BankUnited, Inc.
Form 10-K
February 25, 2013

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2012
Commission file number: 001-35039

BankUnited, Inc.

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	**27-0162450** (I.R.S. Employer Identification No.)
14817 Oak Lane, Miami Lakes, FL (Address of principal executive offices)	**33016** (Zip Code)

(305) 569-2000
(Registrant's telephone number, including area code)

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

Title of each class	Name of each exchange on which registered
Common Stock, $0.01 par value	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ý No o

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes o No ý

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ý No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ý No o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ý

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a "smaller reporting company."

Large accelerated filer ý	Accelerated filer o	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

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

The aggregate market value of the voting and non-voting common stock held by non-affiliates of the registrant on June 30, 2012 was $938,697,163.

The number of outstanding shares of the registrant's common stock, $0.01 par value, as of February 20, 2013, was 95,038,213.

DOCUMENTS INCORPORATED BY REFERENCE:

Portions of the registrant's definitive proxy statement for the 2013 annual meeting of stockholders are incorporated by reference in this Annual Report on Form 10-K in response to Part III. Items 10, 11, 12, 13 and 14.

BANKUNITED, INC.
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For the Year Ended December 31, 2012

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Forward-Looking Statements

This Annual Report on Form 10-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Words such as "anticipate," "expect," "intend," "plan," "believe," "seek," "estimate," "project," "predict," "will" and similar expressions identify forward-looking statements.

These forward-looking statements are based on management's current views with respect to future results, and are subject to risks and uncertainties. Forward-looking statements are based on beliefs and assumptions made by management using currently available information, such as market and industry materials, historical performance and current financial trends. These statements are only predictions and are not guarantees of future performance. The inclusion of forward-looking statements should not be regarded as a representation by the Company that the future plans, estimates or expectations contemplated by a forward-looking statement will be achieved. Forward-looking statements are subject to various risks and uncertainties and assumptions, including those relating to the Company's operations, financial results, financial condition, business prospects, growth strategy and liquidity. If one or more of these or other risks or uncertainties materialize, or if the Company's underlying assumptions prove to be incorrect, the Company's actual results could differ materially from those contemplated by a forward looking statement. These risks and uncertainties include, without limitation:

- failure to comply with the terms of the Company's Loss Sharing Agreements (as defined below) with the FDIC (as defined below);
- geographic concentration of the Company's markets in the coastal regions of Florida which makes the Company's business highly susceptible to local economic conditions and natural disasters;
- court backlogs and an increase in the amount of legislative action that might restrict or delay the Company's ability to foreclose on residential mortgages and hence delay the collection of payments for single family residential loans under the Loss Sharing Agreements;
- ongoing correction in residential and commercial real estate prices and reduced levels of residential and commercial real estate sales;
- credit risk;
- interest rate risk;
- loss of executive officers or key personnel; and
- inadequate allowance for credit losses.

Additional factors are set forth in the Company's filings with the Securities and Exchange Commission, or the SEC, including this Annual Report on Form 10-K.

Forward-looking statements speak only as of the date on which they are made. The Company expressly disclaims any obligation to update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.

As used herein, the terms the "Company," "we," "us" and "our" refer to BankUnited, Inc. and its subsidiaries unless the context otherwise requires.

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PART I

Item 1. Business

Summary

BankUnited, Inc. ("BankUnited, Inc." or "BKU") is a national bank holding company with three direct wholly-owned subsidiaries: BankUnited, National Association ("BankUnited" or the "Bank"), Herald National Bank ("Herald"), and BankUnited Investment Services, Inc. ("BUIS"), collectively, the Company. BankUnited, a national banking association headquartered in Miami Lakes, Florida with $11.7 billion of assets, provides a full range of banking services to individual and corporate customers through 98 branches located in 15 Florida counties. Herald is a national banking association with 2 branch locations in the New York metropolitan area. BUIS is a Florida insurance agency providing wealth management and financial planning services. The operations of BUIS have not historically been significant to the results of operations or financial position of the Company. We intend to discontinue the operations of BUIS in 2013. The Company has built, through organic growth and acquisitions, a premier regional bank with a low-risk, long-term value-oriented business model focused on small and medium sized businesses and consumers. We endeavor to provide personalized customer service and offer a full range of traditional banking products and services to both our commercial and retail customers.

BankUnited, Inc. was organized by a management team led by our Chairman, President and Chief Executive Officer, John A. Kanas, on April 28, 2009 and was initially capitalized with $945.0 million by a group of investors. On May 21, 2009, BankUnited acquired substantially all of the assets and assumed all of the non-brokered deposits and substantially all other liabilities of BankUnited, FSB (the "Failed Bank"), from the Federal Deposit Insurance Corporation, or the FDIC, in a transaction which we refer to as the FSB Acquisition. On February 2, 2011, we completed the initial public offering of 33,350,000 shares of our common stock, 4,000,000 of which was sold by us, for which we received proceeds, after deducting underwriting discounts and estimated offering expenses, of approximately $98.6 million. We refer to this transaction as the IPO. Prior to the IPO we were a direct, wholly owned subsidiary of BU Financial Holdings LLC, ("BUFH" or the "LLC"), a Delaware limited liability company. Immediately prior to the consummation of the IPO, the LLC was liquidated and all LLC interests were distributed to the members of the LLC.

On February 29, 2012, BKU completed the acquisition of Herald for an aggregate purchase price of $65.0 million in cash and stock. We plan to merge Herald into BankUnited in 2013.

The FSB Acquisition

On May 21, 2009, BankUnited entered into a purchase and assumption agreement (the "Purchase and Assumption Agreement") with the FDIC, Receiver of the Failed Bank, to acquire substantially all of the assets and assume all of the non-brokered deposits and substantially all other liabilities of the Failed Bank. Excluding the effects of acquisition accounting adjustments, BankUnited acquired $13.6 billion of assets and assumed $12.8 billion of liabilities. The fair value of the assets acquired was $10.9 billion and the fair value of the liabilities assumed was $13.1 billion. BankUnited received net cash consideration from the FDIC in the amount of $2.2 billion.

The acquired assets included $5.0 billion of loans with a corresponding unpaid principal balance ("UPB") of $11.2 billion, a $3.4 billion FDIC indemnification asset, $538.9 million of investment securities, $1.2 billion of cash and cash equivalents, $177.7 million of foreclosed assets and $590.7 million of other assets. Liabilities assumed included $8.3 billion of non-brokered deposits, $4.6 billion of Federal Home Loan Bank ("FHLB") advances, and $112.2 million of other liabilities.

Concurrently with the FSB Acquisition, the Bank entered into two loss sharing agreements, or the Loss Sharing Agreements, which cover certain legacy assets, including the entire legacy loan portfolio

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and other real estate owned ("OREO") and certain purchased investment securities. We refer to assets covered by the Loss Sharing Agreements as covered assets or, in certain cases, covered loans or covered securities. The Loss Sharing Agreements do not apply to subsequently acquired, purchased or originated assets. At December 31, 2012, the covered assets had an aggregate carrying value of $2.1 billion. The total UPB or, for investment securities, unamortized cost basis, of the covered assets at December 31, 2012 was $4.6 billion. The following charts illustrate the percentage of total assets represented by covered assets at December 31, 2012, 2011 and 2010:

Pursuant to the terms of the Loss Sharing Agreements, the covered assets are subject to a stated loss threshold whereby the FDIC will reimburse the Bank for 80% of losses up to a $4.0 billion stated threshold and 95% of losses in excess of the $4.0 billion stated threshold, calculated, in each case, based on UPB (or, for investment securities, unamortized cost basis) plus certain interest and expenses. The carrying value of the FDIC indemnification asset at December 31, 2012 was $1.5 billion. The Bank will reimburse the FDIC for its share of recoveries with respect to losses for which the FDIC paid the Bank a reimbursement under the Loss Sharing Agreements. The FDIC's obligation to reimburse the Company for losses with respect to the covered assets began with the first dollar of loss incurred. We have received reimbursements of $2.3 billion for claims submitted to the FDIC under the Loss Sharing Agreements as of December 31, 2012.

The Loss Sharing agreements consist of a single family shared-loss agreement (the "Single Family Shared-Loss Agreement"), and a commercial and other loans shared-loss agreement, (the "Commercial Shared-Loss Agreement"). The Single Family Shared-Loss Agreement provides for FDIC loss sharing and the Bank's reimbursement for recoveries to the FDIC for ten years from May 21, 2009 for single family residential loans. The Commercial Shared-Loss Agreement provides for FDIC loss sharing for five years from May 21, 2009 and the Bank's reimbursement for recoveries to the FDIC for eight years from May 21, 2009 for all other covered assets.

Under the Purchase and Assumption Agreement, the Bank may sell up to 2.5% of the covered loans based on the UPB at acquisition, or approximately $280.0 million, on an annual basis without prior consent of the FDIC. Any losses incurred from such loan sales are covered under the Loss Sharing Agreements. Any loan sale in excess of the annual 2.5% of the covered loans requires approval from the FDIC to be eligible for loss share coverage. However, if the Bank seeks to sell residential or non-residential loans in excess of the agreed 2.5% threshold in the nine months prior to the tenth anniversary or the fifth anniversary, respectively, and the FDIC refuses to consent, then the Single Family Shared-Loss Agreement and the Commercial Shared-Loss Agreement will be extended for two years after their respective anniversaries. The terms of the Loss Sharing Agreements are extended only with respect to the loans to be included in such sales. The Bank will have the right to sell all or any portion of such loans without FDIC consent at any time within the nine months prior to the respective

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extended termination dates, and any losses incurred will be covered under the Loss Sharing Agreements. If exercised, this final sale mechanism ensures no residual credit risk in our covered loan portfolio that would otherwise arise from credit losses occurring after the five- and ten-year periods, respectively.

Our Market Areas

Our primary banking market has historically been Florida, in particular the Miami metropolitan statistical area, or MSA. We believe Florida represents a long-term attractive banking market, particularly as the economy has shown signs of improvement.

As a result of the recent financial crisis, many Florida banks have experienced capital constraints and liquidity and earnings challenges. Undercapitalization and increased regulation of the banking sector have caused many banks to reduce lending to new and existing clients and focus primarily on improving their balance sheets, putting pressure on borrowers to look for new banking relationships. Our competitive strengths, including an experienced management team, robust capital position and scalable platform, have allowed us to take advantage of the resultant opportunities. We expect recent improving economic trends in Florida to further enhance our opportunities for growth in that market.

The acquisition of Herald allowed us to begin establishing a presence in the New York metropolitan market. In the first quarter of 2013, we intend to fully launch our entry into New York, New Jersey and Connecticut (the "Tri-State market"), where we see significant long-term growth opportunities, with the opening of three de novo branches in New York City. We believe the economic health of the Tri-State market, coupled with our management team's experience in building a successful Northeast regional bank in the past, position us well to grow in this market.

Products and Services

Lending

General Our primary lending focus is to serve commercial and middle-market businesses, their executives and consumers with a variety of financial products and services, while maintaining a strong and disciplined credit culture.

We offer a full array of lending products that cater to our customers' needs including small business loans, commercial real estate loans, equipment loans and leases, term loans, asset-backed loans, municipal loans and leases, commercial lines of credit, letters of credit, residential mortgage and consumer loans. We also purchase performing residential loans on a national basis. We do not originate or purchase negatively amortizing or sub-prime residential loans.

We have attracted and invested in experienced commercial lending teams from competing institutions in our Florida markets, resulting in significant growth in our new loan portfolio. At December 31, 2012, our loan portfolio included $3.7 billion in loans originated or purchased since the FSB Acquisition, or new loans, including $2.7 billion in commercial and commercial real estate loans, $922.7 million in residential loans and $33.5 million in consumer loans. We have started hiring commercial lending teams in New York and expect the trend of strong loan growth to continue in both the Florida and Tri-State markets.

Commercial loans Our commercial loans, which are generally made to small and middle-market businesses, include equipment loans, lines of credit, acquisition finance credit facilities and an array of Small Business Administration product offerings. We offer term financing for the acquisition or refinancing of properties, primarily rental apartments, industrial properties, retail shopping centers and free-standing buildings, office buildings and hotels. Other products that we provide include secured lines of credit, acquisition, development and construction loan facilities, construction financing and taxi medallion lending. Through two businesses acquired in 2010, we provide municipal leasing and small

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business equipment financing on a national basis. Pinnacle Public Finance offers municipal leasing products and United Capital Business Lending offers small business equipment leases and loans.

Residential mortgages At December 31, 2012, the portfolio of new 1-4 single family residential loans included $827.7 million of purchased loans and $93.0 million of originated loans. We purchase loans to supplement our mortgage origination platform and to geographically diversify our loan portfolio. While the credit parameters we use for purchased loans are substantially similar to the underwriting guidelines we use for originated loans, differences include: (i) loans are purchased on a nationwide basis, while originated loans have historically been limited to Florida; (ii) purchased loans, on average, have higher principal balances than originated loans; and (iii) we consider payment history in selecting which seasoned loans to purchase, while such information is not available for originated loans. We intend to expand our in-house residential mortgage origination channel in 2013. Additionally, we anticipate launching a mortgage servicing business in 2013 to take advantage of existing capacity in this area.

Home equity loans and lines of credit are not a material component of the new loan portfolio.

Consumer loans We offer consumer loans to our customers for personal, family and household purposes, including auto, boat and personal installment loans and recently added indirect auto lending to our product suite. At December 31, 2012, the majority of our consumer loans were indirect auto loans.

Credit Policy and Procedures

The foundation underlying the Company's credit culture, policy and procedures is high credit quality standards, which enhance the long term value of the Company to its customers, employees, stockholders and communities. Credit quality is a key corporate objective that is managed in concert with other key objectives including volume growth, earnings and expense management.

Since lending represents risk exposure, our Board of Directors and its duly appointed committees seek to ensure that the Company maintains high credit quality standards. The Company has established asset oversight committees to administer the loan portfolio and monitor and manage credit risk. These committees include: (i) the Enterprise Risk Management Committee,(ii) the Credit Risk Management Committee, (iii) the Asset Recovery Committee, and (iv) the Criticized Asset Committee. These committees meet at least quarterly.

The credit approval process provides for prompt and thorough underwriting and approval or decline of loan requests. The approval method used is a hierarchy of individual lending authorities for new credits and renewals. The Credit Risk Management Committee approves authorities for lending and credit personnel, which are ultimately submitted to our Board for ratification. Lending authorities are based on position, capability and experience of the individuals filling these positions. Authorities are periodically reviewed and updated.

BankUnited has established in-house borrower lending limits which are significantly lower than its legal lending limit of approximately $204.3 million, at December 31, 2012. The present in-house lending limit is $75.0 million based on total credit exposure of a borrower. These limits are reviewed periodically by the Credit Risk Management Committee and approved annually by the Board of Directors. A similar risk management and approval structure has been implemented at Herald, which had a legal lending limit of $14.0 million at December 31, 2012.

Deposits

We offer traditional deposit products including checking accounts, money market deposit accounts, savings accounts and certificates of deposit with a variety of rates. Our deposits are insured by the FDIC up to statutory limits. Our strategy is to increase the proportion of total deposits represented by lower cost demand deposits. Demand deposits comprised 22% of total deposits at December 31, 2012. Demand deposit balances are concentrated in commercial and small business accounts. Our service fee schedule and rates are competitive with other financial institutions in our market.

Investment Securities

The primary objectives of our investment policy are to provide liquidity necessary for the day-to-day operations of the Company, provide a suitable balance of high credit and diversified quality assets to the consolidated balance sheet, manage interest rate risk exposure, and generate acceptable returns given the Company's established risk parameters.

The investment policy is reviewed annually by our Board of Directors. Overall investment goals are established by our Board, Chief Executive Officer, Chief Financial Officer, and members of the Asset/Liability Committee ("ALCO"). The Board has delegated the responsibility of monitoring our investment activities to ALCO. Day-to-day activities pertaining to the investment portfolio are conducted within the Company's Treasury division under the supervision of the Chief Financial Officer.

Marketing and Distribution

We conduct our banking business through 98 branches located in 15 Florida counties as well as 2 branches in the New York Metropolitan area as of December 31, 2012. Our distribution network also includes 97 ATMs, fully integrated on-line banking, and a telephone banking service. We target growing companies and commercial and middle-market businesses, as well as individual consumers.

In order to market our products, we use local television, radio, print and direct mail advertising and provide sales incentives for our employees.

Competition

Our markets are highly competitive. Our markets contain not only a large number of community and regional banks, but also a significant presence of the country's largest commercial banks. We compete with other state and national financial institutions located in our market areas as well as savings associations, savings banks and credit unions for deposits and loans. In addition, we compete with financial intermediaries such as consumer finance companies, mortgage banking companies, insurance companies, securities firms, mutual funds and several government agencies as well as major retailers, all actively engaged in providing various types of loans and other financial services. Our largest banking competitors in the Florida market include Bank of America, BB&T, JPMorgan Chase, Regions Bank, SunTrust Banks, TD Bank and Wells Fargo. In the Tri-State market, we also anticipate significant competition from, in addition to those listed, Capital One, Signature Bank, New York Community Bank, Valley National and M&T.

