in order to avoid undue loan originator, geographic and other types of concentrations. *We seek to manage the effects on our income of prepayments of the mortgage loans underlying our securities, at a rate materially different than anticipated, by structuring a diversified portfolio with a variety of prepayment characteristics and investing in mortgage related securities or structures with prepayment protections.* [Emphasis added.]

* * *

The primary assets in our current portfolio of mortgage related securities are fixed-rate mortgage-backed securities, floating rate collateralized mortgage obligations, adjustable-rate mortgage-backed securities, hybrid adjustable-rate mortgage-backed securities and balloon maturity mortgage-backed securities. *The mortgage related securities we acquire are obligations issued by federal agencies or federally chartered entities, primarily Fannie Mae, Freddie Mac and Ginnie Mae.*

We seek to manage the effects on our income of prepayments of the mortgage loans underlying our securities at a rate materially different than anticipated. *Our diversified portfolio includes securities with prepayment characteristics that we expect to result in slower prepayments, such as pools of mortgage-backed securities collateralized by mortgages with low loan balances, mortgages originated under Fannie Mae's Expanded Approval Program or agency pools collateralized by loans against investment properties.*

* * *

We have created and will maintain a diversified portfolio to avoid undue geographic, loan originator, and other types of concentrations. By maintaining essentially all of our assets in

government or government-sponsored or chartered enterprises and government or federal agencies, which may include an implied guarantee of the federal government as to payment of principal and interest, we believe we can significantly reduce our exposure to losses from credit risk. We intend to acquire assets that will enable us to be exempt from the Investment Company Act. [Emphasis added.]

31. With regard to the Company's strategies for countering market risk, the Prospectus, in relevant part, stated:

We believe the primary risk inherent in our investments is the effect of movements in interest rates. This arises because the changes in interest rates on our borrowings will not be perfectly coordinated with the effects of interest rate changes on the income from, or value of, our investments. *We therefore follow an interest rate risk management program designed to offset the potential adverse effects resulting from the rate adjustment limitations on our mortgage related securities. We seek to minimize differences between the interest rate indices and interest rate adjustment periods of our adjustable-rate mortgage-backed securities and those of our related borrowings.*

Our interest rate risk management program encompasses a number of procedures, including the following:

- *monitoring and adjusting, if necessary, the interest rate sensitivity of our mortgage related securities compared with the interest rate sensitivities of our borrowings;*
- *attempting to structure our repurchase agreements that fund our purchases of adjustable-rate mortgage-backed securities to have a range of different maturities and interest rate adjustment periods.* We attempt to structure these repurchase agreements to match the reset dates on our adjustable-rate mortgage-backed securities. At September 30, 2004, the weighted average months to reset of our adjustable-rate mortgage-backed securities was 5.1 months and the weighted average reset on the corresponding repurchase agreements was 3.7 months; and
- *actively managing, on an aggregate basis, the interest rate indices and interest rate adjustment periods of our mortgage related securities compared to the interest rate indices and adjustment periods of our borrowings.* Our liabilities under our repurchase agreements are all LIBOR-based, and we,

among other considerations, select our adjustable-rate mortgage-backed securities to favor LIBOR indexes. As of September 30, 2004, over 40% of our adjustable-rate mortgage-backed securities were LIBOR-based.

As a result, we expect to be able to adjust the average maturities and reset periods of our borrowings on an ongoing basis by changing the mix of maturities and interest rate adjustment periods as borrowings mature or are renewed. Through the use of these procedures, we attempt to reduce the risk of differences between interest rate adjustment periods of our adjustable-rate mortgage-backed securities and those of our related borrowings.

* * *

As a further means of protecting our portfolio against the effects of major interest rate changes we may employ a limited hedging strategy under which we purchase interest rate cap contracts (under which we would generally be entitled to payment if interest rate indices exceed the agreed rates) or rate lock or other guaranteed financing contracts (under which we would pay a fee to guarantee certain lines of borrowing at certain rates or for certain periods of time). Under these contracts we would generally only be at risk for the fees paid. These contracts are intended to protect us from significant increases in interest rates. [Emphasis added.]

32. Additionally, regarding the Company's "Asset Tests," the Prospectus, in relevant part, stated:

At the close of each quarter of our taxable year, we must satisfy four tests relating to the nature and diversification of our assets:

- at least 75% of the value of our total assets must be represented by qualified real estate assets, cash, cash items and government securities;
- not more than 25% of our total assets may be represented by securities, other than those securities included in the 75% asset test;
- of the investments included in the 25% asset class, the value of any one issuer's securities may not exceed 5% of the value of our total assets, and we generally may not own more than 10% by vote or value of any one issuer's outstanding securities, in each case except with respect to securities of any qualified REIT subsidiaries or taxable REIT subsidiaries and in the case

of the 10% value test except with respect to "straight debt" having specified characteristics and other excluded securities, as described in the Internal Revenue Code, including, but not limited to, any loan to an individual or an estate, any obligation to pay rents from real property and any security issued by a REIT. In addition, (i) our interest as a partner in a partnership is not considered a security for purposes of applying the 10% value test; (ii) any debt instrument issued by a partnership (other than straight debt or other excluded security) will not be considered a security issued by the partnership if at least 75% of the partnership's gross income is derived from sources that would qualify for the 75% REIT gross income test, and (iii) any debt instrument issued by a partnership (other than straight debt or other excluded security) will not be considered a security issued by the partnership to the extent of our interest as a partner in the partnership; and

- the value of the securities we own in any taxable REIT subsidiaries, in the aggregate, may not exceed 20% of the value of our total assets.

Qualified real estate assets include interests in mortgages on real property to the extent the principal balance of a mortgage does not exceed the fair market value of the associated real property, regular or residual interests in a REMIC (except that, if less than 95% of the assets of a REMIC consists of "real estate assets" (determined as if we held such assets), we will be treated as holding directly our proportionate share of the assets of such REMIC), and shares of other REITs. Non-REMIC CMOs, however, generally do not qualify as qualified real estate assets for this purpose.

* * *

We believe that all or substantially all of the mortgage related securities that we own are and will be qualifying assets for purposes of the 75% asset test. However, to the extent that we own non-REMIC CMOs or other debt instruments secured by mortgage loans (rather than by real property) or debt securities issued by C corporations that are not secured by mortgages on real property, those securities may not be qualifying assets for purposes of the 75% asset test. ***We will monitor the status of our assets for purposes of the various asset tests and will seek to manage our portfolio to comply at all times with such tests.*** [Emphasis added.]

33. Finally, the with regard to the Company's leverage strategy, the Prospectus, in relevant part, stated:

We seek to protect our capital base through the use of a risk-based capital methodology that is patterned on the general principles underlying the proposed risk-based capital standard for internationally active banks of the Basel Committee on Banking Supervision. We use our methodology to calculate an internally generated risk measure for each asset in our portfolio. This measure is then used to establish the amount of leverage we use. The goal of our approach is to ensure that our portfolio's leverage ratio is appropriate for the level of risk inherent in the portfolio. [Emphasis added.]

34. The statements contained in ¶¶ 30 – 33 were materially false and misleading when made because defendants failed to disclose or indicate the following: (1) that the Company's interest costs at the time of the Secondary Offering were substantially increasing; (2) that as a result, the Company's various approaches to risk management did not provide investors reasonable protections against losses; and (3) that the Company lacked adequate internal and financial controls.

The Opteum Financial Services ("OFS") Merger

35. On September 29, 2005, the Company issued a press release entitled "Bimini Mortgage Management and Opteum Financial Services Sign Definitive Agreement to Merge." Therein, the Company, in relevant part, stated:

Bimini Mortgage Management, Inc. (the "Company") (NYSE:BMM), a real estate investment trust that invests primarily in residential mortgage-related securities, today announced that it has signed a definitive merger agreement with Opteum Financial Services, a privately held home mortgage lender headquartered in Paramus, New Jersey. With nearly 1,000 associates operating out of 30 offices and lending in 44 states, Opteum expects to originate or acquire approximately \$7.4 billion in mortgage loans for the fiscal year ending November 30, 2005. The transaction, in which Opteum will become a subsidiary of the Company, is expected to close in November 2005 and is subject to customary closing conditions. The Company expects the transaction will be accretive to earnings in 2006 and beyond.

Commenting on the agreement, Jeffrey J. Zimmer, chairman, co-founder, president and chief executive officer of the Company,

said, *"This transaction represents an excellent opportunity for both companies. From our standpoint, we are diversifying our revenue stream while remaining in our area of expertise – the residential mortgage market. At the same time, we are establishing a broader base for future growth.* We have known members of Opteum's management team for a number of years and believe they are among the best and most experienced in the home mortgage business. We are excited about the opportunity to commit capital to them as all of our shareholders will benefit."

Peter R. Norden, chairman, co-founder, president and chief executive officer of Opteum Financial Services, added, *"We believe this transaction offers an excellent opportunity for our company and our employees on many fronts. The management team at Bimini is highly regarded for their in-depth knowledge of mortgage backed securities, their liquidity management skills, their capital markets expertise and their commitment to the application of best practices and low cost operations. We can continue to grow as opportunities present themselves as part of this very well run publicly held company and attract capital at more favorable rates.* That in turn will create new jobs and improved opportunities for our existing associates."

Terms of the Agreement

Under the terms of the agreement, Bimini has agreed to issue 3,717,242 shares of Class A Common Stock and 1,800,000 Convertible Preferred Shares in the merger to the stockholders of Opteum. The new class of preferred shares would be convertible into Class A Common Stock of Bimini if Bimini's shareholders approve the conversion at a future shareholder meeting. *In addition, Bimini has agreed to lend approximately \$65 million to Opteum to repay existing debt. Bimini has also agreed to pay the Opteum stockholders a contingent cash earn-out of up to \$17.5 million over the next five years, based on achievement by Opteum of certain specific financial objectives. In return, Opteum has agreed that at the time of the merger it will have a book value of \$60 million.* Opteum will operate from their headquarters in Paramus, New Jersey and as a taxable subsidiary of Bimini, which will retain corporate headquarters in Vero Beach, Florida. The three most senior executives of Opteum Financial Services have entered into long term employment contracts.

Management

Jeffrey J. Zimmer will continue as chairman, president and chief executive officer of Bimini. *Peter R. Norden* will continue as

chairman, president and chief executive officer of Opteum and will become senior executive vice president and a director of Bimini. **Robert E. Cauley**, currently chief financial officer and chief investment officer of Bimini, will become vice chairman of the board of Bimini Mortgage Management, Inc. **Martin J. Levine**, co-founder of Opteum, will continue in his role as chief operating officer of Opteum. Jason Kaplan, who represents the family owning a large interest in Opteum, will join the Bimini board for a one-year term. No other senior management changes are planned. [Emphasis added.]

36. Also on September 29, 2005, the Company issued a press release entitled "Bimini Mortgage Management Announces Second Private Placement of \$50 Million of Trust Preferred Securities." Therein, the Company, in relevant part, stated:

Bimini Mortgage Management, Inc. (NYSE:BMM) today announced that it has agreed *to issue and sell in a private placement \$50.0 million of trust preferred securities* through a newly formed trust subsidiary, Bimini Capital Trust II, organized under Delaware law. The trust preferred securities, which were priced at five year swap rates +350 basis points, will require quarterly distributions and will bear a fixed interest rate of 7.8575% through December, 2010 and thereafter the interest rate will float at the prevailing three-month LIBOR rate plus 3.50%. The securities are redeemable, in whole or in part, without penalty, at the option of Bimini any time on or after December, 2010. The securities will mature on December 15, 2035. Bimini intends to use the net proceeds of this private placement to help finance its recently announced merger with Opteum Financial Services, LLC.

Commenting on the issuance, Bimini Chairman, President and Chief Executive Officer, Jeffrey J. Zimmer, stated, "*The Board of Directors of Bimini Mortgage Management, Inc. is very pleased to be able to issue 30-year unsecured debt that will allow us to lend money to Opteum following the merger on terms which are much better than Opteum's current debt.*" [Emphasis added.]

37. On September 30, 2005, Opteum held a conference call with investors and financial analysts. During this call, the defendants, in relevant part, stated:

JEFFREY ZIMMER: ... *The boards and the managements of these two enterprises have worked diligently on a merger and business plan that we expect will provide a future growth path of opportunities far greater than that as stand-alone companies.*

The Bimini board sought to reduce the effect on Bimini and its shareholders from the income volatility and subsequent stock price volatility resulting from large short-term interest rate movements and accentuated by the inherent limitations imposed by REIT regulations.