Interest rates, on both loans and deposits, and prices of fee-based services are significant competitive factors among financial institutions generally. Other important competitive factors include office location, office hours, quality of customer service, community reputation, continuity of personnel and services, and, in the case of larger commercial customers, relative lending limits and ability to offer sophisticated cash management and other commercial banking services. While we continue to provide competitive interest rates on both depository and lending products, we believe that we can compete most successfully by focusing on the financial needs of growing companies and their executives, consumers and commercial and middle-market businesses, and offering them a broad range of personalized services and sophisticated cash management tools tailored to their businesses.

Regulation and Supervision

The U.S. banking industry is highly regulated under federal and state law. These regulations affect the operations of the Company and its subsidiaries.

Statutes, regulations and policies limit the activities in which we may engage and the conduct of our permitted activities. Further, the regulatory system imposes reporting and information collection obligations. We incur significant costs relating to compliance with these laws and regulations. Banking statutes, regulations and policies are continually under review by federal and state legislatures and regulatory agencies, and a change in them, including changes in how they are interpreted or implemented, could have a material adverse effect on our business.

The material statutory and regulatory requirements that are applicable to us are summarized below. The description below is not intended to summarize all laws and regulations applicable to us.

Bank and Bank Holding Company Regulation

BankUnited and Herald are currently national banks. As national banks organized under the National Bank Act, BankUnited and Herald are subject to ongoing and comprehensive supervision, regulation, examination and enforcement by the Office of the Comptroller of the Currency ("OCC").

Any entity that directly or indirectly controls a bank must be approved by the Federal Reserve Board under the Bank Holding Company Act of 1956 ("BHC Act") to become a bank holding company ("BHC"). BHCs are subject to regulation, inspection, examination, supervision and enforcement by the Federal Reserve Board under the BHC Act. The Federal Reserve Board's jurisdiction also extends to any company that is directly or indirectly controlled by a BHC.

The Company, which controls BankUnited and Herald, became a BHC on February 29, 2012.As a BHC, the Company is subject to ongoing and comprehensive supervision, regulation, examination and enforcement by the Federal Reserve Board.

History of the Company as a Regulated Entity

On May 21, 2009, we received approvals from the Office of Thrift Supervision ("OTS") and FDIC for the organization of BankUnited as a federal savings association, for the Company to become a savings and loan holding company ("SLHC"), and for BankUnited to obtain federal deposit insurance.

Subsequently, on February 13, 2012, we received approval of the Federal Reserve Board to become a bank holding company in connection with the conversion of BankUnited from a federal savings association to a national bank and the acquisition of Herald by BankUnited, Inc. On February 14, 2012, we received approval of the OCC to convert BankUnited to a national bank. In connection with the conversion, BankUnited made certain commitments to the OCC regarding the business and capital plans of BankUnited. BankUnited, Inc. consummated these transactions on February 29, 2012, and became a BHC as of that date.

In connection with the approval to become a BHC, the Company committed that within a period of two years of becoming a BHC, or by February 28, 2014, we would conform our nonbanking activities to those permissible for a BHC under the BHC Act. In addition, we committed to adding another independent member to our board of directors within 18 months of becoming a BHC, or by the end of August 2013.

FDIC Deposit Insurance

The FDIC is an independent federal agency that insures the deposits of federally insured depository institutions up to applicable limits. The FDIC also has certain regulatory, examination and enforcement powers with respect to FDIC-insured institutions. The deposits of BankUnited and Herald

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are insured by the FDIC up to applicable limits. As a general matter, the maximum deposit insurance amount is $250,000 per depositor.

Broad Supervision, Examination and Enforcement Powers

A principal objective of the U.S. bank regulatory system is to protect depositors by ensuring the financial safety and soundness of banking organizations. To that end, the banking regulators have broad regulatory, examination and enforcement authority. The regulators regularly examine the operations of banking organizations. In addition, banking organizations are subject to periodic reporting requirements.

The regulators have various remedies available if they determine that the financial condition, capital resources, asset quality, earnings prospects, management, liquidity or other aspects of a banking organization's operations are unsatisfactory. The regulators may also take action if they determine that the banking organization or its management is violating or has violated any law or regulation. The regulators have the power to, among other things:

- enjoin "unsafe or unsound" practices;
- require affirmative actions to correct any violation or practice;
- issue administrative orders that can be judicially enforced;
- direct increases in capital;
- direct the sale of subsidiaries or other assets;
- limit dividends and distributions;
- restrict growth;
- assess civil monetary penalties;
- remove officers and directors; and
- terminate deposit insurance.

The FDIC may terminate a depository institution's deposit insurance upon a finding that the institution's financial condition is unsafe or unsound or that the institution has engaged in unsafe or unsound practices or has violated any applicable rule, regulation, order or condition enacted or imposed by the institution's regulatory agency. Engaging in unsafe or unsound practices or failing to comply with applicable laws, regulations and supervisory agreements could subject the Company, and subsidiaries of the Company or their officers, directors and institution-affiliated parties to the remedies described above and other sanctions.

The Dodd-Frank Act

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or the Dodd-Frank Act, was signed into law. The Dodd-Frank Act is having a broad impact on the financial services industry, and imposes significant regulatory and compliance requirements, including the designation of certain financial companies as systemically important financial companies, or SIFIs, the changing roles of credit rating agencies, the imposition of increased capital, leverage, and liquidity requirements, and numerous other provisions designed to improve supervision and oversight of, and strengthen safety and soundness within, the financial services sector. Additionally, the Dodd-Frank

Act establishes a new framework of authority to conduct systemic risk oversight within the financial system to be distributed among new and existing federal regulatory agencies, including the Financial Stability Oversight Council, or Council, the Federal Reserve Board, the OCC, and the FDIC.

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The following items provide a brief description of certain provisions of the Dodd-Frank Act that are most relevant to the Company and its banking subsidiaries.

Source of strength. The Dodd-Frank Act requires all companies, including BHCs, that directly or indirectly control an insured depository institution to serve as a source of strength for the institution. Under this requirement, the Company in the future could be required to provide financial assistance to its insured depository institution subsidiaries should they experience financial distress.

Limitation on federal preemption. The Dodd-Frank Act significantly reduces the ability of national banks to rely on federal preemption of state consumer financial laws. Although the OCC, as the primary regulator of national banks, will have the ability to make preemption determinations where certain conditions are met, the broad rollback of federal preemption has the potential to create a patchwork of federal and state compliance obligations. This could, in turn, result in significant new regulatory requirements applicable to BankUnited, with potentially significant changes in our operations and increases in our compliance costs. It could also result in uncertainty concerning compliance, with attendant regulatory and litigation risks.

Mortgage loan origination and risk retention. The Dodd-Frank Act contains additional regulatory requirements that may affect our operations and result in increased compliance costs. For example, the Dodd-Frank Act imposes new standards for mortgage loan originations on all lenders, including banking organizations, in an effort to require steps to verify a borrower's ability to repay. In addition, the Dodd-Frank Act generally requires lenders or securitizers to retain an economic interest in the credit risk relating to loans the lender sells or mortgage and other asset-backed securities that the securitizer issues. The risk retention requirement generally will be 5%, but could be increased or decreased by regulation. On January 10, 2013, federal regulators released the "qualified mortgage" rule. The qualified mortgage rule is intended to clarify the application of the Dodd-Frank Act requirement that mortgage lenders have a reasonable belief that borrowers can afford their mortgages, or the lender may not be able to foreclose on the mortgage. It is expected that the standards used in the qualified mortgage rule will also inform the rules implementing the Dodd-Frank Act's risk retention requirement.

Imposition of restrictions on certain activities. The Dodd-Frank Act imposes a new regulatory structure on the over-the-counter derivatives market, including requirements for clearing, exchange trading, capital, margin, reporting, and record keeping. In addition, certain swaps and other derivatives activities are required to be "pushed out" of insured depository institutions and conducted in separately capitalized non-bank affiliates. The Dodd-Frank Act also requires certain persons to register as a "major security-based swap participant" or a "security-based swap dealer." The U.S. Commodity Futures Trading Commission, the SEC and other U.S. regulators are in the process of adopting regulations to implement the Dodd-Frank Act. It is anticipated that this rulemaking process will further clarify, among other things, reporting and recordkeeping obligations, margin and capital requirements, the scope of registration requirements, and what swaps are required to be centrally cleared and exchange-traded. Rules will also be issued to enhance the oversight of clearing and trading entities. These restrictions may affect our ability to manage certain risks in our business.

Expanded FDIC resolution authority. While insured depository institutions have long been subject to the FDIC's resolution process, the Dodd-Frank Act creates a new mechanism for the FDIC to conduct the orderly liquidation of certain "covered financial companies," including bank and thrift holding companies and systemically significant non-bank financial companies. Upon certain findings being made, the FDIC may be appointed receiver for a covered financial company, and would conduct an orderly liquidation of the entity. The FDIC liquidation process is modeled on the existing Federal Deposit Insurance Act, or FDIA bank resolution process, and generally gives the FDIC more discretion than in the traditional bankruptcy context.The FDIC has issued final rules implementing the orderly liquidation authority.

Consumer Financial Protection Bureau ("CFPB"). The Dodd-Frank Act creates a new independent CFPB within the Federal Reserve Board. The CFPB is tasked with establishing and implementing rules and regulations under certain federal consumer protection laws with respect to the conduct of providers of certain consumer financial products and services. The CFPB has rulemaking authority over many of the statutes governing products and services offered to bank and thrift consumers. For banking organizations with assets of $10 billion or more, the CFPB has exclusive rule making and examination, and primary enforcement authority under federal consumer financial law. In addition, the Dodd-Frank Act permits states to adopt consumer protection laws and regulations that are stricter than those regulations promulgated by the CFPB. Compliance with any such new regulations would increase our cost of operations. On January 4, 2012, President Obama installed Richard Cordray as director of the CFPB through a recess appointment. On January 24, 2013, President Obama formally renominated Cordray to the same position. If confirmed by the Senate, he would serve a term expiring December 31, 2018.

Deposit insurance. The Dodd-Frank Act makes permanent the general $250,000 deposit insurance limit for insured deposits. The Dodd-Frank Act also extended until January 1, 2013, federal deposit coverage for the full net amount held by depositors in non-interest bearing transaction accounts. Amendments to the FDIA also revise the assessment base against which an insured depository institution's deposit insurance premiums paid to the deposit insurance fund, or DIF, of the FDIC will be calculated. Under the amendments, the assessment base is no longer the institution's deposit base, but rather its average consolidated total assets less its average tangible equity. Additionally, the Dodd-Frank Act makes changes to the minimum designated reserve ratio of the DIF, increasing the minimum from 1.15 percent to 1.35 percent of the estimated amount of total insured deposits, and eliminating the requirement that the FDIC pay dividends to depository institutions when the reserve ratio exceeds certain thresholds. Several of these provisions may impact the FDIC deposit insurance premiums paid by BankUnited and Herald.

Transactions with affiliates and insiders. The Dodd-Frank Act generally enhances the restrictions on transactions with affiliates under Section 23A and 23B of the Federal Reserve Act, including an expansion of the definition of "covered transactions" and an increase in the amount of time for which collateral requirements regarding covered credit transactions must be satisfied. Insider transaction limitations are expanded through the strengthening of loan restrictions to insiders and the expansion of the types of transactions subject to the various limits, including derivatives transactions, repurchase agreements, reverse repurchase agreements and securities lending or borrowing transactions. Restrictions are also placed on certain asset sales to and from an insider to an institution, including requirements that such sales be on market terms and, in certain circumstances, approved by the institution's board of directors.

Enhanced lending limits. The Dodd-Frank Act strengthens the existing limits on a depository institution's credit exposure to one borrower.

Corporate governance. The Dodd-Frank Act addresses many investor protection, corporate governance and executive compensation matters that will affect most U.S. publicly traded companies, including the Company. The Dodd-Frank Act (1) grants stockholders of U.S. publicly traded companies an advisory vote on executive compensation; (2) enhances independence requirements for compensation committee members; (3) requires companies listed on national securities exchanges to adopt incentive-based compensation clawback policies for executive officers; and (4) provides the SEC with authority to adopt proxy access rules that would allow

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stockholders of publicly traded companies to nominate candidates for election as a director and have those nominees included in a company's proxy materials.

Many of the requirements of the Dodd-Frank Act will be implemented over time and most will be subject to regulations implemented over the course of several years. Given the uncertainty associated with the manner in which the provisions of the Dodd-Frank Act will be implemented by the various regulatory agencies and through regulations, the full extent of the impact such requirements will have on our operations is unclear. The changes resulting from the Dodd-Frank Act may impact the profitability of our business activities, require changes to certain of our business practices, impose upon us more stringent capital, liquidity and leverage requirements or otherwise adversely affect our business. These changes may also require us to invest significant management attention and resources to evaluate and make any changes necessary to comply with new statutory and regulatory requirements.

Failure to comply with the new requirements may negatively impact our results of operations and financial condition.

Notice and Approval Requirements Related to Control

Banking laws impose notice, approval, and ongoing regulatory requirements on any stockholder or other party that seeks to acquire direct or indirect "control" of an FDIC-insured depository institution. These laws include the BHC Act, the Change in Bank Control Act, and the Savings and Loan Holding Company Act. Among other things, these laws require regulatory filings by a stockholder or other party that seeks to acquire direct or indirect "control" of an FDIC-insured depository institution. The determination whether an investor "controls" a depository institution is based on all of the facts and circumstances surrounding the investment. As a general matter, a party is deemed to control a depository institution or other company if the party owns or controls 25% or more of any class of voting stock. Subject to rebuttal, a party may be presumed to control a depository institution or other company if the investor owns or controls 10% or more of any class of voting stock. Ownership by affiliated parties, or parties acting in concert, is typically aggregated for these purposes. If a party's ownership of the Company were to exceed certain thresholds, the investor could be deemed to "control" the Company for regulatory purposes. This could subject the investor to regulatory filings or other regulatory consequences.

Permissible Activities and Investments

Banking laws generally restrict the ability of the Company from engaging in activities other than those determined by the Federal Reserve Board to be so closely related to banking as to be a proper incident thereto. The Gramm-Leach-Bliley Financial Modernization Act of 1999, or "GLB Act," expanded the scope of permissible activities for a BHC that qualifies as a financial holding company. Under the regulations implementing the GLB Act, a financial holding company may engage in additional activities that are financial in nature or incidental or complementary to a financial activity. Those activities include, among other activities, certain insurance and securities activities. Qualifications for becoming a financial holding company include, among other things, meeting certain specified capital standards and achieving certain management ratings in examinations. Under the Dodd-Frank Act, BHCs and their subsidiaries must be well-capitalized and well-managed in order for the BHC and its nonbank affiliates to engage in the expanded financial activities permissible only for a financial holding company.

In addition, as a general matter, the establishment or acquisition by the Company of a depository institution or, in certain cases, a non-bank entity, requires prior regulatory approval.

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Regulatory Capital Requirements and Capital Adequacy

The federal bank regulators view capital levels as important indicators of an institution's financial soundness. As a general matter, FDIC-insured depository institutions and their holding companies are required to maintain minimum capital relative to the amount and types of assets they hold. The final supervisory determination on an institution's capital adequacy is based on the regulator's assessment of numerous factors.

The Company became formally subject to regulatory capital requirements in February 2012, upon becoming a BHC. BankUnited and Herald, as national banks, are each subject to regulatory capital requirements.

The Federal Reserve Board has established risk-based and leverage capital guidelines for BHCs, including the Company. The OCC has established substantially similar risk-based and leverage capital guidelines applicable to national banks, including BankUnited and Herald.The current risk-based capital guidelines, commonly referred to as Basel I, are based upon the 1988 capital accord of the International Basel Committee on Banking Supervision ("Basel Committee"), a committee of central banks and bank supervisors, as implemented by the U.S. federal banking agencies. As discussed further below, the federal banking agencies have adopted separate risk-based capital guidelines for so-called "core banks" based upon the Revised Framework for the International Convergence of Capital Measurement and Capital Standards ("Basel II") issued by the Basel Committee in November 2005.

Basel I

Under the existing Basel I-based guidelines, the minimum ratio of total capital to risk-weighted assets (which are primarily the credit risk equivalents of balance sheet assets and certain off-balance sheet items such as standby letters of credit) is eight percent. At least half of total capital must be composed of tier 1 capital, which includes common stockholders' equity (including retained earnings), qualifying non-cumulative perpetual preferred stock (and, for BHCs only, a limited amount of qualifying cumulative perpetual preferred stock and a limited amount of trust preferred securities), and minority interests in the equity accounts of consolidated subsidiaries, less goodwill, other disallowed intangibles, and disallowed deferred tax assets, among other items. The Federal Reserve Board also has adopted a minimum leverage ratio for BHCs, requiring tier 1 capital of at least three percent of average quarterly total consolidated assets (as defined for regulatory purposes), net of goodwill and certain other intangible assets.

The federal banking agencies have also established risk-based and leverage capital guidelines that FDIC-insured depository institutions are required to meet. These regulations are generally similar to those established by the Federal Reserve Board for bank holding companies.

Basel II

Under the final U.S. Basel II rules issued by the federal banking agencies, there are a small number of "core" banking organizations that will be required to use the advanced approaches under Basel II for calculating risk-based capital related to credit risk and operational risk, instead of the methodology reflected in the regulations effective prior to adoption of Basel II. The rules also require core banking organizations to have rigorous processes for assessing overall capital adequacy in relation to their total risk profiles, and to publicly disclose certain information about their risk profiles and capital adequacy. The Company, BankUnited, and Herald are not among the core banking organizations required to use Basel II advanced approaches.

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Basel III

On December 16, 2010, the Basel Committee released its final framework for strengthening international capital and liquidity regulation, known as Basel III. The Basel III calibration and phase-in arrangements were previously endorsed by the Seoul G20 Leaders Summit in November 2010, and will be subject to individual adoption by member nations, including the United States. Under these standards, when fully phased-in on January 1, 2019, banking institutions will be required to satisfy three risk-based capital ratios:

i. A common equity tier 1 ratio of at least 7.0%, inclusive of 4.5% minimum common equity tier 1 ratio, net of regulatory deductions, and the new 2.5% "capital conservation buffer" of common equity to risk-weighted assets;

ii. A tier 1 capital ratio of at least 8.5%, inclusive of the 2.5% capital conservation buffer; and

iii. A total capital ratio of at least 10.5%, inclusive of the 2.5% capital conservation buffer.

The capital conservation buffer is designed to absorb losses during periods of economic stress. Banking institutions with a common equity tier 1 ratio above the minimum but below the conservation buffer may face constraints on dividends, equity repurchases, and compensation based on the amount of such shortfall. The Basel Committee also announced that a "countercyclical buffer" of 0% to 2.5% of common equity or other loss-absorbing capital "will be implemented according to national circumstances" as an "extension" of the conservation buffer during periods of excess credit growth.

Basel I and Basel II do not include a leverage requirement as an international standard. However, Basel III introduces a non-risk adjusted tier 1 leverage ratio of 3%, based on a measure of total exposure rather than total assets and new liquidity standards.

The Basel Committee had initially planned for member nations to begin implementing the Basel III requirements by January 1, 2013, with full implementation by January 1, 2019. On November 9, 2012, U.S. regulators announced that implementation of Basel III's first requirements would be delayed until an undetermined future date. The regulators made no indication whether any other future regulatory phase-in dates would be delayed.

On November 4, 2011 the Basel Committee issued its final rule setting forth proposals to apply a new common equity tier 1 surcharge to certain designated global systemically important banks ("GSIBs"). GSIBs subject to the surcharge are identified by application of a quantitative "indicator-based approach" for evaluating systemic risk that weights both categories and indicators of size, substitutability, interconnectedness, cross-jurisdictional activity, and complexity. On November 1, 2012, using the Basel Committee's methodology, the Financial Stability Board and the Basel Committee identified 28 financial institutions determined to be GSIBs. The group of GSIBs is updated annually and published by the Financial Stability Board each November. The Company has not been designated as a GSIB.

On June 7, 2012, the Federal Reserve Board, in conjunction with the OCC and the FDIC, published three notices of proposed rulemaking related to the U.S. implementation of Basel III. The proposed rules include two methods for calculating risk-weighted assets: a standardized approach, applicable to all depository institutions, BHCs with consolidated assets of $500 million or more, and SLHCs, and an advanced approach, generally applicable only to the largest, most internationally active banking organizations.Under the proposed rules, core institutions must maintain capital levels that exceed the adequately capitalized minimum ratios under the most constraining of the two approaches. For advanced approaches institutions, the proposed rules state that for the capital conservation buffer, any countercyclical capital buffer applied, and any other capital surcharges that are applied, a depository institution's or BHC's capital adequacy will be assessed using the advanced approaches.

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Dodd-Frank Act Capital Changes

Under the Dodd-Frank Act, the Federal Reserve Board may increase the capital buffer for systemically important financial institutions ("SIFIs"). The purpose of these new capital requirements is to ensure financial institutions are better capitalized to withstand periods of unfavorable financial and economic conditions. The Dodd-Frank Act also requires the establishment of more stringent prudential standards for SIFIs, which include requiring the federal banking agencies to adopt capital and liquidity requirements which address the risks that the activities of an institution pose to the institution and the public and private stakeholders, including risks arising from certain enumerated activities. In addition, the Dodd-Frank Act excludes trust preferred securities issued on or after May 19, 2010, from tier 1 capital for most institutions. For depository institution holding companies with total consolidated assets of more than $15 billion at December 31, 2009, trust preferred securities issued before May 19, 2010 will be phased-out of tier 1 capital over a three-year period.

The ultimate impact of the new capital and liquidity standards on the Company, BankUnited, and Herald is currently being reviewed and will depend on a number of factors, including the rulemaking and implementation by the U.S. banking regulators. The Company cannot determine the ultimate effect that potential legislation, or subsequent regulations, if enacted, would have upon the Company's earnings or financial position. In addition, significant questions remain as to how the capital and liquidity mandates of the Dodd-Frank Act will be integrated with the requirements of Basel III.

Prompt Corrective Action

Under the FDIA, the federal bank regulatory agencies must take "prompt corrective action" against undercapitalized U.S. depository institutions. U.S. depository institutions are assigned one of five capital categories: "well capitalized," "adequately capitalized," "undercapitalized," "significantly undercapitalized," and "critically undercapitalized," and are subjected to differential regulation corresponding to the capital category within which the institution falls. A depository institution is deemed to be "well capitalized" if the banking institution has a total risk-based capital ratio of 10.0% or greater, a tier 1 risk-based capital ratio of 6.0% or greater, and a leverage ratio of 5.0% or greater, and the institution is not subject to an order, written agreement, capital directive, or prompt corrective action directive to meet and maintain a specific level for any capital measure. Under certain circumstances, a well-capitalized, adequately capitalized or undercapitalized institution may be treated as if the institution were in the next lower capital category. A banking institution that is undercapitalized is required to submit a capital restoration plan. Failure to meet capital guidelines could subject the institution to a variety of enforcement remedies by federal bank regulatory agencies, including: termination of deposit insurance by the FDIC, restrictions on certain business activities, and appointment of the FDIC as conservator or receiver. As of December 31, 2012, the Company, BankUnited, and Herald were well-capitalized.

Regulatory Limits on Dividends and Distributions

Federal law currently imposes limitations upon certain capital distributions by national banks, such as certain cash dividends, payments to repurchase or otherwise acquire its shares, payments to stockholders of another institution in a cash-out merger and other distributions charged against capital. The Federal Reserve Board and OCC regulate all capital distributions by BankUnited and Herald directly or indirectly to the Company, including dividend payments.

BankUnited and Herald may not pay dividends to the Company if, after paying those dividends, it would fail to meet the required minimum levels under risk-based capital guidelines and the minimum leverage and tangible capital ratio requirements, or in the event the OCC notified BankUnited or Herald that it was in need of more than normal supervision. Under the FDIA, an insured depository institution such as BankUnited or Herald is prohibited from making capital distributions, including the payment of dividends, if, after making such distribution, the institution would become

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"undercapitalized." Payment of dividends by BankUnited or Herald also may be restricted at any time at the discretion of the appropriate regulator if it deems the payment to constitute an unsafe and unsound banking practice.

In addition, BankUnited is subject to supervisory limits on its ability to declare or pay a dividend or reduce its capital unless certain conditions are satisfied.

Reserve Requirements

Pursuant to regulations of the Federal Reserve Board, all banking organizations are required to maintain average daily reserves at mandated ratios against their transaction accounts. In addition, reserves must be maintained on certain non-personal time deposits. These reserves must be maintained in the form of vault cash or in an account at a Federal Reserve Bank.

Liability of Commonly Controlled Institutions

FDIC-insured depository institutions can be held liable for any loss incurred, or reasonably expected to be incurred, by the FDIC due to the default of an FDIC-insured depository institution controlled by the same company and for any assistance provided by the FDIC to an FDIC-insured depository institution that is in danger of default and that is controlled by the same company. "Default" means generally the appointment of a conservator or receiver for the institution. "In danger of default" means generally the existence of certain conditions indicating that a default is likely to occur in the absence of regulatory assistance.

The cross-guarantee liability for a loss at a commonly controlled institution is subordinated in right of payment to deposit liabilities, secured obligations, any other general or senior liability and any obligation subordinated to depositors or general creditors, other than obligations owed to any affiliate of the depository institution (with certain exceptions). BankUnited and Herald are commonly controlled by the Company.

Limits on Transactions with Affiliates and Insiders

Insured depository institutions are subject to restrictions on their ability to conduct transactions with affiliates and other related parties. Section 23A of the Federal Reserve Act imposes quantitative limits, qualitative requirements, and collateral requirements on certain transactions by an insured depository institution with, or for the benefit of, its affiliates. Transactions covered by Section 23A include loans, extensions of credit, investment in securities issued by an affiliate, and acquisitions of assets from an affiliate. Section 23B of the Federal Reserve Act requires that most types of transactions by an insured depository institution with, or for the benefit of, an affiliate be on terms at least as favorable to the insured depository institution as if the transaction were conducted with an unaffiliated third party.

As noted above, the Dodd-Frank Act generally enhances the restrictions on transactions with affiliates under Section 23A and 23B of the Federal Reserve Act, including an expansion of the definition of "covered transactions" and an increase in the amount of time for which collateral requirements regarding covered credit transactions must be satisfied. The ability of the Federal Reserve Board to grant exemptions from these restrictions is also narrowed by the Dodd-Frank Act, including by requiring coordination with other bank regulators.

The Federal Reserve Board's Regulation O and OCC regulations impose restrictions and procedural requirements in connection with the extension of credit by an insured depository institution to directors, executive officers, principal stockholders and their related interests.

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Examination Fees

The OCC currently charges fees to recover the costs of examining national banks, processing applications and other filings, and covering direct and indirect expenses in regulating national banks. The Dodd-Frank Act provides various agencies with the authority to assess additional supervision fees.

Deposit Insurance Assessments

FDIC-insured depository institutions are required to pay deposit insurance assessments to the FDIC. The amount of a particular institution's deposit insurance assessment is based on that institution's risk classification under an FDIC risk-based assessment system. An institution's risk classification is assigned based on its capital levels and the level of supervisory concern the institution poses to the regulators. Deposit insurance assessments fund the DIF. As noted above, the Dodd-Frank Act changed the way an insured depository institution's deposit insurance premiums are calculated. These changes may impact assessment rates, which could impact the profitability of our operations.

Depositor Preference

The FDIA provides that, in the event of the "liquidation or other resolution" of an insured depository institution, the claims of depositors of the institution (including the claims of the FDIC as subrogee of insured depositors) and certain claims for administrative expenses of the FDIC as a receiver will have priority over other general unsecured claims against the institution. If we invest in or acquire an insured depository institution that fails, insured and uninsured depositors, along with the FDIC, will have priority in payment ahead of unsecured, non-deposit creditors, including us, with respect to any extensions of credit they have made to such insured depository institution.

Federal Reserve System and Federal Home Loan Bank System

As national banks, BankUnited and Herald are required to hold shares of capital stock in a Federal Reserve Bank. BankUnited holds capital stock in the Federal Reserve Bank of Atlanta, and Herald holds capital stock in the Federal Reserve Bank of New York. As members of the Federal Reserve System, BankUnited and Herald have access to the Federal Reserve discount window lending and payment clearing systems.

BankUnited and Herald are members of the Federal Home Loan Bank of Atlanta and the Federal Home Loan Bank of New York, respectively. Each FHLB provides a central credit facility primarily for its member institutions as well as other entities involved in home mortgage lending. Any advances from a FHLB must be secured by specified types of collateral, and all long-term advances may be obtained only for the purpose of providing funds for residential housing finance. As members of the FHLB, BankUnited and Herald are required to acquire and hold shares of capital stock in the FHLB of Atlanta and the FHLB of New York, respectively. BankUnited and Herald are in compliance with this requirement.

Anti-Money Laundering and OFAC

Under federal law, financial institutions must maintain anti-money laundering programs that include established internal policies, procedures, and controls; a designated compliance officer; an ongoing employee training program; and testing of the program by an independent audit function. Financial institutions are also prohibited from entering into specified financial transactions and account relationships and must meet enhanced standards for due diligence and customer identification in their dealings with non-U.S. financial institutions and non-U.S. customers. Financial institutions must take reasonable steps to conduct enhanced scrutiny of account relationships to guard against money laundering and to report any suspicious transactions, and law enforcement authorities have been granted increased access to financial information maintained by financial institutions. Bank regulators

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routinely examine institutions for compliance with these obligations and they must consider an institution's compliance in connection with the regulatory review of applications, including applications for banking mergers and acquisitions. The regulatory authorities have imposed "cease and desist" orders and civil money penalty sanctions against institutions found to be violating these obligations.

The U.S. Department of the Treasury's Office of Foreign Assets Control, or "OFAC," is responsible for helping to insure that U.S. entities do not engage in transactions with certain prohibited parties, as defined by various Executive Orders and Acts of Congress. OFAC publishes lists of persons, organizations, and countries suspected of aiding, harboring or engaging in terrorist acts, known as Specially Designated Nationals and Blocked Persons. If the Company, BankUnited, or Herald finds a name on any transaction, account or wire transfer that is on an OFAC list, the Company or BankUnited must freeze or block such account or transaction, file a suspicious activity report and notify the appropriate authorities.

Consumer Laws and Regulations

Banking organizations are subject to numerous laws and regulations intended to protect consumers. These laws include, among others:

- Truth in Lending Act;
- Truth in Savings Act;
- Electronic Funds Transfer Act;
- Expedited Funds Availability Act;
- Equal Credit Opportunity Act;
- Fair and Accurate Credit Transactions Act;
- Fair Housing Act;
- Fair Credit Reporting Act;
- Fair Debt Collection Act;
- Gramm-Leach-Bliley Act;
- Home Mortgage Disclosure Act;
- Right to Financial Privacy Act;
- Real Estate Settlement Procedures Act;

- laws regarding unfair and deceptive acts and practices; and
- usury laws.

Many states and local jurisdictions have consumer protection laws analogous, and in addition to, those listed above. These federal, state and local laws regulate the manner in which financial institutions deal with customers when taking deposits, making loans, or conducting other types of transactions. Failure to comply with these laws and regulations could give rise to regulatory sanctions, customer rescission rights, action by state and local attorneys general, and civil or criminal liability. The creation of the CFPB by the Dodd-Frank Act has led to enhanced enforcement of consumer financial protection laws.

The Community Reinvestment Act

The Community Reinvestment Act, or "CRA," is intended to encourage banks to help meet the credit needs of their service areas, including low and moderate-income neighborhoods, consistent with safe and sound operations. The bank regulators examine and assign each bank a public CRA rating. The CRA then requires bank regulators to take into account the federal banking bank's record in meeting the needs of its service area when considering an application by a bank to establish or relocate a branch or to conduct certain mergers or acquisitions. The Federal Reserve Board is required to consider the CRA records of a BHC's controlled banks when considering an application by the BHC to acquire a banking organization or to merge with another BHC. When the Company or BankUnited applies for regulatory approval to make certain investments, the regulators will consider the CRA record of target institutions and the Company's depository institution subsidiaries. An unsatisfactory CRA record could substantially delay approval or result in denial of an application. The regulatory agency's assessment of the institution's record is made available to the public. Following their most recent CRA examinations, BankUnited (October 2012) and Herald (October 2011) each received an overall rating of "Satisfactory."

Changes in Laws, Regulations or Policies

Federal, state and local legislators and regulators regularly introduce measures or take actions that would modify the regulatory requirements applicable to banks, their holding companies and other financial institutions. Changes in laws, regulations or regulatory policies could adversely affect the operating environment for the Company in substantial and unpredictable ways, increase our cost of doing business, impose new restrictions on the way in which we conduct our operations or add significant operational constraints that might impair our profitability. We cannot predict whether new legislation will be enacted and, if enacted, the effect that it, or any implementing regulations, would have on our business, financial condition or results of operations. The Dodd-Frank Act imposes substantial changes to the regulatory framework applicable to us and our subsidiaries. The majority of these changes will be implemented over time by various regulatory agencies. The full effect that these changes will have on us remains uncertain at this time and may have a material adverse effect on our business and results of operations.

Employees

At December 31, 2012, we employed 1,384 full-time employees and 45 part-time employees. None of our employees are parties to a collective bargaining agreement. We believe that our relations with our employees are good.

Available Information

Our website address is www.bankunited.com. Our electronic filings with the SEC (including all Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and if applicable, amendments to those reports) are available free of charge on the website as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. The information posted on our website is not incorporated into this Annual Report. In addition, the SEC maintains a website that contains reports and other information filed with the SEC. The website can be accessed at http://www.sec.gov.

Item 1A. Risk Factors

Risk Management and Oversight

The Company's risk management framework and governance structure are intended to provide comprehensive controls and ongoing management of the major risks inherent in its business activities. The Company's ability to properly identify, measure, monitor and report risk is critical to both its soundness and profitability.

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Our Board of Directors oversees our risk management process, including the company-wide approach to risk management, carried out by our management. Our Board approves the Company's business plans and the policies that set standards for the nature and level of risk the Company is willing to assume. The Board receives reports on the Company's management of critical risks and the effectiveness of risk management systems. While our full Board maintains the ultimate oversight responsibility for the risk management process, its committees, including the audit and risk committee, the compensation committee and the nominating and corporate governance committee, oversee risk in certain specified areas. The Chief Risk Officer is responsible for developing an Enterprise Risk Management framework to identify, manage and mitigate risks across our Company.

Risks Related to Our Business

Our business is highly susceptible to credit risk on our non-covered assets.