* * *

A primary focus was to achieve this diversification while capitalizing on the Company's management's core strengths, expertise in mortgages and investing, expertise in liquidity and risk management and expertise in Capital Market structuring. Indeed, the board of Opteum had goals complementary to ours. In order to fund Opteum's growth in an efficient way through the public markets and gain investment in Capital Markets expertise needed to maximize those opportunities, the Opteum board sought out publicly traded companies as potential partners.

* * *

The Bimini board anticipates this merger will be accretive to earnings in 2006. It is not yet clear if the merger will be accretive to earnings in the fourth quarter of 2005. Additionally the Bimini board and management team believe this merger will have a minimal effect at closing on Bimini's book value, although a snapshot as of yesterday would indicate a few cents dilution.

* * *

Opteum Financial Services currently uses gain on sale accounting for their securitizations. It is management's intention to change that to an on balance sheet financing business model for securitizations prior to the end of the second quarter of 2006. Both boards and management teams believe that an on balance sheet financing model will provide a more reliable return pattern to shareholders over a long period of time. In the future bonds may be issued through Bimini at the REIT level, and Bimini may hold all or some classes of these issues with ratings from AAI to unrated. At this time, however, the REIT parent company will continue to hold agency mortgage-related securities and has been granted authority by the board to purchase AAA private-label securities. The corporate structural changes will occur sometime in early 2006.

* * *

PETER NORDEN: ... With this merger, both companies become part of a stronger diversified model whose parts complement

each other. The ability to attract capital at very competitive rates will allow Opteum to continue to grow as opportunities present themselves as part of this very well-run publicly-held company. That, in turn, will create new jobs and improved opportunities for our existing associates. We look forward to our new endeavor as part of Bimini, and we are absolutely convinced that *together we can increase both shareholder value and returns on equity.*

* * *

[ANALYST]: Can you characterize the 2005 origination volumes to date and kind of the product continuum?

PETER NORDEN: ... *One way we are different than most of our competition I have to say is that we originate all different products through all very different channels, and we're very diversified in everything that we do.*

Most of our product is Alt-A, what is considered Alt-A origination. And I would say primarily our Alt-A originations represent 65%, 65 to 70% of our overall production. We also produce a fair amount of prime business as well, Fannie Mae, Freddie Mac type business, and we do a small amount, and it is really the smallest piece of credit challenged individual. It really is a very small number, and all of those loans that are produced I will tell you are also all servicing released right after we originate those loans.

[ANALYST]: And the idea being that that product mix does not change much over the -- throughout the business plan that you have put in place for the merger?

PETER NORDEN: *The anticipation is it will stay that way, yes. Our concentration is on the Alt-A* and on the (inaudible) side for the most part.

* * *

Everything that we do we try -- I have a trading background myself years ago -- and everything we do is built to make sure that we hedge ourselves and make sure that we cover ourselves in every way that we possibly can. So geographic diversity is very important to us, as well as product diversity so that we avoid the cycles of the mortgage banking business, which I think we have all seen. Anyone involved in a mortgage banking business has seen volatility in mortgage banking P&Ls. We really I think do a great job in leveling out those P&Ls by diversifying our product and diversifying geographically.

* * *

[ANALYST]: I was wondering if you could discuss a little bit your plans on what kind of credit you're going to keep on the balance sheet when you're done, or what percentage you're going to sell, how you are going to work the mix in terms of -- and just make those decisions so we can get an idea what their credit profile is going to look like going forward?

JEFFREY ZIMMER: ... As we said in the comments that *we will own AAA securities. Those are very much akin to the portfolio that we have now, a modest step-up in credit card, if you will. As far as the lower rated tranches, Opteum has retained small pieces of those in the past, parts of the securitization and that may continue. But those numbers are very very small.*

JEFFREY ZIMMER: Yes, Jeff, to the extent that the return on equity analysis loss adjusted makes any of the subordinate tranches that Opteum is originating look good and accretive to the other businesses we have, we will take those all day long. *Everybody in this room right here has high comfort and high expertise in credit and mortgage credit specifically. So as time goes on, we will make the business decisions that we have made so far with the AAA sector.*

* * *

[ANALYST]: *Sorry if I'm not congratulatory or calling you all highly regarded. I'm a portfolio manager who has held your stock since your IPO. I see this as a great change in your business model.* If you think the Fed is close to finished or you expect that mortgage REITs will trade up once they are finished, *why would you do this now? Why would you not sit back and as your assets prepay quickly use that cash to buy shares that are right now trading at a discount to book?*

JEFFREY ZIMMER: We are barely trading at a discount to book. But .95 or .96 I don't call that a discount big enough to go ahead and start buying shares, number one. Number two, Opteum has ROEs that are north of 20% right now on their business model. That is massively accretive to earnings. Number three, we have actually had an ROE of 14 or 15% this year. It is the highest in our sector, yet our stock is still \$4 or \$5 from the high. The entire equity investor world does not like the RMBS straight REIT model as the Fed raises rates.

* * *

[ANALYST]: Well again, I repeat, if you expect the Fed to finish sometime in my history, then your own business model as you -- the RMBS business model should improve. And you're going out - *- you have credit exposure now that you did not have before. Every time I pick up a financial newspaper I'm told about the risks of just this kind of mortgage banking, and it is troubling.*

* * *

[ANALYST]: *Well, why did you think of it a year ago before you did your IPO and you were diversified then?*

JEFFREY ZIMMER: ... *The board has thought this through very very well. We are very very [sic] pleased, and you as a shareholder should obviously be pleased as well.*

[ANALYST]: The 80 -- my final question -- the \$86 million residuals, how much of it is I/O and how much of it is credit?

PETER NORDEN: ... If you look at the enhancement levels of AAA, they are far, far lower than they are in subprime. And *we run and the Company has run analysis on those, using what we view are very aggressive loss assumptions and still feel that those are fairly valued.*

* * *

[ANALYST]: I just had a quick question about the servicing. *Do you currently run any sort of hedging program, and what does that entail? What type of securities do you own for that if you do?*

PETER NORDEN: Actually most of our servicing production, all of our portfolio for the most part has -- at this point is ARMs and it is relatively new paper. *We actually always view the origination channel as really our hedge against that servicing, and we write it off fairly quickly at the same time under the same assumption. So we have not been hedging the portfolio at this point in time but that may change with the merger and putting it together.*

[ANALYST]: Okay. And do you currently have the I guess expertise in place to do that, or would you have to hire out?

PETER NORDEN: I just want to add, Hunter Haus (ph) who joined the firm quite a while ago, not long after we joined the firm as you might recall, was involved in managing and servicing and hedging National City's portfolio which was over \$200 billion.

[ANALYST]: Okay.

PETER NORDEN: And *he brings that in-house expertise.*

* * *

[ANALYST]: *Can you tell me to what extent your assertion that this deal is going to be accretive to earnings in 2006 rests upon your outlook for origination volume?*

JEFFREY ZIMMER: We actually in our forward business plan we took 2006 -- 2005 originations and reduced them by 5%. We were being very conservative. And, quite frankly, their originations have been limited because they have not had access to good capital to expand it. *So that is a very very [sic] conservative number.*

PETER NORDEN: ... We have an incredible production staff. They produce great quality products. They pretty much can produce whatever we need at anytime, whatever type of product we need. *So I am very confident that even though we ran the numbers with a drop in production next year, that we will be substantially higher anyway.* [Emphasis added.]

Materially False and Misleading Statements Issued During the Class Period

38. The Class Period begins on November 3, 2005. On this day, the Company issued a press release entitled "Merger of Bimini Mortgage Management and Opteum Financial Services Completed." Therein, the Company, in relevant part, stated:

Bimini Mortgage Management, Inc. (the "Company") (NYSE:BMM), a real estate investment trust that invests primarily in residential mortgage-related securities, today announced that it has completed its previously announced merger with Opteum Financial Services, LLC, a privately held home mortgage lender. Opteum will continue to operate from its headquarters in Paramus, New Jersey, as a taxable REIT subsidiary of Bimini, which will retain corporate headquarters in Vero Beach, Florida.

Commenting on the closing of the transaction, Jeffrey J. Zimmer, chairman, co-founder, president and chief executive officer of the Company, said, "We are very pleased to have completed this transaction in a timely manner. *This merger benefits both companies. It allows Bimini to diversify its revenue stream while remaining in the Company's area of expertise. For Opteum, the merger provides increased access to capital to fund expanded*

growth opportunities. Ultimately, we believe this merger will add long-term value for all of our shareholders."

Under terms of the agreement, Bimini has issued approximately 3.7 million shares of Class A Common Stock and 1.8 million Convertible Preferred Shares in the merger to the stockholders of Opteum. The new class of preferred shares would be convertible into Class A Common Stock of Bimini if Bimini's shareholders approve the conversion at a future shareholder meeting. In addition, Bimini has lent to Opteum approximately \$65 million to repay existing debt and Bimini may pay to Opteum stockholders a contingent earn-out of up to \$17.5 million, payable partially in cash and partially in Convertible Preferred Shares, over the next five years, based on achievement by Opteum of certain specific financial objectives. [Emphasis added.]

39. On February 6, 2006, the Company issued a press release entitled "Bimini Mortgage Management, Inc. Announces Corporate Name Change to 'Opteum Inc.' which stated, in relevant part:

Bimini Mortgage Management, Inc. (NYSE:BMM), a real estate investment trust (REIT) that invests in residential mortgage-related securities and originates loans through its taxable REIT subsidiary, Opteum Financial Services, today announced that the Company's Board of Directors voted unanimously to change its name to Opteum Inc. Effective Friday, February 10, 2006, Opteum Inc. will begin trading on the New York Stock Exchange as "OPX." No changes are planned for the corporate structure.

"This name change leverages Opteum's current brand identity and further enhances the seamless integration of our two companies," said Jeffrey J. Zimmer, Chairman, Chief Executive Officer and President of Opteum Inc. "Our branding effort now represents a unified image on all fronts with investors, customers and associates as we work toward our corporate mission of providing superior returns to our shareholders."

Peter R. Norden, Chief Executive Officer of Opteum Financial Services, added that ***"this change reaffirms our brand position to be a company that is guided by integrity and strives to exceed our customers' and investors' expectations. When we re-branded our company as Opteum in 2003, we knew that we were creating a brand that would represent our company for the long-term."*** [Emphasis added.]

40. On February 23, 2006, the Company issued a press release entitled "Opteum Inc. Reports Fourth Quarter and Full Year 2005 Results." Therein, the Company, in relevant part, stated:

Opteum Inc. ("Opteum") (NYSE:OPX), a real estate investment trust (REIT) that operates an integrated mortgage-related securities investment portfolio and a mortgage origination platform, today announced financial results for the fourth quarter ended December 31, 2005 and for the full year 2005.

As previously announced on November 3, 2005, Opteum closed its acquisition of Opteum Financial Services, LLC ("OFS"). Therefore, for the fourth quarter, the consolidated Company includes the results of Opteum's new taxable REIT subsidiary ("TRS"), OFS, for the period from November 3, 2005 through December 31, 2005. During the quarter, Opteum recorded a net loss according to generally accepted accounting principles ("GAAP") of approximately \$2.7 million or \$0.12 per diluted Class A Common Share as of December 31, 2005. Included in those consolidated results are fourth quarter earnings from Opteum's REIT segment of \$3.9 million or \$0.17 per Class A Common Share. OFS recorded a net loss of \$6.6 million for the fourth quarter of 2005. *The loss at OFS is partially a result of the effects of the purchase accounting rules applied to OFS' assets at the date of the acquisition. The most significant effect was the OFS asset, "loans held for sale," which was adjusted to their fair value as of November 3, 2005. This fair value was higher than the book value of the loans prior to the acquisition. OFS subsequently sold many of the loans at approximately the same value as recorded on the acquisition date. Thus, the Company realized no gain on the subsequent sale of the loans, but the operating expenses of OFS remained.*

For the full year 2005, Opteum had net income of approximately \$24.3 million. See the Company's Consolidated Condensed Statement of Operations below.

* * *

Commenting on the results, Jeffrey J. Zimmer, Chairman, President and Chief Executive Officer, said, "The Opteum Board of Directors is pleased to be able to pay favorable dividends, but we are eagerly anticipating the time when the increases in short term funding rates comes to a halt. *The fourth quarter, as well as the entire year 2005, was a period when very short-term rates*

went up dramatically resulting in lower net interest income as compared with the fourth quarter of 2004 and the year 2004. The Company, in its REIT operations, began over 19 months ago to take steps to mitigate the continued impact of further interest rate movements initiated by the Federal Reserve by adding a greater proportion of adjustable-rate securities to the Company's REIT portfolio.