As a lender, we are exposed to the risk that our customers will be unable to repay their loans according to their terms and that the collateral securing the payment of their loans, if any, may not be sufficient to assure repayment. Similarly, we have credit risk embedded in our securities portfolio. Our credit standards, procedures and policies may not prevent us from incurring substantial credit losses, particularly in light of market conditions in recent years. The continued potential for economic disruption presents considerable risks to us. Although the economic slowdown that the U. S. and our market areas have experienced has begun to reverse and markets have generally improved, there is no assurance that this improvement will be sustained or will continue. It is difficult to determine the many ways in which a decline in economic or market conditions or a failure of those conditions to continue to improve may impact the credit quality of our asset or our business in general. The Loss Sharing Agreements only cover certain legacy assets, and credit losses on assets not covered by the Loss Sharing Agreements could have a material adverse effect on our operating results.

Our allowance for credit losses may not be adequate to cover actual credit losses.

We maintain an allowance for loan and lease losses that represents management's estimate of probable losses inherent in our credit portfolio. This estimate requires management to make certain assumptions and involves a high degree of judgment, particularly as our new loan portfolio is not yet seasoned and has not yet developed an observable loss trend. Management considers numerous factors in determining the amount of the allowance for loan and lease losses, including, but not limited to, internal risk ratings, loss forecasts, collateral values, delinquency rates, historical loss severities, the level of non-performing and restructured loans in the loan portfolio, product mix, underwriting practices, portfolio trends, industry conditions, economic trends and net charge-off trends.

If management's assumptions and judgments prove to be incorrect, our current allowance may be insufficient and we may be required to increase our allowance for loan and lease losses. In addition, federal and state regulators periodically review our allowance for loan and lease losses and may require us to increase our provision for loan losses or recognize further loan charge-offs, based on judgments different than those of our management. Adverse economic conditions could make management's estimate even more complex and difficult to determine. Any increase in our allowance for loan and lease losses will result in a decrease in net income and capital and could have a material adverse effect on our financial condition and results of operations. See Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations Analysis of the Allowance for Loan and Lease Losses" and "Management's Discussion and Analysis of Financial Condition and Results of Operations Critical Accounting Policies and Estimates Allowance for Loan and Lease Losses."

Our business is susceptible to interest rate risk.

Our earnings and cash flows depend to a great extent upon the level of our net interest income. The current low level of market interest limits our ability to add higher yielding assets to the balance sheet. A prolonged period of low rates may exacerbate downward pressure on our net interest margin and have a negative impact on our net interest income in the future. Changes in interest rates can increase or decrease our net interest income, because different types of assets and liabilities may react differently, and at different times, to market interest rate changes. Net interest income is the difference between the interest income we earn on loans, investments and other interest earning assets, and the interest we pay on interest bearing liabilities, such as deposits and borrowings. When interest bearing liabilities mature or reprice more quickly than interest earning assets in a period of rising rates, an increase in interest rates could reduce net interest income. Similarly, when interest earning assets mature or reprice more quickly than interest bearing liabilities, falling interest rates could reduce net interest income. Additionally, an increase in interest rates may, among other things, reduce the demand for loans and our ability to originate loans and decrease loan repayment rates. A decrease in the general level of interest rates may affect us through, among other things, increased prepayments on our loan and mortgage-backed securities portfolios and increased competition for deposits. Accordingly, changes in the level of market interest rates affect our net yield on interest earning assets, loan origination volume, loan and mortgage-backed securities portfolios, and our overall operating results.

We attempt to manage our risk from changes in market interest rates by adjusting the rates, maturity, repricing, and balances of the different types of interest-earning assets and interest bearing liabilities; however, interest rate risk management techniques are not precise, and we may not be able to successfully manage our interest rate risk. As a result, a rapid increase or decrease in interest rates could have an adverse effect on our net interest margin and results of operations.

Interest rates are highly sensitive to many factors beyond our control, including general economic conditions and policies of various governmental and regulatory agencies, particularly the Federal Reserve.

We may not be successful in executing our strategy of creating a strong franchise in the Tri-State market.

An important component of our growth strategy is to create a strong franchise in the Tri-State market by expanding our branch network in the area, including through our recent acquisition of Herald. The primary market we serve is Florida and there is no guarantee that we will be able to integrate successfully or operate profitably the branch locations currently operated by Herald or be able to expand our branch network in the Tri-State market. Consumer and commercial banking in this market is highly competitive, with a large number of community and regional banks and also a significant presence of the country's largest commercial banks. We will be competing with other state and national financial institutions located in the Tri-State market, as well as savings and loan associations, savings banks and credit unions for deposits and loans.

Failure to comply with the terms of our Loss Sharing Agreements with the FDIC may result in significant losses.

A significant portion of BankUnited's revenue continues to be derived from the covered assets. The Loss Sharing Agreements with the FDIC provide that a significant portion of losses related to the covered assets will be borne by the FDIC. Under the Loss Sharing Agreements, we are obligated to comply with certain loan servicing standards, including requirements to participate in government-sponsored loan modification programs. As these standards continue to evolve, we may experience difficulties in complying with the requirements of the Loss Sharing Agreements, which could result in covered assets losing some or all of their coverage. BankUnited's compliance with the terms of the Loss Sharing Agreements is subject to audit by the FDIC through its designated agent. The required terms of the agreements are extensive and failure to comply with any of the guidelines could result in a specific asset or group of assets losing their loss sharing coverage. See Item 1 "Business The FSB Acquisition."

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The geographic concentration of our markets in the coastal regions of Florida makes our business highly susceptible to local economic conditions and natural disasters.

Unlike larger financial institutions that are more geographically diversified, our branch offices are primarily concentrated in the coastal regions of Florida. Additionally, a significant portion of our loans secured by real estate are secured by commercial and residential properties in Florida. The Florida economy and our market in particular were affected by the downturn in commercial and residential property values, and the decline in real estate values in Florida during the downturn was higher than the national average. Additionally, the Florida economy relies heavily on tourism and seasonal residents. Disruption or deterioration in economic conditions in the markets we serve or the occurrence of a natural disaster, such as a hurricane, or a man-made catastrophe, such as the Gulf of Mexico oil spill, could result in one or more of the following:

- an increase in loan delinquencies;
- an increase in problem assets and foreclosures;
- a decrease in the demand for our products and services; or
- a decrease in the value of collateral for loans, especially real estate, in turn reducing customers' borrowing power, the value of assets associated with problem loans and collateral coverage.

Hurricanes and other catastrophes to which our markets in the coastal regions of Florida are susceptible also can disrupt our operations, result in damage to our properties, reduce or destroy the value of collateral and negatively affect the local economies in which we operate, which could have a material adverse effect on our results of operations.

Any decline in existing and new real estate sales could decrease lending opportunities, delay the collection of our cash flow from the Loss Sharing Agreements, and could negatively affect our income.

Delinquencies and defaults in residential mortgages have created a backlog in courts and an increase in the amount of legislative action that might restrict or delay our ability to foreclose and hence delay the collection of payments for single family residential loans under the Loss Sharing Agreements.

For the single family residential loans covered by the Loss Sharing Agreements, we cannot collect loss share payments until we liquidate the properties securing those loans. These loss share payments could be delayed by an extended foreclosure process, including delays resulting from a court backlog, local or national foreclosure moratoriums or other delays, and these delays could have a material adverse effect on our results of operations. Homeowner protection laws may also delay the initiation or completion of foreclosure proceedings on specified types of residential mortgage loans. Any such limitations are likely to cause delayed or reduced collections from mortgagors. Any restriction on our ability to foreclose on a loan, any requirement that we forgo a portion of the amount otherwise due on a loan or any requirement that we modify any original loan terms could negatively impact our business, financial condition, liquidity and results of operations.

Since we engage in lending secured by real estate and may be forced to foreclose on the collateral property and own the underlying real estate, we may be subject to the increased costs and risks associated with the ownership of real property, which could have an adverse effect on our business or results of operations.

A significant portion of our loan portfolio is secured by real property. During the ordinary course of business, we may foreclose on and take title to properties securing certain loans, in which case, we are exposed to the risks inherent in the ownership of real estate. The amount that we, as a mortgagee, may realize after a default is dependent upon factors outside of our control, including:

- general or local economic conditions;
- environmental cleanup liability;

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- neighborhood values;
- interest rates;
- real estate tax rates;
- operating expenses of the mortgaged properties;
- supply of and demand for rental units or properties;
- ability to obtain and maintain adequate occupancy of the properties;
- zoning laws;
- governmental rules, regulations and fiscal policies; and
- hurricanes or other natural or man-made disasters.

Certain expenditures associated with the ownership of real estate, principally real estate taxes and maintenance costs, may also adversely affect our operating expenses.

Our loan portfolio is affected by residential and commercial real estate prices and the level of residential and commercial real estate sales.

Our financial results may be adversely affected by changes in real estate values. We make credit and reserve decisions based on current real estate values, the current conditions of borrowers or projects and our expectations for the future. If the real estate market does not recover or if real estate values decline, we could experience higher delinquencies and charge-offs beyond that provided for in the allowance for loan and lease losses. Although we have the Loss Sharing Agreements with the FDIC, these agreements do not cover 100% of the losses attributable to covered assets. In addition, the Loss Sharing Agreements will not mitigate any losses on our non-covered assets and our earnings could be adversely affected through a higher than anticipated provision for loan losses on such assets.

We depend on our executive officers and key personnel to continue the implementation of our long-term business strategy and could be harmed by the loss of their services.

We believe that our continued growth and future success will depend in large part on the skills of our senior management team. We believe our senior management team possesses valuable knowledge about and experience in the banking industry and that their knowledge and relationships would be very difficult to replicate. Although our senior management team has entered into employment agreements with us, they may not complete the term of their employment agreements or renew them upon expiration. Our success also depends on the experience of our branch managers and lending officers and on their relationships with the customers and communities they serve. The loss of service of one or more of our executive officers or key personnel, or the inability to recruit and retain qualified personnel in the future, could have an adverse effect on our business, financial condition or operating results.

We may not be able to find suitable acquisition candidates and may be unable to manage our growth due to acquisitions.

An important component of our growth strategy is to pursue acquisitions of complementary businesses. We compete with other financial institutions for acquisition opportunities and there are a limited number of candidates that meet our acquisition criteria. Consequently, we may not be able to identify suitable candidates for acquisitions. If we are unable to locate suitable acquisition candidates willing to sell on terms acceptable to us, we would not be able to execute a strategy of growth by acquisition and we would be required to depend on other methods to grow our business.

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Even if suitable candidates are identified and we succeed in consummating future acquisitions, acquisitions involve risks that the acquired business may not achieve anticipated revenue, earnings or cash flows. There may also be unforeseen liabilities relating to the acquired institution or arising out of the acquisition, asset quality problems of the acquired entity, difficulty operating in markets in which we have had no or only limited experience and other conditions not within our control, such as adverse personnel relations, loss of customers because of change in identity, and deterioration in local economic conditions.

In addition, the process of integrating acquired entities will divert significant management time and resources. We may not be able to integrate successfully or operate profitably any financial institutions we may acquire. We may experience disruption and incur unexpected expenses in integrating acquisitions. Any acquisitions we do make may not enhance our cash flows, business, financial condition, results of operations or prospects and may have an adverse effect on our results of operations, particularly during periods in which the acquisitions are being integrated into our operations.

We face significant competition from other financial institutions and financial services providers, which may decrease our growth or profits.

The primary market we serve is Florida. Consumer and commercial banking in Florida is highly competitive. Our market contains not only a large number of community and regional banks, but also a significant presence of the country's largest commercial banks. We compete with other state and national financial institutions located in Florida and adjoining states as well as savings and loan associations, savings banks and credit unions for deposits and loans. In addition, we compete with financial intermediaries, such as consumer finance companies, mortgage banking companies, insurance companies, securities firms, mutual funds and several government agencies as well as major retailers, all actively engaged in providing various types of loans and other financial services.

The financial services industry could become even more competitive as a result of legislative, regulatory and technological changes and continued consolidation. Banks, securities firms and insurance companies can merge under the umbrella of a financial holding company, which can offer virtually any type of financial service, including banking, securities underwriting, insurance (both agency and underwriting) and merchant banking. Increased competition among financial services companies may adversely affect our ability to market our products and services. Also, technology has lowered barriers to entry and made it possible for banks to compete in our market without a retail footprint by offering competitive rates, as well as non-banks to offer products and services traditionally provided by banks. Many of our competitors have fewer regulatory constraints and may have lower cost structures. Additionally, due to their size, many competitors may offer a broader range of products and services as well as better pricing for certain products and services than we can.

Our ability to compete successfully depends on a number of factors, including:

- the ability to develop, maintain and build upon long-term customer relationships based on quality service, high ethical standards and safe and sound assets;
- the ability to attract and retain qualified employees to operate our business effectively;
- the ability to expand our market position;
- the scope, relevance and pricing of products and services offered to meet customer needs and demands;
- the rate at which we introduce new products and services relative to our competitors;
- customer satisfaction with our level of service; and
- industry and general economic trends.

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Failure to perform in any of these areas could significantly weaken our competitive position, which could adversely affect our growth and profitability, which, in turn, could harm our business, financial condition and results of operations.

We are dependent on our information technology and telecommunications systems and third-party servicers. Systems failures, interruptions or breaches of security could have an adverse effect on our financial condition and results of operations.

Our business is highly dependent on the successful and uninterrupted functioning of our information technology and telecommunications systems and third-party servicers. We outsource our major systems including our electronic funds transfer transaction processing, cash management and online banking services. We rely on these systems to process new and renewal loans, gather deposits, provide customer service, facilitate collections and share data across our organization. The failure of these systems, or the termination of a third-party software license or service agreement on which any of these systems is based, could interrupt our operations. Because our information technology and telecommunications systems interface with and depend on third-party systems, we could experience service denials if demand for such services exceeds capacity or such third-party systems fail or experience interruptions. If sustained or repeated, a system failure or service denial could result in a deterioration of our ability to process new and renewal loans, gather deposits and provide customer service, compromise our ability to operate effectively, damage our reputation, result in a loss of customer business, and/or subject us to additional regulatory scrutiny and possible financial liability, any of which could have a material adverse effect on our financial condition and results of operations.

In addition, we provide our customers the ability to bank remotely, including online and over the telephone. The secure transmission of confidential information over the Internet and other remote channels is a critical element of remote banking. Our network could be vulnerable to unauthorized access, computer viruses, phishing schemes and other security breaches. We may be required to spend significant capital and other resources to protect against the threat of security breaches and computer viruses, or to alleviate problems caused by security breaches or viruses. To the extent that our activities or the activities of our customers involve the storage and transmission of confidential information, security breaches and viruses could expose us to claims, litigation and other possible liabilities. Any inability to prevent security breaches or computer viruses could also cause existing customers to lose confidence in our systems and could adversely affect our reputation and our ability to generate business.

Reputational risks could affect our results.

Our ability to originate and maintain accounts is highly dependent upon consumer and other external perceptions of our business practices. Adverse perceptions regarding our business practices could damage our reputation in both the customer and funding markets, leading to difficulties in generating and maintaining accounts as well as in financing them. Adverse developments with respect to the consumer or other external perceptions regarding the practices of our competitors, or our industry as a whole, may also adversely impact our reputation. In addition, adverse reputational impacts on third parties with whom we have important relationships may also adversely impact our reputation. Adverse reputational impacts or events may also increase our litigation risk. We carefully monitor internal and external developments for areas of potential reputational risk and have established governance structures to assist in evaluating such risks in our business practices and decisions.

Global economic conditions may adversely affect our business and results of operations.

There continues to be significant volatility and uncertainty in the global economy which has affected and may continue to affect the markets in which we operate. In particular, the current uncertainty in Europe, including concerns that certain European countries may default on payments due on their sovereign debt, and any resulting disruption may affect interest rates, consumer confidence levels and spending, bankruptcy and default rates, commercial and residential real estate values, and other factors. While we do not have direct exposure to European sovereign debt or the European credit markets, market disruptions in Europe could spread into markets in which we operate. A sustained weakness or weakening in business and economic conditions generally or specifically in the markets in which we do business could have adverse effects on our business including:

- A decrease in the demand for loans and other products and services offered by us;
- A decrease in the value of our assets; and
- An increase in loan delinquencies and defaults.

If economic conditions worsen or remain volatile, our business, financial condition and results of operations could be adversely affected.

Risks Relating to the Regulation of Our Industry

The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 may have a material effect on our operations.

On July 21, 2010, the Dodd-Frank Act was signed into law. The Dodd-Frank Act imposes significant regulatory and compliance changes. There remains significant uncertainty surrounding the manner in which the provisions of the Dodd-Frank Act will be implemented by the various regulatory agencies and the full extent of the impact of the requirements on our operations is unclear. The changes resulting from the Dodd-Frank Act may impact the profitability of our business activities, require changes to certain of our business practices, impose upon us more stringent capital, liquidity and leverage requirements or otherwise adversely affect our business. These changes may also require us to invest significant management attention and resources to evaluate and make any changes necessary to comply with new statutory and regulatory requirements. Failure to comply with the new requirements or with any future changes in laws or regulations may negatively impact our results of operations and financial condition. For a more detailed description of the Dodd-Frank Act, see Item 1 "Business Regulation and Supervision The Dodd-Frank Act."

We operate in a highly regulated environment and the laws and regulations that govern our operations, corporate governance, executive compensation and accounting principles, or changes in them, or our failure to comply with them, may adversely affect us.

We are subject to extensive regulation, supervision, and legal requirements that govern almost all aspects of our operations. Intended to protect customers, depositors, the DIF, and the overall financial stability of the United States, these laws and regulations, among other matters, prescribe minimum capital requirements, impose limitations on the business activities in which we can engage, limit the dividend or distributions that BankUnited and Herald can pay to us, restrict the ability of institutions to guarantee our debt, and impose certain specific accounting requirements on us that may be more restrictive and may result in greater or earlier charges to earnings or reductions in our capital than generally accepted accounting principles. Compliance with laws and regulations can be difficult and costly, and changes to laws and regulations often impose additional compliance costs. Our failure to comply with these laws and regulations, even if the failure follows good faith effort or reflects a difference in interpretation, could subject us to restrictions on our business activities, fines and other penalties, any of which could adversely affect our results of operations, capital base and the price of our securities. Further, any new laws, rules and regulations could make compliance more difficult or expensive or otherwise adversely affect our business and financial condition.

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Failure to comply with the business plan filed with the OCC could have an adverse effect on our ability to execute our business plan.

In conjunction with the conversion of its charter to that of a national bank, BankUnited was required to file a business plan with the OCC. Failure to comply with the business plan could subject the Bank to regulatory actions that could impede our ability to execute our business strategy. The provisions of the business plan restrict our ability to engage in business activities outside of those contemplated in the business plan without regulatory approval.

Federal banking agencies periodically conduct examinations of our business, including compliance with laws and regulations, and our failure to comply with any supervisory actions to which we are or become subject as a result of such examinations may adversely affect us.

Federal banking agencies, including the OCC and Federal Reserve Board, periodically conduct examinations of our business, including compliance with laws and regulations. If, as a result of an examination, a federal banking agency were to determine that the financial condition, capital resources, asset quality, earnings prospects, management, liquidity or other aspects of any of our operations had become unsatisfactory, or that the Company or its management was in violation of any law or regulation, it may take a number of different remedial actions as it deems appropriate. These actions include the power to enjoin "unsafe or unsound" practices, to require affirmative actions to correct any conditions resulting from any violation or practice, to issue an administrative order that can be judicially enforced, to direct an increase in BankUnited's or Herald's capital, to restrict our growth, to assess civil monetary penalties against our officers or directors, to remove officers and directors and, if it is concluded that such conditions cannot be corrected or there is an imminent risk of loss to depositors, to terminate BankUnited's or Herald's deposit insurance. If we become subject to such regulatory actions, our business, results of operations and reputation may be negatively impacted.

Many of our new activities and expansion plans require regulatory approvals, and failure to obtain them may restrict our growth.

We intend to complement and expand our business by pursuing strategic acquisitions of financial institutions and other complementary businesses. We must generally receive federal regulatory approval before we can acquire an institution or business. In determining whether to approve a proposed acquisition, federal banking regulators will consider, among other factors, the effect of the acquisition on the competition, our financial condition, and our future prospects. The regulators also review current and projected capital ratios and levels, the competence, experience, and integrity of management and its record of compliance with laws and regulations, the convenience and needs of the communities to be served (including the acquiring institution's record of compliance under the CRA) and the effectiveness of the acquiring institution in combating money laundering activities. Such regulatory approvals may not be granted on terms that are acceptable to us, or at all. We may also be required to sell branches as a condition to receiving regulatory approval, which condition may not be acceptable to us or, if acceptable to us, may reduce the benefit of any acquisition.

In addition to the acquisition of existing financial institutions, as opportunities arise, we plan to continue *de novo* branching as a part of our internal growth strategy and possibly enter into new markets through *de novo* branching. *De novo* branching and any acquisition carries with it numerous risks, including the inability to obtain all required regulatory approvals. The failure to obtain these regulatory approvals for potential future strategic acquisitions and *de novo* branches may impact our business plans and restrict our growth.

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Financial institutions, such as BankUnited and Herald, face a risk of noncompliance and enforcement action with the Bank Secrecy Act and other anti-money laundering statutes and regulations.

The federal Bank Secrecy Act, the USA PATRIOT Act, and other laws and regulations require financial institutions, among other duties, to institute and maintain an effective anti-money laundering program and file suspicious activity and currency transaction reports as appropriate. The federal Financial Crimes Enforcement Network, established by the U.S. Treasury Department to administer the Bank Secrecy Act, is authorized to impose significant civil money penalties for violations of those requirements, and has recently engaged in coordinated enforcement efforts with the individual federal banking regulators, as well as the U.S. Department of Justice, Drug Enforcement Administration, and Internal Revenue Service. There is also increased scrutiny of compliance with the sanctions programs and rules administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control.

In order to comply with regulations, guidelines and examination procedures in this area, we are dedicating significant resources to the enhancement of our anti-money laundering program, adopting enhanced policies and procedures and implementing a new, robust automated anti-money laundering software solution. If our policies, procedures and systems are deemed deficient or the policies, procedures and systems of the financial institutions that we have already acquired or may acquire in the future are deemed deficient, we could be subject to liability, including fines and regulatory actions such as restrictions on our ability to pay dividends and the necessity to obtain regulatory approvals to proceed with certain aspects of our business plan, including our expansion plans.

We are subject to the CRA and fair lending laws, and failure to comply with these laws could lead to material penalties.

The CRA, the Equal Credit Opportunity Act, the Fair Housing Act and other fair lending laws and regulations impose nondiscriminatory lending requirements on financial institutions. The Department of Justice and other federal agencies are responsible for enforcing these laws and regulations. A successful challenge to an institution's performance under the CRA or fair lending laws and regulations could result in a wide variety of sanctions, including the required payment of damages and civil money penalties, injunctive relief, imposition of restrictions on mergers and acquisitions activity, and restrictions on expansion activity. Private parties may also have the ability to challenge an institution's performance under fair lending laws in private class action litigation.

The FDIC's restoration plan and the related increased assessment rate could adversely affect our earnings.

As a result of economic conditions and the enactment of the Dodd-Frank Act, the FDIC has increased the deposit insurance assessment rates and thus raised deposit premiums for insured depository institutions. If these increases are insufficient for the DIF to meet its funding requirements, further special assessments or increases in deposit insurance premiums may be required. We are generally unable to control the amount of premiums that we are required to pay for FDIC insurance. If there are additional bank or financial institution failures, we may be required to pay FDIC premiums higher than current levels. Any future additional assessments, increases or required prepayments in FDIC insurance premiums may materially adversely affect results of operations.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

At December 31, 2012, BankUnited leased 120,672 square feet of office and operations space in Miami Lakes, Florida. This space includes our principal executive offices, operations center and a retail

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branch. At December 31, 2012, we provided banking services at 98 branch locations in 15 Florida counties. Of the 98 branch properties, we leased 90 locations and owned 8 locations. We also leased 78,354 square feet of property in Florida for future branch operations and 5,580 square feet of warehouse space. Additionally, we leased 29,561 square feet of office and future branch space in New York City, New York, and 20,858 square feet of office, operations and future branch space in Melville, New York.

At December 31, 2012, Herald leased 24,496 square feet of office and operations space in New York City, New York, and 10,048 square feet of office space in Melville, New York. We also leased 10,619 square feet of office and operations space in Hunt Valley, Maryland to house United Business Capital Lending, and 5,488 square feet of office and operations space in Scottsdale, Arizona to house Pinnacle Public Finance.

We believe that our facilities are in good condition and are adequate to meet our operating needs for the foreseeable future.

Item 3. Legal Proceedings

The Company is involved as plaintiff or defendant in various legal actions arising in the normal course of business. In the opinion of management, based upon advice of legal counsel, the likelihood is remote that the impact of these proceedings, either individually or in the aggregate, would be material to the Company's consolidated financial position, results of operations or cash flows.

Item 4. Mine Safety Disclosures

None.

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PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information and Holders of Record

Shares of our common stock began trading on the NYSE under the symbol "BKU" on January 28, 2011. The last sale price of our common stock on the NYSE on February 20, 2013 was $27.68 per share.

The following table shows the high and low sales prices for our common stock for the periods indicated, as reported by the NYSE:

	2012		2011	
	High	Low	High	Low
1st Quarter	$ 26.33	$ 21.66	$ 29.90	$ 27.25
2nd Quarter	25.26	22.23	29.54	26.10
3rd Quarter	26.22	22.85	27.60	19.41
4th Quarter	25.10	22.01	23.49	18.92

As of February 20, 2013, there were 577 stockholders of record of our common stock.

Equity Compensation Plan Information

The information set forth under the caption "Equity Compensation Plan Information" in our definitive proxy statement for the Company's 2013 annual meeting of stockholders (the "Proxy Statement") is incorporated herein by reference.

Dividend Policy

The Company declared a quarterly dividend of $0.17 per share on its common stock for each of the first three quarters of 2012, and increased its dividend to $0.21 per share on its common stock for the fourth quarter of 2012, resulting in total dividends for 2012 of $74.1 million, or $0.72 per share for the year ended December 31, 2012. The Company declared quarterly dividends of $0.14 per share on its common stock in 2011, resulting in total dividends for 2011 of $56.7 million, or $0.56 per share for the year ended December 31, 2011. Dividends from the Bank are the principal source of funds for the payment of dividends on our common stock. The Bank is subject to certain restrictions that may limit its ability to pay dividends to us. See "Business Regulation and Supervision Regulatory Limits on Dividends and Distributions". The quarterly dividends on our common stock are subject to the discretion of our board of directors and dependent on, among other things, our financial condition, results of operations, capital requirements, restrictions contained in financing instruments and other factors that our board of directors may deem relevant.

Stock Performance Graph

The graph set forth below compares the cumulative total stockholder return on an initial investment of $100 in our common stock between January 28, 2011 (the day shares of our common stock began trading) and December 31, 2012, with the comparative cumulative total return of such amount on the S&P 500 Index and the S&P 500 Bank Index over the same period. Reinvestment of all dividends is assumed to have been made in our common stock. The graph assumes our closing sales price on January 28, 2011 of $28.40 per share as the initial value of our common stock.

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The comparisons shown in the graph below are based upon historical data. We caution that the stock price performance shown in the graph below is not necessarily indicative of, nor is it intended to forecast, the potential future performance of our common stock.

COMPARISON OF CUMULATIVE TOTAL RETURN

Index	01/28/11	03/31/11	06/30/11	09/30/11	12/31/11	03/31/12	06/30/12	09/30/12	12/31/12
BankUnited, Inc.	100.00	101.59	94.40	74.34	79.24	90.70	86.17	90.56	90.75
S&P 500	100.00	104.26	104.36	89.89	100.51	113.16	110.05	117.04	116.60
S&P Bank	100.00	100.03	92.40	76.48	88.70	108.05	106.19	113.16	110.19

Recent Sales of Unregistered Securities

None.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

None.

Item 6. Selected Consolidated Financial Data

You should read the selected consolidated financial data set forth below in conjunction with "Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations," and the audited consolidated financial statements and the related notes thereto included elsewhere in this Form 10-K. The selected consolidated financial data set forth below at December 31, 2012, 2011 and 2010 and for the years then ended and at December 31, 2009 and for the period then ended is derived from our audited consolidated financial statements. The selected consolidated financial data set forth below at September 30, 2008, for the period from October 1, 2008 to May 21, 2009 and for the fiscal year ended September 30, 2008, has been derived from the consolidated financial statements of the Failed Bank.

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Although we were incorporated on April 28, 2009, neither we nor the Bank had any substantive operations prior to the FSB Acquisition on May 21, 2009. Results of operations of the Company for the periods after the FSB Acquisition are not comparable to the results of operations of the Failed Bank. See "Management's Discussion and Analysis of Financial Condition and Results of Operations Impact of Acquisition Accounting, ACI Loan Accounting and the Loss Sharing Agreements."

	BankUnited, Inc.				Failed Bank
	At December 31,				At September 30,
	2012	2011	2010	2009	2008
	(dollars in thousands)				
Consolidated Balance Sheet Data:					
Cash and cash equivalents	$ 495,353	$ 303,742	$ 564,774	$ 356,215	$ 1,223,346
Investment securities available for sale, at fair value	4,172,412	4,181,977	2,926,602	2,243,143	755,225
Loans, net	5,512,618	4,088,656	3,875,857	4,588,898	11,249,367
FDIC indemnification asset	1,457,570	2,049,151	2,667,401	3,279,165	
Goodwill and other intangible assets	69,768	68,667	69,011	60,981	28,353
Total assets	12,375,953	11,322,038	10,869,560	11,129,961	14,088,591
Deposits	8,538,073	7,364,714	7,163,728	7,666,775	8,176,817
Federal Home Loan Bank advances	1,916,919	2,236,131	2,255,200	2,079,051	5,279,350
Total liabilities	10,569,273	9,786,758	9,616,052	10,035,701	13,689,821
Total stockholder's equity	1,806,680	1,535,280	1,253,508	1,094,260	398,770

	BankUnited, Inc.				Failed Bank	
	Year Ended December 31, 2012	Year Ended December 31, 2011	Year Ended December 31, 2010	Period from April 28, 2009 to December 31, 2009(1)	Period from October 1, 2008 to May 21, 2009(1)	Year Ended September 30, 2008
	(dollars in thousands, except share data)					
Consolidated Income Statement Data:						
Interest income	$ 720,856	$ 638,097	$ 557,688	$ 335,524	$ 339,068	$ 834,460
Interest expense	123,269	138,937	168,200	83,856	333,392	555,594
Net interest income	597,587	499,160	389,488	251,668	5,676	278,866
Provision for loan losses	18,896	13,828	51,407	22,621	919,139	856,374
Net interest income (loss) after provision for loan losses	578,691	485,332	338,081	229,047	(913,463)	(577,508)
Non-interest income (loss)	89,247	163,217	297,779	253,636	(81,431)	(128,859)
Non-interest expense	323,073	455,805	323,320	283,262	238,403	246,480
Income (loss) before income taxes	344,865	192,744	312,540	199,421	(1,233,297)	(952,847)
Provision (benefit) for income before taxes	133,605	129,576	127,805	80,375		(94,462)
Net income (loss)	$ 211,260	$ 63,168	$ 184,735	$ 119,046	$ (1,233,297)	$ (858,385)

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	BankUnited, Inc.				Failed Bank	
	Year Ended December 31, 2012	Year Ended December 31, 2011	Year Ended December 31, 2010	Period from April 28, 2009 to December 31, 2009(1)	Period from October 1, 2008 to May 21, 2009	Year Ended September 30, 2008
	(dollars in thousands, except per share data)					
Share Data:						
Earnings (loss) per common share, basic	$ 2.05	$ 0.63	$ 1.99	$ 1.29	$ (12,332,970)	$ (8,583,850)
Earnings (loss) per common share, diluted	$ 2.05	$ 0.62	$ 1.99	$ 1.29	$ (12,332,970)	$ (8,583,850)
Cash dividends declared per common share	$ 0.72	$ 0.56	$ 0.37	$	N/A	N/A
Dividend payout ratio	35.13%	90.32%	18.59%	N/A	N/A	N/A
Other Data (unaudited):						
Financial ratios						
Return on average assets(2)	1.71%	0.58%	1.65%	1.69%	(14.26)%	(5.94)%
Return on average common equity(2)	12.45%	4.34%	15.43%	18.98%	(2041.04)%	(75.43)%
Yield on earning assets(2)(7)	7.27%	7.92%	7.26%	7.42%	3.91%	5.91%
Cost of interest bearing liabilities(2)	1.33%	1.62%	1.81%	1.39%	3.94%	4.36%
Equity to assets ratio	14.60%	13.56%	11.53%	9.83%	(7.25)%	2.83%
Interest rate spread(2)(7)	5.94%	6.30%	5.45%	6.03%	(0.03)%	1.55%
Net interest margin(2)(7)	6.04%	6.21%	5.08%	5.58%	0.06%	1.98%
Loan to deposit ratio(5)	65.28%	56.23%	54.96%	60.15%	128.74%	146.45%
Asset quality ratios						
Non-performing loans to total loans(3)(5)	0.62%	0.70%	0.66%	0.38%	24.58%	11.98%
Non-performing assets to total assets(4)	0.89%	1.35%	2.14%	1.24%	23.53%	11.13%
Allowance for loan and lease losses to total loans	1.06%	1.17%	1.48%	0.49%	11.14%	5.98%
Allowance for loan and lease losses to non-performing loans(3)	171.21%	167.59%	226.35%	130.22%	45.33%	49.96%
Net charge-offs to average loans(2)	0.17%	0.62%	0.37%	0.00%	5.51%	1.58%

	BankUnited, Inc.				Failed Bank
	At December 31,				At September 30,
	2012	2011	2010	2009	2008
Capital ratios(6)					
Tier 1 risk-based capital	33.60%	41.62%	42.97%	40.42%	4.90%
Total risk-based capital	34.88%	42.89%	43.71%	40.55%	6.21%
Tier 1 leverage	13.16%	13.06%	10.76%	8.78%	2.89%

(1) The Company was incorporated on April 28, 2009, but neither the Company nor the Bank had any substantive operations prior to the FSB Acquisition on May 21, 2009.

(2) Ratio is annualized for the period from October 1, 2008 to May 21, 2009 and for the period from May 22, 2009 to December 31, 2009. See note 1 above.

(3) We define non-performing loans to include nonaccrual loans, loans, other than ACI loans, that are past due 90 days or more and still accruing and certain loans modified in troubled debt restructurings. Contractually delinquent ACI loans on which interest continues to be accreted are excluded from non-performing loans. The carrying value of ACI loans contractually delinquent by more than 90 days, but not identifed as non-performing was \$176.5 million, \$361.2 million, \$717.7 million and \$1.2 billion at December 31, 2012, 2011, 2010 and 2009 respectively.