* * *

Mr. Zimmer continued: "*The Board is pleased with the speed at which the successful integration of OFS is taking place and views the opportunity for diversified sources of income as a great benefit to all shareholders.*" During the fourth quarter of 2005 OFS successfully issued its first securitization in REMIC form since being acquired by Opteum Inc. The underlying collateral for the issuance were loans originated or purchased by OFS, was \$986 million in size, and was issued using OFS's securitization shelf called Opteum Mortgage Acceptance Corporation (OPMAC). It was OFS's fifth securitization for the year. For more details about our assets and liabilities, please see our annual filing on form 10-K for the year ended December 31, 2005, which the Board anticipates will be filed within the next few business days with the Securities and Exchange Commission." [Emphasis added.]

41. On March 10, 2006, the Company filed its 2005 Annual Report with the SEC on Form 10-K. The Company's 10-K was signed by the Individual Defendants, and reaffirmed the Company's financial results previously announced on February 23, 2006. Additionally, the Company, in relevant part, stated:

Critical Accounting Policies

Opteum's accounting policies are described in Note 1 to the Consolidated Financial Statements. *Opteum has identified the following accounting policies that are critical to the presentation of our financial statements and that require critical accounting estimates by management.*

Opteum's financial statements are prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). These accounting principles require Opteum to make some complex and subjective decisions and assessments. Its most critical accounting policies involve decisions and assessments which could significantly affect its reported assets and liabilities, as well as its

reported revenues and expenses. *Opteum believes that all of the decisions and assessments upon which its financial statements are based were reasonable at the time made* based upon information available to it at that time. Management has identified its most critical accounting policies to be the following:

Mortgage Backed Securities

Opteum's investments in mortgage backed securities (the REIT investment portfolio) are classified as available-for-sale securities. As a result, *changes in fair value are recorded as a balance sheet adjustment to accumulated other comprehensive income (loss), which is a component of stockholders' equity, rather than through the statement of operations.* If available-for-sale securities were classified as trading securities, there could be substantially greater volatility in earnings from period-to-period.

Valuations of Opteum's mortgage backed securities are carried on the balance sheet at fair value. Statement of Financial Accounting Standards No. 107, Disclosures about the Fair Value of Financial Instruments, *defines the fair value of a financial instrument as the amount at which the instrument could be exchanged in a current transaction between willing parties. Opteum's mortgage backed securities have fair values determined by management* based on the average of third-party broker quotes received and/or by independent pricing sources when available. Because the price estimates may vary to some degree between sources, *management must make certain judgments and assumptions about the appropriate price to use to calculate the fair values for financial reporting purposes.* Different judgments and assumptions could affect the amounts Opteum could realize in a current market exchange.

When the fair value of an available-for-sale security is less than amortized cost, management considers whether there is an other-than-temporary impairment in the value of the security (for example, whether the security will be sold or repaid by the borrower prior to the recovery of fair value). *If, in management's judgment, an other-than-temporary impairment exists, the cost basis of the security is written down to the then-current fair value, and this loss is realized and charged against earnings.* The determination of other-than-temporary impairment is a subjective process, and different judgments and assumptions could affect the timing of loss realization.

The decline in fair value of investments held in the portfolio at December 31, 2005 is not considered to be other than temporary.

Accordingly, the write down to fair value is recorded in other comprehensive loss as an unrealized loss (see Note 1 to the financial statements). *The factors considered in making this determination included the expected cash flow from the investment and the magnitude and duration of the historical decline in market prices, as well as Opteum's capacity and intention to hold such securities owned.*

Interest income on mortgage related securities is accrued based on the actual coupon rate and the outstanding principal amount of the underlying mortgages. Premiums and discounts are amortized or accreted into interest income over the estimated lives of the securities using the effective yield method adjusted for the effects of estimated prepayments based on Statement of Financial Accounting Standards ("SFAS") No. 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases*; an amendment of Financial Accounting Standards Board ("FASB") Statements No. 13, 60, and 65 and a rescission of FASB Statement No. 17. *Adjustments are made using the retrospective method to the effective interest computation each reporting period based on the actual prepayment experiences to date and the present expectation of future prepayments of the underlying mortgages. To make assumptions as to future estimated rates of prepayments, Opteum currently uses actual market prepayment history for the securities and for similar securities that Opteum does not own and current market conditions. If the estimate of prepayments is incorrect; [sic] Opteum is required to make an adjustment to the amortization or accretion of premiums and discounts that would have an impact on future income.*

Mortgage Loans Held for Sale

Mortgage loans held for sale represent mortgage loans originated and held pending sale to investors. *The mortgages are carried at the lower of cost or market as determined by outstanding commitments from investors or current investor yield requirements calculated on the aggregate loan basis.* OFS generally sells or securitizes loans with servicing rights retained. *Gains or losses on such sales are recognized at the time legal title transfers to the investor based upon the difference between the sales proceeds from the final investor and the allocated basis of the loan sold,* adjusted for net deferred loan fees and certain direct costs and selling costs. OFS defers net loan origination costs and fees as a component of the loan balance on the balance sheet. Such costs are not amortized and are recognized into income as a component of the gain or loss upon sale.

Valuation Allowance

A valuation allowance is maintained to adjust mortgage loans held for sale to the lower of cost or market.

* * *

Risk Management Approach

Opteum seeks to differentiate itself from other mortgage portfolio managers through its approach to risk management. It invests in a limited universe of mortgage related securities, primarily, but not limited to, those issued by Fannie Mae, Freddie Mac and Ginnie Mae. Payment of principal and interest underlying securities issued by Ginnie Mae is guaranteed by the U.S. Government. Fannie Mae and Freddie Mac mortgage related securities are guaranteed as to payment of principal and interest by the respective agency issuing the security. *Opteum seeks to manage the risk of prepayments of the underlying mortgages by creating a diversified portfolio with a variety of prepayment characteristics. Finally, Opteum seeks to address interest rate risks by managing the interest rate indices and borrowing periods of its debt, as well as through hedging against interest rate changes.*

Opteum has implemented a risk-based capital methodology patterned on the general principles underlying the proposed risk-based capital standards for internationally active banks of the Basel Committee on Banking Supervision, commonly referred to as the Basel II Accord. The Basel II Accord encourages banks to develop methods for measuring the risks of their banking activities to determine the amount of capital required to support those risks. Similarly, *Opteum uses its methodology to calculate an internally generated risk measure for each asset in its portfolio. This measure is then used to establish the amount of leverage it uses. Opteum expects its risk management program to reduce its need to use hedging techniques.*

* * *

Management's Report on Internal Control over Financial Reporting

Management of Opteum Inc. (the "Company") is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. *The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial*

reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. The Company's internal control over financial reporting includes those policies and procedures that:

- (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;
- (ii) *provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorization of management and directors of the Company;* and
- (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

* * *

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2005. Management's assessment on internal controls did not include the internal controls of Opteum Financial Services, LLC which is included in the 2005 consolidated financial statements of the Company and constituted \$1.1 billion and \$49.9 million of total and net assets, as of December 31, 2005 and \$3.4 million and \$(6.6) million of total revenues and net income for the year then ended. Management did not assess the effectiveness of internal control over financial reporting at this entity because the Company did not have the ability to conduct an assessment of the acquired entity's internal controls over financial reporting during the time period from November 3, 2005, date of acquisition, through December 31, 2005, date of management's assessment. In making its assessment of the effectiveness of internal control, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control-Integrated Framework. Based on our assessment and those criteria, *management believes that the Company maintained effective internal control over financial reporting as of December 31, 2005.* [Emphasis added.]

42. The Company's 10-K also contained Sarbanes-Oxley required certifications,

signed by Defendants Zimmer and Cauley, which stated:

I, [Jeffrey J. Zimmer, Chief Executive Officer and President / Robert E. Cauley, Chief Financial Officer], certify that:

1. I have reviewed this annual report on Form 10-K of Opteum Inc. (the "registrant");
2. ***Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;***
3. ***Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;***
4. ***The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:***
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b) ***designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principals;***

- c) *evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;* and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. *The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting,* to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
- a) *all significant deficiencies and material weakness in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information;* and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

* * *

In connection with the Annual Report of Opteum Inc. (the "Company") on Form 10-K for the fiscal year ended December 31, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, [Jeffrey J. Zimmer, Chief Executive Officer / Robert E. Cauley, Chief Financial Officer] of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- 1. The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and
- 2. *The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.* [Emphasis added.]

43. On March 28, 2006, the Company issued a press release entitled "Opteum Reports Strong Demand for 'Affordability Products' as Home Prices Hold Steady and Interest Rates Continue to Climb." Therein, the Company, in relevant part, stated:

"The sharp upward trend in 'affordability products' this season is clear," says Alex Koutouzis, senior vice president for Opteum Financial Services, one of the nation's fastest growing mortgage lenders. "In fact, interest-only loans now make up almost 50 percent of the total share of mortgages in major competitive housing markets like San Diego, Atlanta and San Francisco."

Interest-only (IO) loans have become one of the industry's most popular products as they can help buyers afford a larger home and enjoy substantially lower payments for the initial term. The program is best suited for those who exhibit a proven track record for managing their finances well and understand the product's pros and cons. Opteum anticipates that 10-year IO products will continue to gain popularity, whereas demand for the two to three year (or shorter) IO term will drop dramatically.

In addition, Opteum is experiencing a strong demand for the 40-year fixed rate balloon. This loan offers a payment nearly halfway between interest-only and 30-year fixed. The 40-year fixed works for buyers focused on the long-term value of their property and who want to build equity each month. [Emphasis added.]

44. On May 8, 2006, the Company issued a press release entitled "Opteum Inc. Reports First Quarter 2006 Results." Therein, the Company, in relevant part, stated:

Opteum Inc. ("Opteum") (NYSE:OPX), a real estate investment trust (REIT) that operates an integrated mortgage-related securities investment portfolio and mortgage origination platform, today announced financial results for the quarter ended March 31, 2006. This release should be read in conjunction with the Company's Form 10-Q, which was filed this afternoon with the Securities and Exchange Commission.

For the quarter ended March 31, 2006, Opteum had REIT net income of \$0.9 million, or \$0.04 per weighted average Class A Common Share outstanding. The REIT had estimated taxable earnings of \$1.3 million, or \$0.06 per weighted average Class A Common Share outstanding. The taxable income results includes payments made by the Company's taxable REIT subsidiary, Opteum Financial Services (OFS), to the REIT of approximately

\$1.8 million of interest on the \$65 million loan that the REIT has made to OFS. That interest is not counted as revenue under generally accepted accounting principles (GAAP) since it is eliminated in consolidation of the subsidiary. Yet, that cash can and will be distributed to shareholders. Opteum Inc., which includes the results of OFS, recorded a net loss, on a GAAP basis, of approximately \$5.1 million, or (\$0.21) per weighted average Class A Common Share as of March 31, 2006. ***Included in those consolidated results are first quarter operating results from OFS, which posted a GAAP net loss of \$6.0 million after tax, or approximately (\$0.26) per weighted average Class A Common Share outstanding for the first quarter of 2006. This loss was due to two specific accounting charges.***

First, the Company chose early adoption of SFAS 156, which pertains to the valuation of Originated Mortgage Servicing Rights (OMSR). The Company has elected to use the fair value method for valuing all OMSRs. As a result of this adoption, changes in the fair value of the OMSRs over a given period will be reflected in earnings. More importantly, ***this change will allow the Company to hedge the OMSRs using the alternate accounting treatment to SFAS 133.*** Although the initial adoption of SFAS 156, as of January 1, 2006, resulted in an increase in the value of the OMSRs by \$4.3 million (pre-tax), which was booked to retained earnings, ***the March 31, 2006 valuation resulted in a charge in OFS's earnings of \$2.5 million (pre tax), or approximately (\$0.11) per weighted average Class A Common Share outstanding.***

The GAAP net loss at OFS is also a result of the change in the value of retained interests in securitizations that OFS has issued from its two private-label shelves. The change in the value of these residuals flows through the statement of operations of OFS. The increase in one-month LIBOR of 44 basis points during the first quarter of 2006 was the primary reason for the valuation decline and resulting charge of \$4.2 million (pre-tax) in the first quarter of 2006. This decline represents non-cash charges to earnings and is reflective of market conditions at the time. The valuation is subject to fluctuation over time due to the differences between actual and projected prepayments, losses on the underlying loans and the changing value of LIBOR. ***Accordingly, management has made slight changes to the assumptions underlying the valuation as part of the implementation of the Company's hedging strategy in order to align the assumptions used in its hedge strategy with the valuation methodology.***

The change in value of the OMSRs and the change in value of the residual interests represent approximately \$6.7 million (pre-

tax) of the \$20.2 million decline in book value for Opteum Inc. from December 31, 2005 to March 31, 2006. The book value of Opteum Inc. as of March 31, 2006, was approximately \$223.2 million or \$9.67 per Class A Common Share outstanding on that date.