(4) Non-performing assets include non-performing loans and OREO.

(5)

Total loans is net of unearned discounts and deferred fees and costs.

(6) Capital ratios presented as of December 31, 2009 are ratios of the Bank.

(7) On a tax-equivalent basis for the years ended December 31, 2012, 2011 and 2010.

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Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis is intended to assist readers in understanding the consolidated financial condition and results of operations of BankUnited, Inc. and its subsidiaries (the "Company", "we", "us" and "our") and should be read in conjunction with the consolidated financial statements, accompanying footnotes and supplemental financial data included herein. In addition to historical information, this discussion contains forward-looking statements that involve risks, uncertainties and assumptions that could cause actual results to differ materially from management's expectations. Factors that could cause such differences are discussed in the sections entitled "Forward-looking Statements" and "Risk Factors." We assume no obligation to update any of these forward-looking statements.

Overview

Performance Highlights

In evaluating our financial performance, we consider the level of and trends in net interest income, the net interest margin and interest rate spread, the allowance and provision for loan losses, performance ratios such as the return on average assets and return on average equity, asset quality ratios including the ratio of non-performing loans to total loans, non-performing assets to total assets, and portfolio delinquency and charge-off trends. We consider growth in the loan portfolio and trends in deposit mix. We analyze these ratios and trends against our own historical performance, our budgeted performance and the financial condition and performance of comparable financial institutions in our region and nationally.

Performance highlights include:

- Net income for the year ended December 31, 2012 was $211.3 million or $2.05 per diluted share, compared to $63.2 million or $0.62 per diluted share for the year ended December 31, 2011. Earnings for 2012 generated a return on average stockholders' equity of 12.45% and a return on average assets of 1.71%. Results for 2011 reflected a one-time charge of $110.4 million recorded in conjunction with the Company's IPO.

- Net interest income for 2012 was $597.6 million, an increase of $98.4 million over the prior year. The net interest margin, calculated on a tax-equivalent basis, decreased to 6.04% for 2012 from 6.21% for 2011. The decline in the net interest margin resulted from a decrease in the average yield on interest earning assets, partially offset by a decrease in the average rate paid on interest bearing liabilities. The primary driver of the decrease in the average yield on interest earning assets was a shift in the composition of the loan portfolio away from higher yielding covered loans into new loans originated at lower current market rates of interest. The decrease in the average rate paid on interest bearing liabilities resulted from declines in market interest rates and a continued shift in deposit mix into lower cost deposit products. The following chart provides a comparison of net interest margin, the interest rate spread, the average yield on interest earning assets and the average rate paid on interest bearing liabilities for the years ended December 31, 2012 and 2011 (on a tax-equivalent basis):

We completed the acquisition of Herald on February 29, 2012 for a purchase price of $65.0 million. At the date of acquisition, Herald had total loans of $306.0 million, total investment securities of $161.0 million and total deposits of $435.5 million.

Strong loan growth continued. New loans increased by $2.0 billion in 2012 to $3.7 billion. New loan growth in 2012 outpaced the resolution of covered loans, resulting in net growth in the total loan portfolio. New loan growth was concentrated in the commercial portfolio segment, commensurate with our core business strategy. The following charts compare the composition of our loan portfolio at December 31, 2012 and 2011:

Total deposits grew by $1.2 billion to $8.5 billion while demand deposits increased to 22% of total deposits at December 31, 2012. The following charts illustrate the composition of deposits at December 31, 2012 and 2011:

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Asset quality remains strong. At December 31, 2012, 97% of the new commercial loan portfolio was rated "pass" and 99% of the new residential portfolio was current. The ratio of non-performing, non-covered loans to total non-covered loans was 0.43% at December 31, 2012. Credit risk related to the covered loans is significantly mitigated by the Loss Sharing Agreements.

The Company's capital ratios exceed all regulatory "well capitalized" guidelines. The charts below present the Company's regulatory capital ratios compared to regulatory guidelines as of December 31, 2012 and 2011:

Opportunities and Challenges

Management has identified significant opportunities for our Company, including:

Our capital position, market presence and experienced lending team position us well for continued organic growth in Florida and the Tri-State market. In addition to our core commercial banking franchise, we are building an in-house residential origination channel and have entered the indirect auto and taxi medallion lending businesses.

Planned expansion of our branch footprint, including three branches in Manhattan scheduled to open in the first quarter of 2013.

Potential growth through strategic acquisitions of financial institutions and complementary businesses.

The potential to take advantage of lower market interest rates and the ability to shift deposits into lower cost products to further reduce our cost of funds.

The continued enhancement of our infrastructure and technology platforms will enable us to expand product offerings to our customers and increase operational efficiency.

We have also identified significant challenges confronting the industry and our Company:

- The current low interest rate environment is likely to put pressure on our net interest margin, particularly as higher-yielding covered assets are liquidated or mature and are replaced with assets originated or purchased at current market rates of interest.

Economic conditions in the Florida market, while improving, remain under stress. Continued economic stress may lead to elevated levels of non-performing assets or impact our ability to sustain the trajectory of new loan growth.

Management expects that the Company and the banking industry as a whole may be required by market forces and/or regulation to operate with higher capital ratios than in the recent past.

Uncertainty about the full impact of new regulation may present challenges in the execution of our business strategy and the management of non-interest expense. For additional discussion, see "Regulation and Supervision."

Impact of Acquisition Accounting, ACI Loan Accounting and the Loss Sharing Agreements

The application of acquisition accounting, accounting for loans acquired with evidence of deterioration in credit quality since origination ("ACI" or "Acquired Credit Impaired" loans) and the provisions of the Loss Sharing Agreements have had a material impact on our financial condition and results of operations. The more significant ways in which our financial statements have been impacted are summarized below and discussed in more detail throughout this "Management's Discussion and Analysis of Financial Condition and Results of Operations":

Under the acquisition method of accounting, all of the assets acquired and liabilities assumed in the FSB Acquisition were initially recorded on the consolidated balance sheet at their estimated fair values as of May 21, 2009. These estimated fair values differed materially from the carrying amounts of many of the assets acquired and liabilities assumed as reflected in the financial statements of the Failed Bank immediately prior to the FSB Acquisition. In particular, the carrying amount of investment securities, loans, the FDIC indemnification asset, goodwill and other intangible assets, net deferred tax assets, deposit liabilities, and FHLB advances were materially impacted by these adjustments, which continue to affect the reported amounts of such assets and liabilities;

Interest income, interest expense and the net interest margin reflect the impact of accretion of the fair value adjustments made to the carrying amounts of interest earning assets and interest bearing liabilities in conjunction with the FSB Acquisition;

The estimated fair value at which the acquired loans were initially recorded by the Company was significantly less than the unpaid principal balances of the loans. No allowance for loan and lease losses was recorded with respect to acquired loans at the FSB Acquisition date. The write-down of loans to fair value in conjunction with the application of acquisition accounting and credit protection provided by the Loss Sharing Agreements reduces the impact of the provision for loan losses related to the acquired loans on the results of operations;

Acquired investment securities were recorded at their estimated fair values at the FSB Acquisition date, significantly reducing the potential for other-than-temporary impairment charges in periods subsequent to the FSB Acquisition for the acquired securities. Certain of the acquired investment securities are covered under the Loss Sharing Agreements. The impact on results of operations of any future other-than-temporary impairment charges related to covered securities would be significantly mitigated by indemnification by the FDIC;

An indemnification asset related to the Loss Sharing Agreements with the FDIC was recorded in conjunction with the FSB Acquisition. The Loss Sharing Agreements afford the Company significant protection against future credit losses related to covered assets;

Non-interest income includes the effect of accretion of discount on the indemnification asset;

Non-interest income includes gains and losses associated with the resolution of covered assets and the related effect of indemnification under the terms of the Loss Sharing Agreements. The

- impact of gains or losses related to transactions in covered loans and other real estate owned is significantly mitigated by indemnification by the FDIC;

- ACI loans that are contractually delinquent may not be reflected as nonaccrual loans or non-performing assets due to the accounting treatment accorded such loans under Accounting Standards Codification ("ASC") section 310-30, "Loans and Debt Securities Acquired with Deteriorated Credit Quality."

These factors may impact the comparability of our financial performance to that of other financial institutions.

Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles and follow general practices within the banking industry. Application of these principles requires management to make complex and subjective estimates and judgments that affect the amounts reported in the consolidated financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable and appropriate under current circumstances. These assumptions form the basis for our judgments about the carrying values of assets and liabilities that are not readily available from independent, objective sources. We evaluate our estimates on an ongoing basis. Use of alternative assumptions may have resulted in significantly different estimates. Actual results may differ from these estimates.

Accounting policies are an integral part of our financial statements. A thorough understanding of these accounting policies is essential when reviewing our reported results of operations and our financial position. We believe that the critical accounting policies and estimates discussed below involve a heightened level of management judgment due to the complexity, subjectivity and sensitivity involved in their application.

Note 1 to the consolidated financial statements contains a further discussion of our significant accounting policies.

Allowance for Loan and Lease Losses

The allowance for loan and lease losses ("ALLL") represents management's estimate of probable loan losses inherent in the Company's loan portfolio. Determining the amount of the ALLL is considered a critical accounting estimate because of its complexity and because it requires significant judgment and estimation. Estimates that are particularly susceptible to change that may have a material impact on the amount of the ALLL include:

- the amount and timing of expected future cash flows from ACI loans and impaired loans;

- the value of underlying collateral, which impacts loss severity and certain cash flow assumptions;

- the selection of peer banks used to calculate loss factors;

- estimated losses based on risk characteristics and risk rating of loans; and

- our assessment of qualitative factors.

Note 1 of the notes to our consolidated financial statements describes the methodology used to determine the ALLL.

Accounting for Acquired Loans and the FDIC Indemnification Asset

A significant portion of the covered loans are ACI Loans. The accounting for ACI loans requires the Company to estimate the timing and amount of cash flows to be collected from these loans and to

continually update estimates of the cash flows expected to be collected over the lives of the loans. Similarly, the accounting for the FDIC indemnification asset requires the Company to estimate the timing and amount of cash flows to be received from the FDIC in reimbursement for losses and expenses related to the covered loans; these estimates are directly related to estimates of cash flows to be received from the covered loans. Estimated cash flows impact the rate of accretion on covered loans and the FDIC indemnification asset as well as the amount of any ALLL to be established related to the covered loans. These cash flow estimates are considered to be critical accounting estimates because they involve significant judgment and assumptions as to their amount and timing.

Covered 1-4 single family residential and home equity loans were placed into homogenous pools at the time of the FSB Acquisition; the ongoing credit quality and performance of these loans is monitored on a pool basis and expected cash flows are estimated on a pool basis. At acquisition, the fair value of the pools was measured based on the expected cash flows to be derived from each pool. For ACI pools, the difference between total contractual payments due and the cash flows expected to be received at acquisition was recognized as non-accretable difference. The excess of expected cash flows over the recorded fair value of each ACI pool at acquisition was recognized as accretable yield. The accretable yield is recognized as interest income over the life of each pool.

We monitor the pools quarterly by updating our expected cash flows to determine whether any changes have occurred in expected cash flows that would be indicative of impairment or necessitate reclassification between non-accretable difference and accretable yield. Initial and ongoing cash flow expectations incorporate significant assumptions regarding prepayment rates, the timing of resolution of loans, frequency of default, delinquency and loss severity, which is dependent on estimates of underlying collateral values. Changes in these assumptions could have a potentially material impact on the amount of the ALLL related to the covered loans as well as on the rate of accretion on these loans. Prepayment, delinquency and default curves used to forecast pool cash flows are derived from roll rates generated from the historical performance of the ACI residential loan portfolio observed over the immediately preceding four quarters. Generally, improvements in expected cash flows less than 1% of the expected cash flows from a pool are not recorded. This threshold is judgmentally determined.

Generally, commercial loans are monitored and expected cash flows updated at the individual loan level due to the size and other unique characteristics of these loans. The expected cash flows are estimated based on judgments and assumptions which include credit risk grades established in the Bank's ongoing credit review program, likelihood of default based on observations of specific loans during the credit review process as well as applicable industry data, loss severity based on updated evaluations of cash flows from available collateral, and the contractual terms of the underlying loan agreements. Changes in the assumptions that impact forecasted cash flows could result in a potentially material change to the amount of the ALLL or the rate of accretion on these loans.

The estimated cash flows from the FDIC indemnification asset are sensitive to changes in the same assumptions that impact expected cash flows on covered loans. Estimated cash flows impact the rate of accretion on the FDIC indemnification asset.

Other Real Estate Owned

Assets acquired through, or in lieu of, loan foreclosure are held for sale and are initially recorded at the fair value of the collateral at the date of foreclosure based on estimates, including some obtained from third parties, less estimated costs to sell, establishing a new cost basis. Subsequent to foreclosure, valuations are periodically performed, and the assets are carried at the lower of cost or fair value less estimated costs to sell. Significant property improvements that enhance the salability of the property are capitalized to the extent that the carrying value does not exceed estimated realizable value. Legal fees, maintenance and other direct costs of foreclosed properties are expensed as incurred. Given the large number of OREO properties and the judgment involved in estimating fair value of the properties,

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accounting for OREO is regarded as a critical accounting policy. Estimates of value of OREO properties are typically based on real estate appraisals performed by independent appraisers. In some cases, if an appraisal is not available, values may be based on brokers' price opinions. These values are generally updated as appraisals become available.

Equity Based Compensation

Prior to the consummation of the IPO, BUFH had issued equity awards in the form of Profits Interest Units ("PIUs") to certain members of management. Compensation expense related to PIUs was based on the fair value of the underlying units on the date of the consolidated financial statements. At the time of the IPO, the PIUs were exchanged for a combination of vested and unvested shares and vested and unvested options. The fair value of PIUs and options issued in exchange for PIUs was estimated using a Black-Scholes option pricing model, which incorporated significant assumptions as to expected volatility, dividends, terms, risk free rates and, prior to the IPO, equity value per share. Changes in these underlying assumptions would have had a potentially material effect on the values assigned to these instruments. Determining the fair value of the PIUs and the options issued in exchange for the PIUs is considered a critical accounting estimate because it requires significant judgments and because of the potential materiality of the amounts involved. See Notes 1 and 17 to our consolidated financial statements for further information about equity based compensation awards and the techniques used to value them.

Fair Value Measurements

The Company measures certain of its assets and liabilities at fair value on a recurring or non-recurring basis. Assets and liabilities measured at fair value on a recurring basis include investment securities available for sale, derivative instruments and, for periods prior to the IPO, the liability for PIUs. Assets that may be measured at fair value on a non-recurring basis include OREO, impaired loans, loans held for sale, intangible assets and assets acquired and liabilities assumed in business combinations. The consolidated financial statements also include disclosures about the fair value of financial instruments that are not recorded at fair value.

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. Inputs used to determine fair value measurements are prioritized into a three level hierarchy based on observability and transparency of the inputs, summarized as follows:

Level 1 observable inputs that reflect quoted prices in active markets,

Level 2 inputs other than quoted prices in active markets that are based on observable market data, and

Level 3 unobservable inputs requiring significant management judgment or estimation.

When observable market inputs are not available, fair value is estimated using modeling techniques such as discounted cash flow analyses and option pricing models. These modeling techniques utilize assumptions that we believe market participants would use in pricing the asset or the liability.

Particularly for estimated fair values of assets and liabilities categorized within level 3 of the fair value hierarchy, the selection of different valuation techniques or underlying assumptions could result in fair value estimates that are higher or lower than the amounts recorded or disclosed in our consolidated financial statements. Considerable judgment may be involved in determining the amount that is most representative of fair value.

Because of the degree of judgment involved in selecting valuation techniques and underlying assumptions, fair value measurements are considered critical accounting estimates.

Notes 1, 4, and 20 to our consolidated financial statements contain further information about fair value estimates.

Recent Accounting Pronouncements

See Note 1 to our consolidated financial statements for a discussion of recent accounting pronouncements.

Results of Operations

Net Interest Income

Net interest income is the difference between interest earned on interest earning assets and interest incurred on interest bearing liabilities and is the primary driver of core earnings. Net interest income is impacted by the relative mix of interest earning assets and interest bearing liabilities, the ratio of interest earning assets to total assets and of interest bearing liabilities to total funding sources, movements in market interest rates, levels of non-performing assets and pricing pressure from competitors.

The mix of interest earning assets is influenced by loan demand and by management's continual assessment of the rate of return and relative risk associated with various classes of earning assets. The mix of interest bearing liabilities is influenced by management's assessment of the need for lower cost funding sources weighed against relationships with customers and growth requirements and is impacted by competition for deposits in the Company's markets and the availability and pricing of other sources of funds.

Net interest income is also impacted by the accounting for ACI loans and to a declining extent, the accretion of fair value adjustments recorded in conjunction with the FSB Acquisition. ACI loans were initially recorded at fair value, measured based on the present value of expected cash flows. The excess of expected cash flows over carrying value, known as accretable yield, is recognized as interest income over the lives of the underlying loans. Accretion related to ACI loans has a positive impact on our net interest income, net interest margin and interest rate spread. The impact of accretion related to ACI loans on net interest income, the net interest margin and the interest rate spread is expected to continue to decline as ACI loans comprise a declining percentage of total loans. The proportion of total loans represented by ACI loans will decline as the ACI loans are resolved and new loans are added to the portfolio. ACI loans represented 29.1%, 50.8% and 76.3% of total loans, net of premiums, discounts, deferred fees and costs, at December 31, 2012, 2011 and 2010, respectively. As the impact of accretion related to ACI loans declines, we expect our net interest margin and interest rate spread to decrease.