* * *

The Company has not made any significant changes to its portfolio strategy since the summer of 2004, when the Company determined to substantially increase the asset allocation to adjustable-rate mortgages - those mortgages that reset within 12 months. By the fall of 2004, this was accomplished. Following this change, the Company has had the highest cumulative dividends and the highest cumulative return on equity for the following six quarters compared with the Company's 2005 RMBS peer group, as spelled out by the equity research analysts who cover the sector.

Previously, the Board had determined not to provide earnings guidance for future periods unless the estimates by the equity analyst community were clearly out of line with management estimates. *As a result of this policy, the Board has determined that the Company should indeed provide earnings guidance for the REIT taxable income for the second quarter of 2006. The Company estimates that approximately \$0.25 to \$0.35 will be available to pay dividends from second quarter taxable earnings from the REIT.* This estimate does not incorporate any second quarter results from OFS. The Board has authorized management to update the public with this information if new data makes the estimates fall outside this range.

* * *

In September of 2004 and December of 2004, respectively, the Company completed an IPO and a public secondary offering. Many of the assets that were purchased as a result of those successful offerings are now resetting to higher coupons. In addition, because the longer end of the yield curve has increased in rate, the homeowner is not as readily in a position to refinance an adjustable-rate mortgage into a fixed-rate mortgage - as had been the case in previous quarters when the yield curve was flatter. *The Company believes that its strategy of owning low-duration adjustable-rate assets has proven to be successful. As of this date, the Company has not realized any permanent losses to book value as a result of portfolio restructuring.* Based on the Company's previous timing of dividend announcements, the

Company expects that the Board of Directors will declare a second quarter 2006 dividend sometime during the first two weeks of June 2006.

Commenting on the results, Jeffrey J. Zimmer, Chairman, President and Chief Executive Officer, said, "The Opteum Board of Directors is pleased both to be able to pay favorable dividends for the first quarter of 2006 and *to present expectations of favorable earnings for the second quarter 2006...*

* * *

"The Board is pleased with the speed at which the successful integration of OFS is taking place and views the opportunity for diversified sources of income as a great benefit to all shareholders. Moreover, the Board anticipates the hedging program for OMSRs and residuals to commence during the second quarter of 2006 so as to reduce the volatility of the earnings results at OFS. During the first quarter, OFS successfully issued its first 2006 securitization in REMIC form. ...

* * *

Mr. Zimmer went on to say, "The competition in mortgage originations has continued into the second quarter. *Although the Company does not expect origination levels to remain below expectations throughout the entire year, we have taken steps to reduce costs at OFS.* In the first quarter of 2006, the Company reduced non-origination personnel expenses at OFS by over \$3.5 million as measured on an annual basis. Additional efficiencies are in the process of being implemented. In addition, as a taxable REIT subsidiary of Opteum Inc., OFS has been able to take advantage of significant reductions in the rate it pays to finance its mortgage pipeline and owned assets. On an annualized basis, OFS has reduced borrowing costs by approximately \$3.5 million per year. *Finally, we believe that OFS financial results will benefit on an ongoing basis from the capital markets expertise that the REIT management team is rigorously applying to the OFS securitization strategy.*" [Emphasis added.]

45. Also on May 8, 2006, Opteum filed its Quarterly Report with the SEC on Form 10-Q. The Company's 10-Q was signed by Defendants Zimmer and Cauley, and reaffirmed the Company's financial results previously announced. The Company's 10-Q also contained Sarbanes-Oxley required certifications, substantially similar to the certifications contained in

¶42, *supra*. Additionally, the Company, in relevant part, stated:

Interim Financial Statements

The accompanying interim financial statements reflect all adjustments, consisting of normal recurring items that, *in the opinion of management, are necessary for a fair presentation of the Company's financial position, results of operations, statement of stockholder equity and cash flows for the periods presented.* These interim financial statements have been prepared in accordance with disclosure requirements for interim financial information and accordingly, they may not include all of the information and footnotes required by U.S. generally accepted accounting principles ("GAAP") for annual financial statements. The operating results for the interim period ended March 31, 2006 are not necessarily indicative of results that can be expected for the year ended December 31, 2006. The operating results of the interim period ended March 31, 2005 do not include the results of OFS, as the merger closed in November 2005. The financial statements included as part of this Form 10-Q should be read in conjunction with the financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2005.

Basis of Presentation and Use of Estimates

The accompanying consolidated financial statements are prepared on the accrual basis of accounting in accordance with GAAP. The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates affecting the accompanying financial statements include the fair values of mortgage backed securities, the prepayment speeds used to calculate amortization and accretion of premiums and discounts on mortgage backed securities, the deferred tax liability valuation, the valuation allowance on mortgage loans held for sale, the valuation of derivative financial instruments and the fair value of mortgage servicing rights.

Consolidation

The accompanying March 31, 2006 consolidated financial statements include the accounts of Opteum and its wholly-owned

subsidiary, OFS, as well the wholly-owned and majority owned subsidiaries of OFS. Opteum uses the equity method to account for other investments for which it has the ability to exercise significant influence over operating and financial policies. Consolidated net earnings of Opteum include Opteum's share of the net earnings (losses) of these companies, if any. The inter-company loan and all other material inter-company accounts and transactions have been eliminated from the consolidated financial statements.

* * *

Evaluation of Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company's Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure based closely on the definition of "disclosure controls and procedures" in Rule 13a-15(e). ...

As of the end of the period covered by this report, the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and the Company's Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures. Based on the foregoing, the Company's Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective.

Changes in Internal Controls over Financial Reporting

There have been no changes in the Company's internal controls over financial reporting identified in connection with the calculation of such internal controls that occurred during the Company's last fiscal year or in other factors that could have materially affected, or are reasonably likely to materially affect the Company's internal controls subsequent to the date the Company completed its evaluation. [Emphasis added.]

46. On August 8, 2006, the Company issued a press release entitled "Opteum Inc.

Reports Second Quarter 2006 Results." Therein, the Company, in relevant part, stated:

Opteum Inc. ("Opteum", the "Company") (NYSE:OPX), a real estate investment trust (REIT) that operates an integrated mortgage-related securities investment portfolio and mortgage origination platform, today announced financial results for the quarter ended June 30, 2006. This release should be read in conjunction with the Company's Form 10-Q, which was filed this morning with the Securities and Exchange Commission.

For the quarter ended June 30, 2006, Opteum had REIT net income of \$7.52 million, or \$0.31 per weighted average Class A Common Share outstanding. The REIT had estimated taxable income of \$9.99 million, or \$0.42 per weighted average Class A Common Share. Taxable income includes payments made by the Company's taxable REIT subsidiary, Opteum Financial Services (OFS), to the REIT of approximately \$2.2 million of interest on the loans that the REIT has made to OFS, which is eliminated in consolidation of the subsidiary.

Opteum Inc., which includes the results of OFS, recorded a consolidated net loss for the second quarter of 2006, on a GAAP basis, of approximately \$3.69 million, or (\$0.15) per weighted average Class A Common Share as of June 30, 2006.

The Company's reported net loss for the second quarter is mainly a result of the change in value of assets held by OFS, which flow through the consolidated statement of operations, some of which have increased in value and some of which have decreased in value.

First, the Company's adoption of SFAS 156 during the first quarter of 2006, which pertains to the valuation of Originated Mortgage Servicing Rights (OMSR), requires the Company to use the fair value method for valuing all OMSRs. As a result of this adoption, changes in the fair value of the OMSRs over a given period will be reflected in earnings. ***This change allows the Company to more effectively hedge the OMSRs compared with the treatment available under SFAS 133.*** OMSR's resulted in an increase in OFS's earnings of \$3.3 million (pre-tax), or approximately \$0.14 per weighted average Class A Common Share during the second quarter of 2006.

Secondly, the net change in the value of retained interests in securitizations that OFS has issued from its two private-label shelves declined in value during the second quarter of 2006. ***The change in the value of these residuals flows through the statement of operations of OFS. The increase in one-month LIBOR of 50.5 basis points during the second quarter of 2006, as***

well as related movements in forward LIBOR, were the primary reasons for the valuation decline and the resulting non-cash charge of \$15.8 million (net and pre-tax) in the second quarter of 2006 or \$0.69 (net and pre-tax) weighted average Class A Common Share. The valuation is subject to fluctuation over time due to the differences between actual and projected prepayments, losses on the underlying loans and the changing value of LIBOR.

Although the Company estimates that the book value per weighted average Class A Common Share outstanding as of the close of business yesterday, August 7, 2006, was between \$8.45 and \$8.60, the book value of the Company as of June 30, 2006 was \$8.22 per weighted average Class A Common Share outstanding or approximately \$200 million. *The recovery in book value per weighted average Class A Common Share outstanding can be attributable to favorable changes in the forward LIBOR curve and lower treasury rates since the end of the second quarter, offset by application of the effective yield method adjustment for the third quarter.*

* * *

In September of 2004 and December of 2004, respectively, the Company completed an IPO and a public secondary offering. Many of the assets that were purchased as a result of those successful offerings are now resetting to higher coupons. In addition, because the longer end of the yield curve has increased in rate during the second quarter of 2006, the homeowner was not in a position to refinance as readily from an adjustable-rate mortgage into a fixed-rate mortgage - as had been the case in previous quarters when the yield curve was flatter. *The Company believes that its strategy of owning low-duration, adjustable-rate assets has proven to be successful. As of this date, the Company has not realized any net permanent losses to book value as a result of portfolio restructuring.*

The Company has not made any significant changes to its portfolio strategy since the summer of 2004, when the Company determined to substantially increase the asset allocation to adjustable-rate mortgages - those mortgages whose coupons reset within 12 months. By the fall of 2004, this was accomplished. Following this change, the Company has had the highest cumulative dividends and the highest cumulative return on equity for the following seven quarters compared with the Company's 2005 RMBS peer group, as spelled out by the equity research analysts who cover the sector.

* * *

"Although the Board is pleased that the changes in value during the second quarter of 2006 of the REIT portfolio, the OMSR's and the retained interests in securitizations were within expectations as described in the Company's Form 10-Q for Q1 2006, the Board is also acutely focused on the negative aspects of the net book value volatility inherent in the OFS OMSR's and retained interests in securitizations, despite the fact they are non-cash charges. *As stated previously, the Board authorized hedging program for OMSRs and residuals to commence during the second quarter of 2006. Hedging will continue to be utilized as a tool to curtail balance sheet volatility when proper pricing opportunities present themselves.*

* * *

Mr. Zimmer went on to say, "The competition in mortgage originations continued throughout the second quarter and now into the third quarter. But, in addition to the previously announced reductions in duplicative or underperforming personnel at OFS, which will result in over \$3.5 million in annualized savings, the reduced borrowing costs the Company announced in the second quarter have now all been implemented and should save OFS approximately \$3.5 million per year in the future. Finally, *we believe that OFS financial results will benefit on an ongoing basis from the capital markets expertise that the REIT management team is rigorously applying to the OFS securitization strategy.*" [Emphasis added.]

47. Also on August 8, 2006, Opteum filed its Quarterly Report with the SEC on Form 10-Q. The Company's 10-Q was signed by Defendants Zimmer and Cauley, and reaffirmed the Company's financial results previously announced. The Company's 10-Q also contained Sarbanes-Oxley required certifications, substantially similar to the certifications contained in ¶42, *supra*. Additionally, the Company, in relevant part, stated:

Critical Accounting Policies

Opteum's accounting policies are described in Note 1 to the Consolidated Financial Statements. Opteum has identified the following accounting policies that are critical to the presentation of our financial statements and that require critical accounting estimates by management.

*Opteum's financial statements are prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). These accounting principles require Opteum to make some complex and subjective decisions and assessments. Its most critical accounting policies involve decisions and assessments which could significantly affect its reported assets and liabilities, as well as its reported revenues and expenses. **Opteum believes that all of the decisions and assessments upon which its financial statements are based were reasonable at the time made based upon information available to it at that time.***

* * *

Interim Financial Statements

The accompanying interim financial statements reflect all adjustments, consisting of normal recurring items that, in the opinion of management, are necessary for a fair presentation of the Company's financial position, results of operations, statement of stockholders' equity and cash flows for the periods presented. These interim financial statements have been prepared in accordance with disclosure requirements for interim financial information and accordingly, they may not include all of the information and footnotes required by U.S. generally accepted accounting principles ("GAAP") for annual financial statements. The operating results for the interim period ended June 30, 2006, are not necessarily indicative of results that can be expected for the year ended December 31, 2006. The operating results of the interim period ended June 30, 2005, do not include the results of OFS, as the merger closed in November 2005. The financial statements included as part of this Form 10-Q should be read in conjunction with the financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2005.

Basis of Presentation and Use of Estimates

The accompanying consolidated financial statements are prepared on the accrual basis of accounting in accordance with GAAP. The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates affecting the accompanying financial statements include the fair values of MBS, the prepayment speeds used to calculate

amortization and accretion of premiums and discounts on MBS, the deferred tax liability valuation, the valuation allowance on mortgage loans held for sale, the valuation of retained interests, trading and the fair value of mortgage servicing rights.

Consolidation

The accompanying June 30, 2006, consolidated financial statements include the accounts of Opteum and its wholly-owned subsidiary, OFS, as well the wholly-owned and majority-owned subsidiaries of OFS. All inter-company accounts and transactions have been eliminated from the consolidated financial statements. The financial statements for June 30, 2005, do not include the results of OFS, as the merger was finalized in November 2005.

* * *

Evaluation of Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company's Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure based closely on the definition of "disclosure controls and procedures" in Rule 13a-15(e). In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As of the end of the period covered by this report, the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and the Company's Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures. Based on the foregoing, the Company's Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective.

Changes in Internal Controls over Financial Reporting

There were no significant changes in the Company's internal control over financial reporting that occurred during the Company's most recent fiscal quarter that have materially affected or are reasonably likely to materially affect, the Company's internal control over financial reporting. [Emphasis added.]

48. On November 8, 2006, the Company issued a press release entitled "Opteum Inc. to Delay Filing Third Quarter Form 10-Q; Restate First and Second Quarter Financial Statements; Postpone Third Quarter Earnings Call; Previously Reported Year-to-Date Pre-Tax Results Estimated to Be Reduced by Less Than \$1 Million after Restatement." Therein, the Company, in relevant part, stated:

Opteum Inc. (NYSE:OPX) ("Opteum" or the "Company"), a real estate investment trust ("REIT") that operates an integrated mortgage-related securities investment portfolio and mortgage origination platform, today ***announced that its Quarterly Report on Form 10-Q for the quarter ended September 30, 2006, will be delayed and that it will restate its consolidated financial statements for the quarters ended March 31, 2006, and June 30, 2006, due primarily to the application of an accounting policy by the Company's subsidiary, Opteum Financial Services, LLC ("OFS"), that was not in accordance with U.S. generally accepted accounting principles ("GAAP").***

Although the Company's review of the full legal, accounting and tax impact of this accounting policy is ongoing, ***the Company presently believes that, once restated, its consolidated results of operations before income taxes for the six month period ended June 30, 2006, will be reduced by less than \$1 million from the Company's year-to-date consolidated results of operations before income taxes previously reported.*** The Company presently anticipates an offsetting increase to the Company's consolidated results of operations before income taxes for the quarterly period ended September 30, 2006.

The previous accounting policy relates to the manner in which OFS accounts for changes in the fair value of interest rate lock commitments ("IRLCs"). Under Statement of Financial Accounting Standards No. 133 - Accounting for Derivative Instruments and Hedging Activities ("SFAS No. 133"), IRLCs are to be recorded on the Company's consolidated balance sheet at fair value with changes in fair value to be reflected in the Company's current period results of operations. OFS' prior

accounting policy resulted in a misapplication of SFAS No. 133, thereby generating non-cash, short-term timing differences that overstated earnings in the first quarter of 2006 and understated earnings in the second quarter of 2006. Proper application of SFAS No. 133 would not, however, have changed the amount of dividends declared by the Company year-to-date. Further, the Company's dividend policy of declaring dividends based on REIT taxable income remains unchanged.

In light of the foregoing, *the Company's consolidated financial statements, including the Company's consolidated balance sheet, statement of operations, statement of stockholders' equity, statement of cash flows and the notes thereto, as of, and for the periods ended, March 31, 2006, and June 30, 2006, should no longer be relied upon.* [Emphasis added.]

49. On December 20, 2006, the Company issued a press release entitled "Opteum Inc. Reports Third Quarter 2006 Results; Declares \$0.05 Fourth Quarter 2006 Cash Dividend; Announces Filing of Amendments to Form 10-Qs for March 2006 and June 2006." Therein, the Company, in relevant part, stated:

Opteum Inc. (NYSE:OPX) ("Opteum" or "the Company"), a real estate investment trust ("REIT") that operates an integrated mortgage-related securities investment portfolio and mortgage origination platform, today announced financial results for the quarter ended September 30, 2006, and the declaration of a \$0.05 fourth quarter 2006 cash dividend. This release should be read in conjunction with Opteum's Quarterly Report on Form 10-Q for the period ended September 30, 2006, which was filed this morning with the Securities and Exchange Commission. The Company also announced the filing of amendments to its Form 10-Qs for the periods ended March 31, 2006 and June 30, 2006.

Results of Operations

For the nine months ended September 30, 2006, Opteum had a consolidated net loss of \$15.6 million, or \$(0.64) per weighted average Class A Common Share outstanding, compared with net income of \$27.0 million, or \$1.27 per weighted average Class A Common Share outstanding, for the nine months ended September 30, 2005.

For the three months ended September 30, 2006, Opteum had a consolidated net loss of \$6.3 million, or \$(0.25) per weighted

average Class A Common Share outstanding, compared with third quarter 2005 net income of \$7.9 million, or \$0.37 per weighted average Class A Common Share outstanding.

Commenting on the results, Jeffrey J. Zimmer, Chairman, President and Chief Executive Officer, said, "We continue to experience extremely challenging operating conditions as our funding costs have accelerated faster than the yields on our portfolio assets over the last two years. Additionally, the aggregate demand for mortgage products and services has declined significantly during the year, which has negatively affected results at our taxable REIT subsidiary, Opteum Financial Services (OFS). *It has been five months since the Federal Reserve last implemented a rate hike. If this neutral policy continues or if the Federal Reserve relaxes monetary policy, the results from operations at both the Opteum REIT and OFS will have the opportunity for improvement. In the meantime, we are aggressively pursuing various funding alternatives to lower our borrowing costs, increase our liquidity and better position us to effectively compete with larger financial institutions that have lower costs of capital.*"

* * *

Book Value Per Share

Opteum's Book Value Per Share increased to \$8.41 as of September 30, 2006, from \$8.19 as of June 30, 2006, as restated. Book Value Per Share is regularly used as a valuation metric by various equity analysts and may be deemed a non-GAAP financial measure pursuant to Regulation G. Opteum computes "Book Value Per Share" by dividing total stockholders' equity by the total number of shares of Class A Common Stock outstanding. [Emphasis added.]

50. Also on December 20, 2006, Opteum filed its Quarterly Report with the SEC on Form 10-Q. The Company's 10-Q was signed by Defendants Zimmer and Cauley, and reaffirmed the Company's financial results previously announced. The Company's 10-Q also contained Sarbanes-Oxley required certifications, substantially similar to the certifications contained in ¶42, *supra*. Additionally, the Company, in relevant part, stated:

Interim Financial Statements

The accompanying interim financial statements reflect all adjustments, consisting of normal recurring items that, in the opinion of management, are necessary for a fair presentation of the Company's financial position, results of operations, statement of stockholders' equity and cash flows for the periods presented.

These interim financial statements have been prepared in accordance with disclosure requirements for interim financial information and accordingly, they may not include all of the information and footnotes required by U.S. generally accepted accounting principles ("GAAP") for annual financial statements. The operating results for the interim period ended September 30, 2006, are not necessarily indicative of results that can be expected for the year ended December 31, 2006. The operating results of the interim period ended September 30, 2005, do not include the results of OFS, as the merger closed in November 2005. Certain September 30, 2005 amounts were reclassified to conform to the 2006 presentation. The financial statements included as part of this Form 10-Q should be read in conjunction with the financial statements and notes thereto included in the Company's Annual Report on Form 10-K (as amended) for the year ended December 31, 2005.

Basis of Presentation and Use of Estimates

The accompanying consolidated financial statements are prepared on the accrual basis of accounting in accordance with GAAP. The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates affecting the accompanying financial statements include the fair values of MBS, the prepayment speeds used to calculate amortization and accretion of premiums and discounts on MBS, the deferred tax liability valuation, the valuation allowance on mortgage loans held for sale, the valuation of retained interests, trading and the fair value of mortgage servicing rights.

Consolidation

The accompanying September 30, 2006, consolidated financial statements include the accounts of Opteum and its wholly-owned subsidiary, OFS, as well the wholly-owned and majority-owned subsidiaries of OFS. All inter-company accounts and transactions have been eliminated from the consolidated financial statements.

The financial statements for September 30, 2005, do not include the results of OFS, as the merger was finalized in November 2005.

* * *

Critical Accounting Policies

The Company's financial statements are prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). The Company's significant accounting policies are described in Note 1 to the Company's accompanying Consolidated Financial Statements.

GAAP requires the Company's management to make some complex and subjective decisions and assessments. The Company's most critical accounting policies involve decisions and assessments which could significantly affect our reported assets and liabilities, as well as our reported revenues and expenses.

* * *

Evaluation of Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company's Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure based closely on the definition of "disclosure controls and procedures" in Rule 13a-15(e). In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As of the end of the period covered by this report, the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and the Company's Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures. Based on the foregoing, the Company's Chief Executive Officer

and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective.

Changes in Internal Controls over Financial Reporting

On November 3, 2005, the Company acquired Opteum Financial Services, LLC, ("OFS") a privately held company. *Management's assessment of the internal controls at the OFS level started with the assumption that OFS, as a private company, may not possess a system of internal controls sufficient to comply fully with all of the rules and requirements for internal control systems for SEC registrants at the time of the acquisition. Accordingly, management conducted a comprehensive review of all controls in place coupled with an assessment of all critical processes so as to ensure full compliance with the rules and requirements for SEC registrants by year end.* This process was a substantial undertaking and required the Company to hire external consultants to assist. As of the dates the Company's quarterly reports for the periods ended March 31, 2006 and June 30, 2006 were filed, this process was not complete. During the period ended September 30, 2006, as part of the process of establishing whether or not the system of internal controls that existed at OFS were sufficient to comply, management discovered a material weakness with respect to the controls in place associated with the accounting by OFS for IRLCs. *Owing to a lack of sufficient internal controls being in place, the accounting treatment utilized to account for IRLCs up to that point was not in compliance with GAAP and the quarterly financial statements issued for the periods ended March 31, 2006 and June 30, 2006 required re-statement. Management has since made changes, where needed, at the OFS level to ensure such system of internal control is adequate to allow management to rely on the OFS internal controls for purposes of preparing the Company's quarterly and annual reports.*

There were no significant changes in the Company's internal control over financial reporting that occurred during the Company's most recent fiscal quarter, other than as reported above, that have materially affected or are reasonably likely to materially affect, the Company's internal control over financial reporting. [Emphasis added.]

51. On December 21, 2006, the Company issued a press release entitled "Opteum Inc. Sells Equity Stake in Opteum Financial Services; Expects Substantial Mortgage Origination Cost Savings." Therein, the Company, in relevant part, stated:

Opteum Inc. (NYSE:OPX) ("Opteum" or the "Company"), a real estate investment trust ("REIT") that operates an integrated mortgage-related securities investment portfolio and mortgage origination platform, today announced that it has sold a 7.5% non-voting limited liability company membership interest in the Company's wholly owned subsidiary, Opteum Financial Services, LLC ("OFS"), to Citigroup Global Markets Realty Corp. ("Citigroup Realty"), a unit of Citigroup Corporate and Investment Banking, for \$4,125,000. The Company also granted Citigroup Realty the option, exercisable at any time before December 21, 2007, to purchase an additional 7.49% non-voting limited liability company membership interest in OFS for \$4,119,500. Separately, the Company today announced that it expects substantial cost savings at OFS as a result of amendments to OFS' funding facilities with Citigroup Realty.