Payments received in excess of expected cash flows may result in a pool of ACI residential loans becoming fully amortized and its carrying value reduced to zero even though outstanding contractual balances remain related to loans in the pool. Once the carrying value of a pool is reduced to zero, any future proceeds from the remaining loans are recognized as interest income upon receipt. The carrying value of one pool was reduced to zero in late 2011. Future expected cash flows from this pool totaled $105.6 million as of December 31, 2012. The UPB of loans remaining in this pool was $213.9 million at December 31, 2012. The timing of receipt of proceeds from loans in this pool may be unpredictable, leading to increased volatility in the yield on the pool.

Fair value adjustments of interest earning assets and interest bearing liabilities recorded at the time of the FSB Acquisition are accreted to interest income or expense over the lives of the related assets or liabilities. Generally, accretion of these fair value adjustments increases interest income and

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decreases interest expense, and thus has a positive impact on our net interest income, net interest margin and interest rate spread. The impact of accretion of fair value adjustments on interest income and interest expense will continue to decline as these assets and liabilities mature or are repaid and constitute a smaller portion of total interest earning assets and interest bearing liabilities.

The impact of accretion and ACI loan accounting on net interest income makes it difficult to compare our net interest margin and interest rate spread to those reported by other financial institutions.

The following tables present, for the years ended December 31, 2012, 2011 and 2010, information about (i) average balances, the total dollar amount of taxable equivalent interest income from earning assets and the resultant average yields; (ii) average balances, the total dollar amount of interest expense on interest bearing liabilities and the resultant average rates; (iii) net interest income; (iv) the interest rate spread; and (v) the net interest margin. Nonaccrual and restructured loans are included in the average balances presented in this table; however, interest income foregone on nonaccrual loans is not included. Yields have been calculated on a tax equivalent basis (dollars in thousands):

	2012			2011			2010		
	Average Balance	**Interest(1)**	**Yield/ Rate(1)**	**Average Balance**	**Interest(1)**	**Yield/ Rate(1)**	**Average Balance**	**Interest(1)**	**Yield/ Rate(1)**
Assets:									
Interest earning assets:									
Loans	$ 4,887,209	$ 587,571	12.02%	$ 3,848,837	$ 513,539	13.34%	$ 4,181,062	$ 431,468	10.32%
Investment securities available for sale	4,611,379	135,833	2.95%	3,654,137	127,630	3.49%	2,891,493	126,565	4.38%
Other interest earning assets	522,184	4,931	0.94%	628,782	2,743	0.44%	640,506	1,958	0.31%
Total interest earning assets	10,020,772	728,335	7.27%	8,131,756	643,912	7.92%	7,713,061	559,991	7.26%
Allowance for loan and lease losses	(56,463)			(57,462)			(38,236)		
Non-interest earning assets	2,387,719			2,866,486			3,513,839		
Total assets	$ 12,352,028			$ 10,940,780			$ 11,188,664		
Liabilities and Stockholders' Equity:									
Interest bearing liabilities:									
Interest bearing demand deposits	$ 504,614	3,155	0.63%	$ 382,329	2,499	0.65%	$ 273,897	1,981	0.72%
Savings and money market deposits	3,912,444	24,093	0.62%	3,366,466	29,026	0.86%	2,870,768	34,243	1.19%
Time deposits	2,632,451	38,930	1.48%	2,585,201	44,248	1.71%	3,889,961	72,120	1.85%
Total interest bearing deposits	7,049,509	66,178	0.94%	6,333,996	75,773	1.20%	7,034,626	108,344	1.54%
Borrowings:									
FHLB advances	2,227,910	57,040	2.56%	2,246,068	63,158	2.81%	2,244,601	59,784	2.66%
Short-term borrowings	12,435	51	0.41%	1,333	6	0.48%	7,812	72	0.92%
Total interest bearing liabilities	9,289,854	123,269	1.33%	8,581,397	138,937	1.62%	9,287,039	168,200	1.81%
Non-interest bearing demand deposits	1,099,448			622,377			440,673		
Other non-interest bearing liabilities	265,399			282,416			263,789		
Total liabilities	10,654,701			9,486,190			9,991,501		
Stockholders' equity	1,697,327			1,454,590			1,197,163		
	$ 12,352,028			$ 10,940,780			$ 11,188,664		

Total liabilities and stockholders' equity			
Net interest income	$ 605,066	$ 504,975	$ 391,791
Interest rate spread	5.94%	6.30%	5.45%
Net interest margin	6.04%	6.21%	5.08%

(1) On a tax-equivalent basis where applicable

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Increases and decreases in interest income, calculated on a tax-equivalent basis, and interest expense result from changes in average balances (volume) of interest earning assets and liabilities, as well as changes in average interest rates. The following table shows the effect that these factors had on the interest earned on our interest earning assets and the interest incurred on our interest bearing liabilities for the years indicated. The effect of changes in volume is determined by multiplying the change in volume by the previous year's average rate. Similarly, the effect of rate changes is calculated by multiplying the change in average rate by the previous year's volume. Changes applicable to both volume and rate have been allocated to volume (in thousands):

	2012 Compared to 2011			2011 Compared to 2010		
	Change Due to Volume	Change Due to Rate	Increase (Decrease)	Change Due to Volume	Change Due to Rate	Increase (Decrease)
Interest Income Attributable to:						
Loans	$ 124,837	$ (50,805)	$ 74,032	$ (44,197)	$ 126,268	$ 82,071
Investment securities available for sale	27,935	(19,732)	8,203	26,799	(25,734)	1,065
Other interest earning assets	(956)	3,144	2,188	(51)	836	785
Total interest income	151,816	(67,393)	84,423	(17,449)	101,370	83,921
Interest Expense Attributable to:						
Interest bearing demand deposits	732	(76)	656	709	(191)	518
Savings and money market deposits	3,147	(8,080)	(4,933)	4,274	(9,491)	(5,217)
Time deposits	628	(5,946)	(5,318)	(22,332)	(5,540)	(27,872)
Total interest bearing deposits	4,507	(14,102)	(9,595)	(17,349)	(15,222)	(32,571)
FHLB advances	(503)	(5,615)	(6,118)	41	3,333	3,374
Short-term borrowings	46	(1)	45	(32)	(34)	(66)
Total interest expense	4,050	(19,718)	(15,668)	(17,340)	(11,923)	(29,263)
Increase (decrease) in net interest income	$ 147,766	$ (47,675)	$ 100,091	$ (109)	$ 113,293	$ 113,184

Year ended December 31, 2012 compared to year ended December 31, 2011

Net interest income, calculated on a tax-equivalent basis, was $605.1 million for the year ended December 31, 2012 compared to $505.0 million for the year ended December 31, 2011, an increase of $100.1 million. The increase in net interest income was comprised of an increase in interest income of $84.4 million and a decrease in interest expense of $15.7 million.

The increase in tax-equivalent interest income resulted primarily from a $74.0 million increase in interest income from loans and an $8.2 million increase in interest income from investment securities available for sale.

Increased interest income from loans was attributable to a $1.0 billion increase in the average balance outstanding offset by a decrease in the average yield to 12.02% for 2012 from 13.34% for 2011. Offsetting factors contributed to the overall decline in the yield on loans:

New loans originated at lower market rates of interest comprised a greater percentage of the portfolio in 2012 than in 2011. New loans represented 55.8% of the average balance of loans outstanding in 2012 as compared to 24.0% in 2011. The tax equivalent yield on new loans was 4.32% for the year ended December 31, 2012 as compared to 4.93% for the year ended December 31, 2011. We expect the impact of growth of the new loan portfolio to lead to further declines in the overall yield on loans in future periods.

The yield on loans acquired in the FSB Acquisition increased to 21.76% for 2012 as compared to 16.00% for 2011. This increase resulted from (i) generally improved default frequency and severity rates leading to an increase in expected cash flows, (ii) covered loans being resolved at a faster rate than previously expected leading to acceleration of both actual and forecasted cash flows and higher accretion and (iii) recognition of all proceeds from resolution of loans in the residential pool with a carrying value of zero as interest income, as discussed above. Specifically, proceeds of $29.9 million from the sale of loans in this pool were recognized as interest income in the fourth quarter of 2012.

The average balance of investment securities available for sale increased by $1.0 billion for the year ended December 31, 2012 over the year ended December 31, 2011 while the yield declined to 2.95% for 2012 from 3.49% for 2011. The decline in yield was primarily a result of adding securities to the portfolio at lower prevailing rates.

The primary components of the decrease in interest expense for the year ended December 31, 2012 as compared to the year ended December 31, 2011 were a $9.6 million decline in interest expense on deposits and a $6.1 million decline in interest expense on FHLB advances and other borrowings. The most significant factor contributing to the decline in interest expense on deposits was a decline in the average rate paid on interest bearing deposits to 0.94% in 2012 as compared to 1.20% in 2011, partly offset by a $0.7 billion increase in the average balance outstanding. The decrease in average rate resulted primarily from a decline in market rates of interest across deposit products. Specifically, the average rate paid on savings and money market deposits declined to 0.62% for the year ended December 31, 2012 from 0.86% for the year ended December 31, 2011, a decrease of 0.24%. The average rate paid on time deposits, inclusive of accretion of fair value adjustments, declined by 0.23% to 1.48% in 2012 from 1.71% in 2011. Excluding the impact of accretion of fair value adjustments, the average rate paid on time deposits declined by 0.48%, to 1.50% from 1.98%. Accretion of fair value adjustments declined by $6.5 million for the year ended December 31, 2012 as compared to the year ended December 31, 2011. The average rate paid on FHLB advances, inclusive of the impact of cash flow hedges and fair value accretion, declined by 0.25%, to 2.56% in 2012 from 2.81% in 2011. This decline resulted primarily from maturing advances being rolled over at lower market rates, partially offset by a decline of $4.3 million in accretion of fair value adjustments. The impact of accretion of fair value adjustments on interest expense will continue to decline as the related borrowings mature.

The net interest margin, calculated on a tax-equivalent basis, for the year ended December 31, 2012 was 6.04% as compared to 6.21% for the year ended December 31, 2011, a decrease of 17 basis points. The interest rate spread declined to 5.94% for the year ended December 31, 2012 from 6.30% for the year ended December 31, 2011. The declines in net interest margin and interest rate spread resulted primarily from lower yields on loans and investment securities partly offset by a lower cost of deposits and borrowings, as discussed above.

Year ended December 31, 2011 compared to year ended December 31, 2010

Net interest income, calculated on a tax-equivalent basis, increased to $505.0 million for the year ended December 31, 2011 from $391.8 million for the year ended December 31, 2010, an increase of $113.2 million. The increase was comprised of an increase in interest income of $83.9 million coupled with a decline in interest expense of $29.3 million.

The increase in tax-equivalent interest income was primarily driven by an $82.1 million increase in interest income from loans. The average yield on loans increased by 302 basis points, to 13.34% for the year ended December 31, 2011 from 10.32% for the year ended December 31, 2010, primarily because of an increase in the yield on loans acquired in the FSB Acquisition to 16.00% for the year ended December 31, 2011 from 10.66% for the year ended December 31, 2010. This increase resulted from (i) covered loans being resolved at a faster rate than expected, resulting in higher accretion, (ii) improved default frequency and severity rates leading to an increase in expected cash flows, (iii) favorable resolutions of commercial ACI loans, and (iv) to a lesser extent, recognition of all

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proceeds from resolution of loans in one residential pool with a carrying value of zero as interest income, as discussed above. The average yield on new loans declined to 4.93% for the year ended December 31, 2011 from 5.46% for the year ended December 31, 2010, primarily due to continued declines in market interest rates. New loans constituted 41.3% of loans, net of premiums, discounts, deferred fees and costs, at December 31, 2011 as compared to 13.7% at December 31, 2010. The overall increase in the average yield on loans was in part offset by a decrease of $332.2 million in the average balance outstanding. The decrease in the average balance of loans resulted from paydowns and resolutions of covered loans, partially offset by growth in the new loan portfolio. The average balance of loans acquired in the FSB Acquisition declined to $2.9 billion for the year ended December 31, 2011 from $3.9 billion for the year ended December 31, 2010, while the average balance of new loans grew to $923.8 million from $274.6 million for the years ended December 31, 2011 and 2010, respectively.

Interest income from investment securities, calculated on a tax-equivalent basis, increased by $1.1 million as a result of a $762.6 million increase in the average balance, substantially offset by a decline in the average yield to 3.49% from 4.38%. The decline in average yield is indicative of the addition of securities to the portfolio at lower prevailing market rates of interest.

The decline in interest expense for the year ended December 31, 2011 was primarily driven by a decrease of $32.6 million in interest expense on deposits, partially offset by an increase of $3.4 million in interest expense on FHLB advances. The average rate paid on interest bearing deposits declined by 34 basis points, to 1.20% from 1.54%. Three factors contributed to the decline in the average rate paid on deposits. A decrease in market rates of interest across all deposit product groups and continued runoff of higher cost time deposits were partially offset by a reduction in accretion of acquisition date fair value adjustments. Accretion of fair value adjustments on time deposits totaled $7.0 million for the year ended December 31, 2011 as compared to $21.4 million for the year ended December 31, 2010. Accretion continues to decrease as time deposits outstanding at the date of the FSB Acquisition mature. The average rate paid on time deposits, exclusive of fair value accretion, declined to 1.98% for 2011 from 2.41% for 2010. A decline in the overall average balance of deposits also contributed to reduced interest expense. Consistent with our strategy of replacing more costly time deposits with lower cost deposits, the average balance of time deposits declined by $1.3 billion while the average balance of interest bearing demand, savings and money market deposits increased by $604.1 million. The increase in interest expense on FHLB advances was primarily attributable to a decrease of $4.8 million in accretion of acquisition date fair value adjustments.

The net interest margin, calculated on a tax-equivalent basis, increased by 113 basis points to 6.21% for the year ended December 31, 2011 from 5.08% for the year ended December 31, 2010. Similarly, the interest rate spread increased by 85 basis points to 6.30% for 2011 from 5.45% for 2010. Increases in the net interest margin and interest rate spread were driven primarily by the increased yield on loans and the lower cost of interest bearing deposits discussed above.

Provision for Loan Losses

The provision for loan losses is the amount of expense that, based on our judgment, is required to maintain the ALLL at an adequate level to absorb probable losses inherent in the loan portfolio at the balance sheet date and that, in management's judgment, is appropriate under U.S. generally accepted accounting principles. The determination of the amount of the ALLL is complex and involves a high degree of judgment and subjectivity. Our determination of the amount of the allowance and corresponding provision for loan losses considers ongoing evaluations of the various segments of the loan portfolio and of individually significant credits, levels of non-performing loans and charge-offs, statistical trends and economic and other relevant factors. See "Analysis of the Allowance for Loan and Lease Losses" below for more information about how we determine the appropriate level of the allowance.

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Because the determination of fair value at which the loans acquired in the FSB Acquisition were initially recorded encompassed assumptions about expected future cash flows and credit risk, no ALLL was recorded at the date of acquisition. An allowance related to ACI loans is recorded only when estimates of future cash flows related to these loans are revised downward, indicating further deterioration in credit quality. An allowance for non-ACI loans may be established if factors considered relevant by management indicate that the credit quality of the non-ACI loans has deteriorated.

Since the recognition of a provision for (recovery of) loan losses on covered loans represents an increase (reduction) in the amount of reimbursement we ultimately expect to receive from the FDIC, we also record an increase (decrease) in the FDIC indemnification asset for the present value of the projected increase (reduction) in reimbursement, with a corresponding increase (decrease) in non-interest income, recorded in "Net gain (loss) on indemnification asset" as discussed below in the section entitled "Non-interest income." Therefore, the impact on our results of operations of any provision for (recovery of) loan losses on covered loans is significantly mitigated by the corresponding impact on non-interest income. For the years ended December 31, 2012, 2011 and 2010, we recorded provisions for (recoveries of) losses on covered loans of $(0.5) million, $(7.7) million and $46.5 million and increases (reductions) in related non-interest income of $0.3 million, $(6.3) million and $29.3 million, respectively.

For the years ended December 31, 2012, 2011 and 2010, we recorded provisions for loan losses of $19.4 million, $21.5 million and $4.9 million, respectively, related to new loans. These loans are not protected by the Loss Sharing Agreements and as such, these provisions are not offset by increases in non-interest income. The provision for new loans declined for the year ended December 31, 2012 as compared to the year ended December 31, 2011 in spite of increased loan growth in 2012. The impact of loan growth on the provision for loan losses was partially offset by decreases in the peer group loss factors applied in determining the ALLL for the new commercial portfolio. See the section entitled "Analysis of the Allowance for Loan and Leases" below for further discussion. The increase in the provision for losses on new loans for the year ended December 31, 2011 as compared to the year ended December 31, 2010 resulted primarily from growth in the new loan portfolio.

Non-Interest Income

The Company reported non-interest income of $89.2 million, $163.2 million and $297.8 million for the years ended December 31, 2012, 2011 and 2010, respectively. The majority of our non-interest income resulted from the resolution of assets covered by our Loss Sharing Agreements with the FDIC and accretion of discount on the FDIC indemnification asset. Typically, the primary components of non-interest income of financial institutions are service charges and fees and gains or losses related to the sale or valuation of investment securities, loans and other assets. Thus, it is difficult to compare the amount and composition of our non-interest income with that of other financial institutions of our size.