"We are thrilled that Citigroup Realty, a subsidiary of a world-class financial institution, has partnered with us to drive profitable growth at OFS," said Jeffrey J. Zimmer, Chairman, President and Chief Executive Officer of Opteum Inc. "We continue to believe in the value of the OFS franchise and are excited by Citigroup Realty's strong vote of confidence."

"At OFS, we have long considered Citigroup Realty a strategic business partner and are eager to expand our relationship with them," added Peter R. Norden, Senior Executive Vice President of Opteum Inc. and President and Chief Executive Officer of OFS. ***"With lower funding costs and even greater access to capital, we are well positioned to profitably increase our market share as we leverage our multi-channel mortgage origination platform."*** [Emphasis added.]

52. On January 9, 2007, the Company issued a press release entitled "Levine Announces Retirement; Filiberto and Haas Appointed as Co-Chief Operating Officers at Opteum Financial Services, LLC." Therein, the Company, in relevant part, stated:

Opteum Inc. (NYSE:OPX) ("Opteum" or the "Company"), a real estate investment trust ("REIT") that operates an integrated mortgage-related securities investment portfolio and mortgage origination platform, today announced that Martin J. Levine, Co-Founder, Executive Vice President and Chief Operations Officer of the Company's wholly owned subsidiary, Opteum Financial Services, LLC ("OFS"), will be retiring effective March 31, 2007. The Company also today announced the appointment of Robert Filiberto and G. Hunter Haas IV as Co-Chief Operating Officers of

OFS effective immediately. Mr. Levine will continue in his role as Executive Vice President pending his retirement and will work closely with Mr. Filiberto and Mr. Haas until then to ensure a seamless transition of his responsibilities.

* * *

Commenting on Mr. Levine's retirement, Jeffrey J. Zimmer, Chairman, President and Chief Executive Officer of Opteum, stated, "*Marty has been a tremendous resource for OFS since its initial founding. Drawing upon his twenty-plus years of operating experience, Marty has been instrumental in facilitating OFS' transition from a privately held enterprise to a subsidiary of a publicly traded corporation. We are grateful for all of his contributions and, on behalf of all of Opteum's associates, we wish him a long, healthy and prosperous retirement.*" [Emphasis added.]

53. On February 14, 2007, the Company issued a press release entitled "Opteum Inc. Reports Fourth Quarter 2006 and Full-Year 2006 Results." Therein, the Company, in relevant part, stated:

Opteum Inc. (NYSE:OPX) ("Opteum" or the "Company"), a real estate investment trust ("REIT") that operates an integrated mortgage-related securities investment portfolio and mortgage origination platform, today announced financial results for the fourth quarter and year ended December 31, 2006.

Summary of Results of Operations

For the quarter ended December 31, 2006, Opteum reported a consolidated net loss of approximately \$33.9 million, or \$(1.38) per Class A Common Share. This includes a \$10.0 million loss attributable to an other than temporary impairment as of December 31, 2006, of certain mortgage-backed security ("MBS") portfolio assets that we have sold or intend to sell during the first quarter of 2007. Accumulated Other Comprehensive Loss has been reduced by a corresponding amount and these MBS assets will be reflected on our balance sheet at fair market value as of December 31, 2006. Any difference between the fair market value of these MBS assets as of December 31, 2006, and the amounts ultimately realized upon the sale of such MBS assets will be reflected as a gain or loss in our first quarter 2007 earnings. We currently estimate that our first quarter 2007 earnings will include a loss of approximately \$1.1 million related

to the sale of these MBS assets. For the fourth quarter of 2005, Opteum reported a consolidated net loss of \$2.7 million, or \$(0.12) per Class A Common Share.

For the year ended December 31, 2006, Opteum reported a consolidated net loss of approximately \$49.5 million, or \$(2.02) per Class A Common Share, compared with consolidated net income of \$24.3 million, or \$1.03 per Class A Common Share, for the year ended December 31, 2005.

Book Value per Share

The Company currently estimates that its Book Value per Share as of December 31, 2006, was approximately \$7.85 compared with \$8.41 as of September 30, 2006. Book Value per Share is regularly used as a valuation metric by various equity analysts that follow the Company and may be deemed a non-GAAP financial measure pursuant to Regulation G. The Company computes Book Value per Share by dividing total stockholders' equity by the total number of shares outstanding of the Company's Class A Common Stock.

Management Commentary

Commenting on the Company's 2006 fourth quarter and full-year results, Jeffrey J. Zimmer, Chairman, President and Chief Executive Officer, said, "There is nothing we dislike more than reporting negative operating results. *The Company had one of the best records of earnings and dividends among our New York Stock Exchange-traded peer group during 2004 and 2005, but in 2006 we underperformed much of the peer group*, which was understandably reflected in our stock price. *Challenging business and operating conditions during 2006 resulted in inferior financial performance in both of our business units. The Company's investment portfolio produced losses during the second half of the year as higher borrowing costs - the result of two years of increases in the Federal Funds Rate - finally surpassed the gross yield on our portfolio assets.* The sale of certain MBS assets during the first quarter of 2007 is intended to enable the Company to realize a positive net interest margin profit at a faster pace. The Company's taxable REIT subsidiary and mortgage origination platform, *Opteum Financial Services, LLC ("OFS")*, *has posted losses for four consecutive quarters, primarily due to four reasons: stiff competition for mortgage loans during a period when the number of loans originated declined nationwide, high debt costs, certain operating inefficiencies and a substantial increase during the fourth quarter in loan loss reserves due to anticipated increases in early*

payment defaults on fourth quarter 2006 originations. Despite the Company's recent operating losses, however, we are optimistic about the opportunities that lie ahead in 2007. Actions have been taken and additional actions are being evaluated to create a path to profitability in the near future."

* * *

Loan Loss Reserves

The Company's total loan loss provision in 2006 was \$13.3 million. Of that amount, \$7.3 million was reserved in the fourth quarter of 2006. The actual loan losses realized in 2006 were \$7.5 million, \$3.3 million of which were realized during the fourth quarter of 2006. The additional reserves were due to anticipated increases in early payment defaults on fourth quarter 2006 originations. As of December 31, 2006, the Company's valuation allowance for loan losses was \$8.0 million, compared with \$2.2 million as of December 31, 2005.

* * *

Opteum Financial Services

During the fourth quarter of 2006, OFS originated or purchased \$1.6 billion in mortgages, compared with \$1.59 billion originated or purchased during the fourth quarter of 2005. For the full-year 2006, OFS originated or purchased \$6.31 billion in mortgages, which was down 2.8% from the \$6.49 billion originated or purchased in 2005. However, the nearly flat levels for 2006 versus 2005 are differentiated by the 21.0% year-over-year decline in the higher-margin OFS retail business versus the 13.0% increase in the lower-margin OFS conduit business. Year-over-year wholesale originations and purchases were up 0.2%.

Actual margins associated with sales of mortgage loans at OFS during 2006 were less on average during the year than had been anticipated due largely to stiff competition in the marketplace for mortgage originations. The difference in actual margin represents the largest component of operating losses incurred in 2006. *Exacerbating these lower-than-expected loan sale margins was an increase in loan loss reserves as a result of increases in early payment defaults on fourth quarter 2006 originations, a decline in value of OFS's retained interests in securitizations, and net losses on hedge transactions related to both mortgage servicing rights and the retained interests.*

In response to these results and to the secular development of brokerage firms acquiring mortgage lenders that are then provided with significantly lower funding costs, the Company's management team worked closely with key lenders to improve asset funding rates and initial margin rates. In late December 2006, the Company announced the sale to Citigroup Global Markets Realty Corp. ("Citigroup Realty") of a 7.5% non-voting Class B limited liability company membership interest in OFS and amendments to OFS's financing facilities with Citigroup Realty that *the Company currently believes, based on 2007 projected production levels, will lead to approximately \$5.5 million to \$6 million in savings at OFS.*

* * *

The expected recovery in the Company's Book Value per Share discussed above will not be fully realized if OFS's results do not improve. *However, the OFS management team believes the combination of its new funding terms, cost savings associated with its reduction in staff, and access to Citigroup Realty's capital markets expertise will lead to breakeven or positive monthly results at OFS by mid-2007.*

* * *

"The Board of Directors and our senior management team believe that the implementation of recent operating changes will lead to positive operating results during 2007. I look forward to making that promise a reality so all of our shareholders can realize a positive return on their investment," Zimmer concluded. [Emphasis added.]

54. On March 14, 2007, Opteum filed its 2006 Annual Report with the SEC on Form 10-K. The Company's 10-K was signed by the Individual Defendants, and reaffirmed the Company's financial results previously announced on February 14, 2007. The Company's 10-K also contained Sarbanes-Oxley required certifications, substantially similar to the certifications contained in ¶42, *supra*. Additionally, the Company, in relevant part, stated:

Basis of Presentation and Use of Estimates

The accompanying consolidated financial statements are prepared on the accrual basis of accounting in accordance with generally accepted accounting principals ("GAAP"). The

preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates affecting the accompanying financial statements include the fair values of MBS, the prepayment speeds used to calculate amortization and accretion of premiums and discounts on MBS, the deferred tax liability valuation, the valuation allowance on mortgage loans held for sale, the valuation of retained interests, trading and the fair value of mortgage servicing rights. Certain December 31, 2005 and 2004 amounts were reclassified to conform to the 2006 presentation.

Consolidation

Opteum owned 100% of OFS until December 21, 2006, when a Class B non-voting interest representing 7.5% of OFS's then outstanding Limited Liability Company membership interest was sold to Citigroup Realty. Citigroup Realty's proportionate share in the after-tax results of OFS's operations are shown in the accompanying consolidated statements of operations, and Citigroup Realty's interests in the net equity of OFS is reflected as a liability on the accompanying consolidated balance sheets.

The accompanying 2006 consolidated financial statements include the accounts of Opteum and its majority-owned subsidiary, OFS, as well the wholly-owned and majority owned subsidiaries of OFS. All inter-company accounts and transactions have been eliminated from the consolidated financial statements.

* * *

CRITICAL ACCOUNTING POLICIES & ESTIMATES

The Company's financial statements are prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). The Company's significant accounting policies are described in Note 1 to the Company's accompanying Consolidated Financial Statements.

* * *

Risk Management Approach

Opteum seeks to differentiate itself from other mortgage portfolio managers through its approach to risk management. It invests in a limited universe of mortgage related securities, primarily, but not

limited to, those issued by Fannie Mae, Freddie Mac and Ginnie Mae. Payment of principal and interest underlying securities issued by Ginnie Mae is guaranteed by the U.S. Government. Fannie Mae and Freddie Mac mortgage related securities are guaranteed as to payment of principal and interest by the respective agency issuing the security. Opteum seeks to manage the risk of prepayments of the underlying mortgages by creating a diversified portfolio with a variety of prepayment characteristics. Finally, *Opteum seeks to address interest rate risks by managing the interest rate indices and borrowing periods of its debt, as well as through hedging against interest rate changes.*

Opteum has implemented a risk-based capital methodology patterned on the general principles underlying the proposed risk-based capital standards for internationally active banks of the Basel Committee on Banking Supervision, commonly referred to as the Basel II Accord. The Basel II Accord encourages banks to develop methods for measuring the risks of their banking activities to determine the amount of capital required to support those risks. Similarly, Opteum uses its methodology to calculate an internally generated risk measure for each asset in its portfolio. This measure is then used to establish an appropriate amount of leverage. Opteum expects its risk management program to reduce its need to use hedging techniques.

* * *

Evaluation of Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company's reports filed with or submitted to the Securities and Exchange Commission (the "SEC") pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure based closely on the definition of "disclosure controls and procedures" in Rule 13a-15(e). ...

As of the end of the period covered by this report, the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and the Company's Chief Financial Officer, of the effectiveness of the design and

operation of the Company's disclosure controls and procedures. Based on the foregoing, the Company's Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective.

Changes in Internal Controls over Financial Reporting

On November 3, 2005, the Company acquired Opteum Financial Services, LLC, ("OFS") a privately held company. Management's assessment of the internal controls at the OFS level started with the assumption that OFS, as a private company, may not possess a system of internal controls sufficient to comply fully with all of the rules and requirements for internal control systems for SEC registrants at the time of the acquisition. Accordingly, management conducted a comprehensive review of all controls in place coupled with an assessment of all critical processes so as to ensure full compliance with the rules and requirements for SEC registrants by year end. This process was a substantial undertaking and required the Company to hire external consultants to assist. As of the dates the Company's quarterly reports for the periods ended March 31, 2006 and June 30, 2006 were filed, this process was not complete. During the period ended September 30, 2006, as part of the process of establishing whether or not the system of internal controls that existed at OFS were sufficient to comply, ***management discovered a material weakness with respect to the controls in place associated with the accounting by OFS for IRLCs. Owing to a lack of sufficient internal controls being in place, the accounting treatment utilized to account for IRLCs up to that point was not in compliance with GAAP and the quarterly financial statements issued for the periods ended March 31, 2006 and June 30, 2006 required re-statement.*** Management made changes during the fourth quarter of 2006, where needed, at OFS to ensure such system of internal control is adequate to allow management to rely on the OFS internal controls for purposes of preparing the Company's Exchange Act reports.

There were no significant changes in the Company's internal control over financial reporting that occurred during the Company's most recent fiscal quarter, other than as reported above, that have materially affected or are reasonably likely to materially affect, the Company's internal control over financial reporting. [Emphasis added.]

55. On March 20, 2007, in response to a critical analyst report, the Company issued a press release entitled "Opteum Inc. Comments on FBR Research Report" Therein, the Company,

in relevant part, stated:

March 20, 2007--Opteum Inc. (NYSE:OPX) wishes to make several observations in response to a research report released this morning by Friedman Billings Ramsey and Company, Inc.

1. The report questions whether the Company will continue to be able to secure covenant waivers on its warehouse lines of credit. As the Company stated in its Form 10-K filed March 14, 2007 with the Securities and Exchange Commission, *the Company has secured all waivers needed to date.*

2. The Company has incurred a total of just \$8 million of margin calls on its warehouse lines in 2007.

3. The Company has produced approximately \$44 million of sub prime mortgages in 2007 which represents approximately 4.8% of 2007 year to date loan production of approximately \$916 million. Forty-four percent of the \$44 million (approximately \$19 million) subprime mortgages were underwritten by a third party buyer and sold directly to that buyer. *The Company no longer underwrites sub prime mortgages. The Company believes that it is adequately reserved for early payment defaults related to sub prime mortgages as well as all other mortgages.*

4. The research report questions whether Opteum Inc. (NYSE: "OPX") is a going concern. The Company completed its 2006 audit last week and the Company received a clean audit opinion and is a going concern. The Company continues to believe it has very adequate liquidity. *The Company currently owns approximately \$3 billion in agency mortgage related assets, the value of which has increased during 2007 as rates have declined. These agency assets are guaranteed by an agency of the United States Government.*

5. *The Company continues to believe that the carrying value of the servicing rights on its balance sheet correctly reflects the value of the servicing rights.* The changes in the value of the servicing rights have been related to changes in prepayment speed assumptions. The changes in prepayment assumptions also apply to our retained interests in securitizations. *Losses continue to run, in the aggregate, in line with expectations.* [Emphasis added.]

56. On April 20, 2007, the Company issued a press release entitled "Opteum to Exit

Conduit and Wholesale Lending Business." Therein, the Company, in relevant part, stated:

Opteum Inc. (NYSE:OPX) ("Opteum" or the "Company"), a real estate investment trust ("REIT") that operates an integrated mortgage-related investment portfolio and mortgage origination platform, *today announced that its subsidiary, Opteum Financial Services, LLC ("OFS"), intends to exit its Conduit and Wholesale mortgage loan origination businesses. OFS has ceased accepting new applications in each of these origination channels, effective immediately.* These actions are due primarily to the deterioration in the secondary market for closed mortgage loans and continuing weakness in consumer demand for mortgage products and services.

* * *

"Recently, some secondary market investors in closed mortgage loans have changed their terms and have delayed settling whole loan trades involving certain Alt-A mortgage products. *This has forced OFS to re-market loans in respect of which it believed it had already obtained purchasing commitments, and has resulted in an estimated \$22 million pre-tax loss associated with mortgage loans originated by OFS.* This loss will be reflected in the Company's first quarter results. Because we believe that the current adverse market environment may continue in coming quarters, *we intend to exit the Conduit and Wholesale mortgage origination businesses,*" Mr. Zimmer continued. [Emphasis added.]

57. On May 7, 2007, the Company issued a press release entitled "Opteum to Sell Retail Mortgage Origination Platform for an Estimated \$5 Million Plus Assumption of Certain Liabilities." Therein, the Company, in relevant part, stated:

Opteum Inc. (NYSE:OPX) ("Opteum" or the "Company"), a real estate investment trust ("REIT"), today announced that its subsidiary, Opteum Financial Services, LLC ("OFS"), has entered into a definitive agreement with Prospect Mortgage Company, LLC, *concerning the sale of substantially all of the assets related to OFS's retail mortgage origination business (the "Business") and certain other assets associated with OFS's corporate staff functions for an estimated aggregate purchase price of \$5 million plus the assumption of certain lease and other liabilities related to the Business and the assets being sold.* The transaction, which is subject to certain closing conditions, is scheduled to be completed during the second quarter of 2007.

"Given the reduced demand for mortgage products and services and the deterioration in the secondary market for closed mortgage

loans, *this transaction will enable us to refocus our energies on managing and growing our RMBS portfolio, while stemming OFS's losses associated with mortgage originations,*" said Jeffrey J. Zimmer, Chairman, President and Chief Executive Officer. "Upon completion of this transaction and the wind down of OFS's Conduit and Wholesale mortgage origination divisions, we will be out of the mortgage origination business entirely. *Certain costs associated with exiting the mortgage origination business will be reflected in our first quarter and second quarter results,*" Mr. Zimmer added. [Emphasis added.]

58. The statements contained in ¶¶ 38 – 57 were materially false and misleading when made because defendants failed to disclose or indicate the following: (1) that the Company's integration of OFS was not proceeding according to plan; (2) that the Company's risk management controls and procedures were incompatible with OFS' risk management controls and procedures; (3) that OFS' loans were designed to produce short-term financial results, which would subject the Company to unreasonable long-term risk and expenses; (4) that the Company had improperly valued and monitored collateral; (5) that the Company had underreported its loan loss reserves; (6) that the Company's book value and projected cash flows were materially overstated; (7) that the Company had failed to adequately hedge its exposure to losses; (8) that the Company and OFS lacked adequate internal and financial controls; (9) that the Company's financial statements were not prepared in accordance with GAAP; (9) that, as a result of the above, the Company's financial statements were false and misleading at all relevant times; and (10) that, as a result of the foregoing, the Company's guidance about its 2007 financial and operational results were lacking in any reasonable basis when made.

The Truth Begins to Emerge

59. On May 10, 2007, the Company shocked investors when it issued a press release entitled "Opteum Inc. Reports First Quarter 2007 Results." Therein, the Company, in relevant part, stated:

76.5% of First Quarter Net Loss Attributable To:

- **\$37.4 Million Valuation Allowance on OFS's Deferred Tax Assets**
- **\$12.2 Million Negative Fair Value Adjustment to OFS's Mortgage Servicing Rights**
- **\$1.3 Million Negative Fair Value Adjustment to OFS's Residuals**
- **\$8.8 Million in Asset Write Downs at OFS**

Opteum Inc. (NYSE:OPX) ("Opteum" or the "Company"), a real estate investment trust ("REIT"), today *reported a consolidated net loss of \$78.1 million, or \$(3.14) per Class A Common Share* for the three month period ended March 31, 2007, compared to a consolidated net loss of \$8.0 million, or \$(0.34) per Class A Common Share, for the prior year period. *The Company's first quarter results were significantly impacted by operations at the Company's majority-owned subsidiary, Opteum Financial Services, LLC ("OFS").*

Nearly 50% of the Company's first quarter net loss, or \$37.4 million, was attributable to a valuation allowance on OFS's deferred tax assets. Nearly 17.5% of the first quarter net loss was attributable to negative fair value adjustments to OFS's mortgage servicing rights and retained interests in securitizations. Slightly more than 10% of the first quarter net loss was attributable to asset write downs at OFS due in part to the Company's decision to exit the mortgage origination business.

Details of Results of Operations

The Company's first quarter consolidated results include net interest income of \$1.9 million, other income of \$1.4 million, gross servicing fee income of \$7.6 million, *a \$12.2 million negative fair value adjustment to mortgage servicing rights* (inclusive of \$4.7 million of run-off), *an \$18.0 million loss on mortgage banking activities, \$0.8 million in losses on the sale of mortgage-backed securities, a \$17.8 million provision associated with an increase in the Company's loan loss reserve, \$8.8 million in asset write downs at OFS*, \$20.6 million in operating expenses, an income tax provision of \$11.5 million (inclusive of a \$37.4 million valuation allowance on deferred tax assets) and \$0.8 million of minority interest in OFS's loss.

The Company's \$18.0 million first quarter loss on mortgage banking activities includes a \$14.1 million negative fair value adjustment to mortgage loans held for sale and interest rate lock commitments, a \$1.3 million negative fair value adjustment to retained interests in securitizations and hedging losses of \$4.6 million. As of March 31, 2007, the Company's loan loss reserve was \$17.9 million, compared with \$8.0 million as of December 31, 2006, and \$2.2 million as of December 31, 2005. [Emphasis added.]

60. On this news, shares of the Company's stock fell \$1.37 per share, or over 25 percent, to close on May 11, 2007 at \$4.08 per share, on unusually heavy trading volume.

POST CLASS PERIOD DISCLOSURES

61. On July 2, 2007, the Company issued a press release entitled "Opteum Financial Services, LLC Completes Sale of Retail Mortgage Origination Business; Opteum Inc. Announces Resignation of Peter R. Norden." Therein, the Company, in relevant part, stated:

Opteum Inc. (NYSE:OPX) ("Opteum" or the "Company"), a real estate investment trust ("REIT"), today announced that its majority-owned subsidiary, Opteum Financial Services, LLC ("OFS"), has completed the sale, effective June 30, 2007, of substantially all of the assets related to OFS's retail mortgage loan origination business (the "Business"), and certain other assets associated with OFS's corporate staff functions, for \$1.5 million plus the assumption of approximately \$4 million in lease obligations and other liabilities related to the Business and the assets being sold.

Commenting on the transaction, Jeffrey J. Zimmer, Chairman, President and Chief Executive Officer of Opteum Inc., said, "Although the purchase price was less than we originally expected, we are pleased to announce that, with the consummation of this transaction, we have completely exited the mortgage loan origination business." Mr. Zimmer continued, "*OFS has been a significant drain on our earnings and we will now focus our energies on managing and growing our RMBS portfolio as we restore our profitability. We will also continue to own OFS's residual interests in securitizations and mortgage servicing rights. However, we may seek to sell all or a portion of these assets depending on market conditions.*"

In conjunction with the sale of the Business, Peter R. Norden resigned his position as Senior Executive Vice President and as a member of the Board of Directors of Opteum Inc. effective June 29, 2007. Mr. Norden also resigned his position as President, Chief Executive Officer and Co-Head of Capital Markets of OFS. Mr. Norden served as a member of the Board of Directors of Opteum Inc. since the acquisition of OFS on November 3, 2005.

62. On August 10, 2007, the Company issued a press release entitled "Opteum Inc. Files Form 12b-25; Provides Guidance on Second Quarter 2007 Results; Provides MBS Portfolio Information as of June 30, 2007." Therein, the Company, in relevant part, further revealed:

MBS Portfolio Remains 100% Invested in Agency MBS

All Margin Calls Have Been Satisfied

Funding Lines Remain Intact

Opteum Inc. (NYSE:OPX) ("Opteum" or the "Company"), a real estate investment trust ("REIT"), today announced that it has filed a Form 12b-25 with the Securities and Exchange Commission in respect of its Quarterly Report on Form 10-Q for the period ended June 30, 2007. The Company today also announced preliminary estimates of its second quarter results of operations and Book Value Per Share at June 30, 2007. These estimates are subject to continuing review by the Company's independent registered public accounting firm and are subject to change. As previously announced, the Company expects to report its definitive second quarter results and file its second quarter Form 10-Q on Tuesday, August 14, 2007. The Company today also announced the June 30, 2007, composition of the Company's investment portfolio of residential mortgage-backed securities ("MBS"). This information appears in the tables at the end of this press release.

Book Value Per Share

The Company estimates its Book Value Per Share at June 30, 2007, at approximately \$1.17 compared with \$4.80 as of March 31, 2007. Book Value Per Share is regularly used as a valuation metric by various equity analysts that follow the Company and may be deemed a non-GAAP financial measure pursuant to Regulation G. The Company computes Book Value Per Share by dividing total stockholders' equity by the total number of shares outstanding of the Company's Class A Common Stock.

Estimated Second Quarter Results of Operations

The Company presently estimates a consolidated net loss of approximately \$162.5 million, or approximately (\$6.53) per Class A Common Share for the three-month period ended June 30, 2007. The Company presently estimates its second quarter loss from continuing operations at approximately \$82.0 million and losses from discontinued operations, net of tax, of approximately \$80.5 million. Discontinued operations refer to the mortgage loan origination operations previously conducted by the Company's majority-owned subsidiary, Orchid Island TRS, LLC ("OITRS").

Estimated Second Quarter Results of Continuing Operations

The Company's estimated second quarter loss from continuing operations includes an estimated realized loss of approximately \$18.6 million on the sale of MBS and an estimated other-than-temporary impairment charge of approximately \$55.3 million on MBS previously held in an unrealized loss position. In accordance with U.S. generally accepted accounting principles ("GAAP"), the Company previously reported the unrealized losses on MBS that were held as available for sale securities as accumulated other comprehensive loss ("AOCI") on the Company's consolidated balance sheet.

* * *

Estimated Second Quarter Results of Discontinued Operations

The Company's estimated second quarter losses from discontinued operations of approximately \$80.5 million, net of tax, include an estimated \$10.5 in losses on sales of assets of the discontinued operations, net of tax, and an estimated \$70.0 million in losses from discontinued operations, net of tax. The estimated \$70.0 million in losses from discontinued operations, net of tax, includes an estimated \$26.2 million negative fair value adjustment to the Company's retained interests in securitizations. [Emphasis added.]

PLAINTIFFS' CLASS ACTION ALLEGATIONS

63. This is a federal class action on behalf of those who purchased or otherwise acquired Opteum's common stock pursuant or traceable to the Company's September 17, 2004 IPO or the Company's December 16, 2004 Secondary Offering, and including those who

purchased or otherwise acquired the Company's common stock between November 3, 2005 and May 10, 2007, inclusive (the "Class Period"), and who were damaged thereby (the "Class"). Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

64. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Opteum's common stock was actively traded on the New York Stock Exchange ("NYSE"). While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Opteum or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

65. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

66. Plaintiffs will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

67. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether the federal securities laws were violated by defendants' acts as alleged herein;

- (b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Opteum; and
- (c) to what extent the members of the Class have sustained damages and the proper measure of damages.

68. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

UNDISCLOSED ADVERSE FACTS

69. The market for Opteum's common stock was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Opteum's common stock traded at artificially inflated prices during the Class Period. Plaintiffs and other members of the Class purchased or otherwise acquired Opteum's common stock relying upon the integrity of the market price of Opteum's common stock and market information relating to Opteum, and have been damaged thereby.

70. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Opteum's common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented

the truth about the Company, its business and operations, as alleged herein.

71. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiffs and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about Opteum's financial well-being, business relationships, and prospects. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Opteum and its financial well-being, business relationships, and prospects, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in Plaintiffs and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

LOSS CAUSATION

72. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiffs and the Class.

73. During the Class Period, Plaintiffs and the Class purchased common stock of Opteum at artificially inflated prices and were damaged thereby. The price of Opteum's common stock significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

SCIENTER ALLEGATIONS

74. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were

materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Opteum, their control over, and/or receipt and/or modification of Opteum's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Opteum, participated in the fraudulent scheme alleged herein.

75. Additionally, the Company used the artificially inflated price of its securities to consummate the November 3, 2005 merger between Bimini Mortgage Management, Inc. and Opteum Financial Services, LLC by issuing approximately 3.7 million shares of Class A Common Stock and 1.8 million of Convertible Preferred Shares.

**Applicability of Presumption of Reliance:
Fraud On The Market Doctrine**

76. At all relevant times, the market for Opteum's common stock was an efficient market for the following reasons, among others:

- (a) Opteum's stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;
- (b) As a regulated issuer, Opteum filed periodic public reports with the SEC and the NYSE;
- (c) Opteum regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as

communications with the financial press and other similar reporting services; and

- (d) Opteum was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

77. As a result of the foregoing, the market for Opteum common stock promptly digested current information regarding Opteum from all publicly-available sources and reflected such information in Opteum's stock price. Under these circumstances, all purchasers of Opteum common stock during the Class Period suffered similar injury through their purchase of Opteum common stock at artificially inflated prices and a presumption of reliance applies.

NO SAFE HARBOR

78. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Opteum who knew that those statements were false

when made.

FIRST CLAIM
Violation of Section 11 of
The Securities Act Against All Defendants

79. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein only to the extent, however, that such allegations do not allege fraud, scienter or the intent of the defendants to defraud Plaintiffs or members of the Class. This count is predicated upon defendants' strict liability for making false and materially misleading statements in the Registration Statement and Prospectus.

80. This claim is asserted by Plaintiffs against all defendants by, and on behalf of, persons who acquired shares of the Company's common stock pursuant to or traceable to the false Registration Statement issued in connection with the Company's September 17, 2004 IPO or the Prospectus issued in connection with the Company's December 16, 2004 Secondary Offering.

81. Individual Defendants as signatories of the Registration Statement or Prospectus, as directors and/or officers of Opteum and controlling persons of the issuer, owed to the holders of the stock obtained through the Registration Statement or Prospectus the duty to make a reasonable and diligent investigation of the statements contained in the Registration Statement or Prospectus at the time they became effective to ensure that such statements were true and correct, and that there was no omission of material facts required to be stated in order to make the statements contained therein not misleading. Defendants knew, or in the exercise of reasonable care should have known, of the material misstatements and omissions contained in or omitted from the Registration Statement or Prospectus as set forth herein. As such, defendants are liable to the Class.

82. Underwriter Defendants owed to the holders of the stock obtained through the Registration Statement or Prospectus the duty to make a reasonable and diligent investigation of the statements contained in the Registration Statement or Prospectus at the time they became effective to ensure that such statements were true and correct and that there was no omission of material facts required to be stated in order to make the statements contained therein not misleading. Defendants knew, or in the exercise of reasonable care should have known, of the material misstatements and omissions contained in or omitted from the Registration Statement and Prospectus, as set forth herein. As such, defendants are liable to the Class.

83. None of the defendants made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement or Prospectus were true or that there was no omission of material facts necessary to make the statements made therein not misleading.

84. Defendants issued and disseminated, caused to be issued and disseminated, and participated in the issuance and dissemination of, material misstatements to the investing public which were contained in the Registration Statement and Prospectus, which misrepresented or failed to disclose, *inter alia*, the facts set forth above. By reason of the conduct herein alleged, each defendant violated and/or controlled a person who violated Section 11 of the Securities Act.

85. As a direct and proximate result of defendants' acts and omissions in violation of the Securities Act, the market price of Opteum's common stock sold in the IPO was artificially inflated, and Plaintiffs and the Class suffered substantial damage in connection with their ownership of Opteum's common stock pursuant to the Registration Statement or Prospectus.

86. Opteum is the issuer of the stock sold via the Registration Statement and Prospectus. As issuer of the stock, the Company is strictly liable to Plaintiffs and the Class for

the material misstatements and omissions therein.

87. At the times they obtained their shares of Opteum, Plaintiffs and members of the Class did so without knowledge of the facts concerning the misstatements or omissions alleged herein.

88. This action is brought within one year after discovery of the untrue statements and omissions in and from the Registration Statement which should have been made through the exercise of reasonable diligence, and within three years of the effective date of the Prospectus.

89. By virtue of the foregoing, Plaintiffs and the other members of the Class are entitled to damages under Section 11 as measured by the provisions of Section 11(e), from the defendants and each of them, jointly and severally.

SECOND CLAIM
Violation of Section 12(a)(2) of
The Securities Act Against All Defendants

90. Plaintiffs repeat and realleges each and every allegation contained above as if fully set forth herein.

91. This Count is brought pursuant to Section 12(a)(2) of the Securities Act on behalf of the Class, against all defendants.

92. Defendants were sellers, offerors, and/or solicitors of purchasers of the shares offered pursuant to the Opteum IPO Registration Statement and Secondary Offering Prospectus.

93. The Opteum Registration Statement and Prospectus contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and concealed and failed to disclose material facts. The Individual Defendants' actions of solicitation included participating in the preparation of the false the misleading Registration Statement and Prospectus.

94. Defendants owed to the purchasers of Opteum's common stock, including Plaintiffs and other members of the Class, the duty to make a reasonable and diligent investigation of the statements contained in the IPO materials, including the Registration Statement and Prospectus, to ensure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. Defendants knew of, or in the exercise of reasonable care should have known of, the misstatements and omissions contained in the Registration Statement and Prospectus, as set forth above.

95. Plaintiffs and other members of the Class purchased or otherwise acquired Opteum's common stock pursuant to and/or traceable to the defective Registration Statement or Prospectus. Plaintiffs did not know, or in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in the Registration Statement and Prospectus.

96. Plaintiffs, individually and representatively, hereby offer to tender to defendants that common stock which Plaintiffs and other Class members continue to own, on behalf of all members of the Class who continue to own such common stock, in return for the consideration paid for that common stock together with interest thereon. Class members who have sold their Opteum common stock are entitled to rescissory damages.

97. By reason of the conduct alleged herein, these defendants violated, and/or controlled a person who violated Section 12(a)(2) of the Securities Act. Accordingly, Plaintiffs and members of the Class who hold Opteum common stock purchased in the IPO or Secondary Offering have the right to rescind and recover the consideration paid for their Opteum common stock, and hereby elect to rescind and tender their Opteum common stock to the defendants sued herein. Plaintiffs and Class members who have sold their Opteum common stock are entitled to

rescissory damages.

98. This action is brought within three years from the time that the common stock upon which this Count is brought was sold to the public, and within one year from the time when Plaintiffs discovered or reasonably could have discovered the facts upon which this Count is based.

THIRD CLAIM
Violation of Section 15 of The Securities Act
Against the Individual Defendants

99. Plaintiffs repeat and reallege each and every allegation contained above, excluding all allegations above that contain facts necessary to prove any elements not required to state a Section 15 claim, including without limitation, scienter.

100. This count is asserted against Individual Defendants and is based upon Section 15 of the Securities Act.

101. Individual Defendants, by virtue of their offices, directorship and specific acts were, at the time of the wrongs alleged herein and as set forth herein, controlling persons of Opteum within the meaning of Section 15 of the Securities Act. The Individual Defendants had the power and influence and exercised the same to cause Opteum to engage in the acts described herein.

102. Individual Defendants' position made them privy to and provided them with actual knowledge of the material facts concealed from Plaintiffs and the Class.

103. By virtue of the conduct alleged herein, the Individual Defendants are liable for the aforesaid wrongful conduct and are liable to Plaintiffs and the Class for damages suffered.

FOURTH CLAIM
Violation of Section 10(b) of
The Exchange Act and Rule 10b-5
Promulgated Thereunder Against All Defendants

104. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

105. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiffs and other Class members, as alleged herein; and (ii) cause Plaintiffs and other members of the Class to purchase Opteum's common stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

106. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort to maintain artificially high market prices for Opteum's common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

107. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about Opteum's financial well-being, business relationships, and prospects, as specified herein.

108. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Opteum's value and

performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Opteum and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Opteum common stock during the Class Period.

109. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of, and had access to, other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

110. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and

for the purpose and effect of concealing Opteum's financial well-being, business relationships, and prospects from the investing public and supporting the artificially inflated price of its common stock. As demonstrated by defendants' overstatements and misstatements of the Company's financial well-being, business relationships, and prospects throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

111. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Opteum common stock was artificially inflated during the Class Period. In ignorance of the fact that market prices of Opteum's common stock were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the common stock trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by defendants, but not disclosed in public statements by defendants during the Class Period, Plaintiffs and the other members of the Class acquired Opteum's common stock during the Class Period at artificially high prices and were damaged thereby.

112. At the time of said misrepresentations and omissions, Plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiffs and the other members of the Class and the marketplace known the truth regarding the problems that Opteum was experiencing, which were not disclosed by defendants, Plaintiffs and other members of the Class would not have purchased or otherwise acquired their Opteum common stock, or, if they had acquired such common stock during the Class Period, they would not have done so at the artificially inflated prices which they paid.

113. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

114. As a direct and proximate result of defendants' wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's common stock during the Class Period.

FIFTH CLAIM
Violation of Section 20(a) of
The Exchange Act Against the Individual Defendants

115. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

116. The Individual Defendants acted as controlling persons of Opteum within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiffs contend are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiffs to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

117. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to

control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

118. As set forth above, Opteum and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, Plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

WHEREFORE, Plaintiffs prays for relief and judgment, as follows:

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiffs and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (c) Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated:

Respectfully submitted,

By: _____

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