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The following table presents a comparison of the categories of non-interest income for the years ended December 31, 2012, 2011 and 2010 (in thousands):

	2012	2011	2010
Accretion of discount on FDIC indemnification asset	$ 15,306	$ 55,901	$ 134,703
Income from resolution of covered assets, net	51,016	18,776	121,462
Net gain (loss) on indemnification asset	(6,030)	79,812	17,736
FDIC reimbursement of costs of resolution of covered assets	19,569	31,528	29,762
Loss on sale of covered loans, net	(29,270)	(70,366)	(76,360)
Non-interest income from covered assets	50,591	115,651	227,303
Service charges and fees	12,716	11,128	10,567
Gain on sale of non-covered loans, net	613	652	50
Gain (loss) on sale or exchange of investment securities available for sale, net	17,039	1,136	(998)
Loss on extinguishment of debt	(14,175)		
Loss on termination of interest rate swap	(8,701)		
Mortgage insurance income	9,772	16,904	18,441
Settlement with the FDIC			24,055
Other non-interest income	21,392	17,746	18,361
	$ 89,247	$ 163,217	$ 297,779

Non-interest income related to transactions in the covered assets

Accretion of discount on the FDIC indemnification asset totaled $15.3 million, $55.9 million and $134.7 million for the years ended December 31, 2012, 2011 and 2010, respectively. Accretion is a result of discounting and may also increase or decrease from period to period due to changes in expected cash flows from the ACI loans.

The FDIC indemnification asset was initially recorded at its estimated fair value of $3.4 billion, representing the present value of estimated future cash payments from the FDIC for probable losses on covered assets, up to 90 days of past due interest, excluding interest related to loans on nonaccrual at acquisition, and reimbursement of certain expenses. A discount rate of 7.10%, determined using a risk-free yield curve plus a premium reflecting uncertainty related to the collection, amount and timing of cash flows and liquidity concerns, was used in the initial calculation of fair value. If projected cash flows from the ACI loans increase, the yield on the loans will increase accordingly and the discount rate of accretion on the FDIC indemnification asset will decrease as less cash flow is expected to be recovered from the indemnification asset. For the years ended December 31, 2012, 2011 and 2010, the average rate at which discount was accreted on the FDIC indemnification asset was 0.89%, 2.48% and 4.69%, respectively.

The decrease in total accretion for the year ended December 31, 2012 as compared to the year ended December 31, 2011 and for the year ended December 31, 2011 as compared to the year ended December 31, 2010 related both to the decrease in the average discount rate resulting from increases in projected cash flows from the ACI loans and to the decrease in the average balance of the indemnification asset. The average balance of the indemnification asset decreased primarily as a result of the submission of claims and receipt of cash from the FDIC under the terms of the Loss Sharing Agreements. We expect the accretion rate to be negative, and to begin recording amortization of, rather than accretion on, the indemnification asset beginning in the first quarter of 2013. Additionally, as we continue to submit claims under the Loss Sharing Agreements, the balance of the indemnification asset will continue to decline.

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The balance of the FDIC indemnification asset is also reduced or increased as a result of decreases or increases in estimated cash flows to be received from the FDIC related to the gains or losses recorded in our consolidated financial statements from transactions in the covered assets. When these transaction gains or losses are recorded, we also record an offsetting amount in the statement of income line item "Net gain (loss) on indemnification asset." This line item includes the significantly mitigating impact of FDIC indemnification related to the following types of transactions in covered assets:

- gains or losses from the resolution of covered assets;
- provisions for (recoveries of) losses on covered loans;
- gains or losses on the sale of covered loans;
- gains or losses on the sale of OREO; and
- impairment of OREO.

Each of these types of transactions is discussed further below.

A rollforward of the FDIC indemnification asset from December 31, 2009 to December 31, 2012 follows (in thousands):

Balance, December 31, 2009	$ 3,279,165
Accretion	134,703
Reduction for claims filed	(764,203)
Net gain on indemnification asset	17,736
Balance, December 31, 2010	2,667,401
Accretion	55,901
Reduction for claims filed	(753,963)
Net gain on indemnification asset	79,812
Balance, December 31, 2011	2,049,151
Accretion	15,306
Reduction for claims filed	(600,857)
Net loss on indemnification asset	(6,030)
Balance, December 31, 2012	$ 1,457,570

Covered loans may be resolved through prepayment, short sale of the underlying collateral, foreclosure, sale of the loans or charge-off. For loans resolved through prepayment, short sale or foreclosure, the difference between consideration received in resolution of the loans and the carrying value of the loans is recorded in the consolidated statement of income line item "Income from resolution of covered assets, net." Both gains and losses on individual resolutions are included in this line item. Losses from the resolution of covered loans increase the amount recoverable from the FDIC under the Loss Sharing Agreements. Gains from the resolution of covered loans reduce the amount recoverable from the FDIC under the Loss Sharing Agreements. These additions to or reductions in amounts recoverable from the FDIC related to the resolution of covered loans are recorded in non-interest income in the line item "Net gain (loss) on indemnification asset" and reflected as corresponding increases or decreases in the FDIC indemnification asset. The amount of income recorded in any period will be impacted by the number and UPB of ACI loans resolved, the amount of consideration received, and our ability to accurately project cash flows from ACI loans in future periods.

As history of the performance and resolution of ACI loans has grown and we have updated our projections of cash flows from the ACI loans, gains or losses recorded on resolution of covered loans

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have declined in absolute terms. As our projections of cash flows from the ACI loans have been updated, these cash flows have increasingly been reflected in interest income, through increased yields and higher accretion, rather than in income from resolution of covered assets. For the years ended December 31, 2012, 2011 and 2010, ACI loans with a UPB of $1.0 billion, $1.7 billion and $1.9 billion were resolved by payment in full, foreclosure or short sale.

The following table provides further detail of the components of income from resolution of covered assets, net for the years ended December 31, 2012, 2011 and 2010 (in thousands):

	2012	2011	2010
Payments in full	$ 70,562	$ 90,773	$ 142,172
Foreclosures	(19,326)	(46,726)	(15,691)
Short sales	(5,046)	(25,185)	7,801
Modifications			(2,424)
Charge-offs	(2,918)	(6,917)	(14,303)
Recoveries	7,744	6,831	3,907
Income from resolution of covered assets, net	$ 51,016	$ 18,776	$ 121,462

As expected, the impact of payments in full on the results of operations declined for the year ended December 31, 2012 as compared to the year ended December 31, 2011 as well as for the year ended December 31, 2011 as compared to the year ended December 31, 2010. This is a result of additional history with the performance of covered loans being reflected in our updated cash flow forecasts and a decline in the number of paid in full resolutions. We expect the impact on non-interest income of resolutions from payments in full to decline further in the future as we continue to update our cash flow forecasts and the number of loans in the portfolio likely to be resolved in this manner decreases.

A decline in the level of foreclosure and short sale activity coupled with improving home prices led to a decrease in losses on resolutions from foreclosures and short sales for the year ended December 31, 2012 as compared to the year ended December 31, 2011. In contrast, home price depreciation in our primary market areas led to increased losses, or declines in net gains, from short sales and foreclosures for the year ended December 31, 2011 as compared to the year ended December 31, 2010.

The impact of charge-offs has declined year over year due primarily to reductions in the number and dollar amount of charge-offs of home equity lines of credit.

Under the Purchase and Assumption Agreement, we are permitted to sell on an annual basis up to 2.5% of the covered loans, based upon the UPB at the time of the FSB Acquisition, or approximately $280.0 million, without prior consent of the FDIC. Any losses incurred from such loan sales are covered under the Loss Sharing Agreements. The significantly mitigating amounts recoverable from the FDIC related to these losses are recorded as increases in the FDIC indemnification asset and corresponding increases in the non-interest income line item "Net gain (loss) on indemnification asset."

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Sales of covered loans for the years ended December 31, 2012, 2011 and 2010 are summarized as follows (in thousands):

	2012	2011	2010
Unpaid principal balance of loans sold	$ 239,135	$ 268,588	$ 272,178
Gross cash proceeds	$ 104,543	$ 76,422	$ 68,099
Carrying value of loans sold	103,127	146,148	143,526
Transaction costs incurred	(747)	(640)	(933)
Net pre-tax impact on earnings, excluding gain on indemnification asset	$ 669	$ (70,366)	$ (76,360)
Loss on sale of covered loans	$ (29,270)	$ (70,366)	$ (76,360)
Proceeds recorded in interest income	29,939		
	$ 669	$ (70,366)	$ (76,360)
Gain on indemnification asset	$ 30,725	$ 56,053	$ 57,747

Loans were sold on a non-recourse basis to third parties. The decline in loss on sale of covered loans for the year ended December 31, 2012 as compared to the year ended December 31, 2011 resulted from (i) improved pricing on the sale and (ii) the impact of sale of loans from the pool of residential ACI loans with a carrying value of zero. Loans with an aggregate UPB of $73.1 million were sold from this pool in 2012 and the proceeds of $29.9 million were recorded in interest income. No loss was recorded in the consolidated financial statements on the sale of loans from this pool. Since reimbursements from the FDIC under the Loss Sharing Agreements are calculated based on UPB of the loans rather than on their financial statement carrying amounts, the gain on indemnification asset recorded related to the sale of covered loans for 2012 includes a component related to the sale of loans from the zero carrying value pool. Historically, we have sold covered loans in the fourth quarter of each fiscal year. We anticipate that we will continue to exercise our right to sell covered loans in future periods, and depending on market conditions, expect to sell loans on a quarterly, rather than an annual basis.

Additional impairment arising since the FSB Acquisition related to covered loans is recorded in earnings through the provision for losses on covered loans. Under the terms of the Loss Sharing Agreements, the Company is entitled to recover from the FDIC a portion of losses on these loans; therefore, the discounted amount of additional expected cash flows from the FDIC related to these losses is recorded in non-interest income in the line item "Net gain (loss) on indemnification asset" and reflected as a corresponding increase in the FDIC indemnification asset. Alternatively, a recovery of the provision for loan losses related to covered loans results in a reduction in the amounts the Company expects to recover from the FDIC and a corresponding reduction in the FDIC indemnification asset and in non-interest income, reflected in the line item "Net gain (loss) on indemnification asset."

The Company records impairment charges related to declines in the net realizable value of OREO properties subject to the Loss Sharing Agreements and recognizes additional gains or losses upon the eventual sale of such OREO properties. These amounts are included in non-interest expense in the consolidated financial statements. The estimated increase or reduction in amounts recoverable from the FDIC with respect to these gains and losses is reflected as an increase or decrease in the FDIC indemnification asset and in non-interest income in the line item "Net gain (loss) on indemnification asset."

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Net gain (loss) on indemnification asset of $(6.0) million, $79.8 million and $17.7 million was recorded for the years ended December 31, 2012, 2011 and 2010, respectively, representing the net change in the FDIC indemnification asset from increases or decreases in cash flows estimated to be received from the FDIC related to gains and losses from covered assets as discussed in the preceding paragraphs. The net impact on earnings before taxes of transactions related to covered assets for the years ended December 31, 2012, 2011 and 2010 was $10.5 million, $(12.2) million and $(1.9) million, respectively, as detailed in the following tables (in thousands):

	2012		
	Transaction Income (Loss)	Net Gain (Loss) on Indemnification Asset	Net Impact on Pre-tax Earnings
Recovery of losses on covered loans	$ 503	$ 344	$ 847
Income from resolution of covered assets, net	51,016	(41,962)	9,054
Net loss on sale of covered loans	(29,270)	30,725	1,455
Gain on sale of OREO	4,164	(3,078)	1,086
Impairment of OREO	(9,926)	7,941	(1,985)
	$ 16,487	$ (6,030)	$ 10,457

	2011		
	Transaction Income (Loss)	Net Gain (Loss) on Indemnification Asset	Net Impact on Pre-tax Earnings
Recovery of losses on covered loans	$ 7,692	$ (6,327)	$ 1,365
Income from resolution of covered assets, net	18,776	(6,871)	11,905
Net loss on sale of covered loans	(70,366)	56,053	(14,313)
Loss on sale of OREO	(23,576)	17,272	(6,304)
Impairment of OREO	(24,569)	19,685	(4,884)
	$ (92,043)	$ 79,812	$ (12,231)

	2010		
	Transaction Income (Loss)	Net Gain (Loss) on Indemnification Asset	Net Impact on Pre-tax Earnings
Provision for losses on covered loans	$ (46,481)	$ 29,291	$ (17,190)
Income from resolution of covered assets, net	121,462	(84,138)	37,324
Net loss on sale of covered loans	(76,360)	57,747	(18,613)
Loss on sale of OREO	(2,174)	1,932	(242)
Impairment of OREO	(16,131)	12,904	(3,227)
	$ (19,684)	$ 17,736	$ (1,948)

Certain OREO and foreclosure related expenses, including fees paid to attorneys and other service providers, property preservation costs, maintenance and repair costs, advances for taxes and insurance, appraisal costs and inspection costs are also reimbursed under the terms of the Loss Sharing Agreements. Such expenses are recorded in non-interest expense when incurred, and the reimbursement is recorded as "FDIC reimbursement of costs of resolution of covered assets" in non-interest income when submitted to the FDIC, generally upon ultimate resolution of the underlying covered assets. This may result in the expense and the related income from reimbursements being

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recorded in different periods. For the years ended December 31, 2012, 2011, and 2010 non-interest expense included approximately $20.3 million, $32.0 million and $49.7 million, respectively, of such expenses. During the years ended December 31, 2012, 2011, and 2010, claims of $19.6 million, $31.5 million, and $29.8 million, respectively, were submitted to the FDIC. As of December 31, 2012, $16.9 million of expenses incurred to date remained to be submitted for reimbursement from the FDIC in future periods.

We expect the impact on non-interest income of transactions in the covered assets to decline in future periods as these assets comprise a smaller percentage of our total assets.

Other components of non-interest income

Gains on the sale of investment securities available for sale during the year ended December 31, 2012 related primarily to the following:

- We sold agency mortgage-backed securities with an aggregate fair value of $526.7 million and a combined effective yield of 1.22%, utilizing the proceeds to extinguish $520.0 million of FHLB advances and terminate a cash flow hedge with a combined cost of borrowing of 3.46%. We realized a gain on sale of these securities of $10.0 million, a loss on extinguishment of the FHLB advances of $14.2 million and a loss on termination of the cash flow hedge of $8.7 million. This transaction is expected to have a positive impact on our net interest margin in 2013.

- Gains of $6.4 million on the sale of financial institution preferred stocks resulted from a decision to reduce our level of exposure to this asset class.

- We realized net gains of $0.6 million from the liquidation of certain positions in asset-backed securities, primarily student loan backed securities, in response to market developments.

Mortgage insurance income represents mortgage insurance proceeds received with respect to covered loans in excess of the portion of losses on those loans that is recoverable from the FDIC. Mortgage insurance proceeds up to the amount of losses on covered loans recoverable from the FDIC offsets amounts otherwise reimbursable by the FDIC. Decreases in mortgage insurance income for the year ended December 31, 2012 as compared to the year ended December 31, 2011 and for the year ended December 31, 2011 as compared to the year ended December 31, 2010 resulted primarily from declines in the volume of claims being processed.

Non-interest income for the year ended December 31, 2010 included approximately $24.1 million representing the settlement of a dispute with the FDIC associated with the valuation established on certain investment securities at the time of the FSB Acquisition.

Other non-interest income for the year ended December 31, 2012 included a gain of $5.3 million on the acquisition of Herald. For further discussion, see Note 3 to the consolidated financial statements.

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Non-Interest Expense

The following table presents the components of non-interest expense for the years ended December 31, 2012, 2011 and 2010 (in thousands):

	2012	2011	2010
Employee compensation and benefits	$ 173,261	$ 272,991	$ 144,486
Occupancy and equipment	54,465	36,680	28,692
Impairment of other real estate owned	9,926	24,569	16,131
(Gain) loss on sale of other real estate owned	(4,164)	23,576	2,174
Other real estate owned expense	7,624	13,001	19,003
Foreclosure expense	12,644	18,976	30,669
Change in value of FDIC warrant			21,832
Deposit insurance expense	7,248	8,480	13,899
Professional fees	15,468	17,330	14,677
Telecommunications and data processing	12,462	12,041	12,321
Other non-interest expense	34,139	28,161	19,436
	$ 323,073	$ 455,805	$ 323,320

Non-interest expense as a percentage of average assets, excluding a $110.4 million equity based compensation charge recorded in conjunction with the IPO in 2011, was 2.6%, 3.2% and 2.9% for the years ended December 31, 2012, 2011 and 2010, respectively. The more significant components of non-interest expense are discussed below.

Employee compensation and benefits

As is typical for financial institutions, employee compensation and benefits represents the single largest component of recurring non-interest expense. Excluding the impact of the $110.4 million equity based compensation charge recorded in conjunction with the IPO as discussed further below, employee compensation and benefits increased by $10.7 million or 6.6% for the year ended December 31, 2012 as compared to the year ended December 31, 2011 and by $18.1 million, or 12.5% for the year ended December 31, 2011 as compared to the year ended December 31, 2010. These increases in employee compensation and benefits costs reflected growth and expansion of our operations and continued enhancement of our management team and supporting personnel. We expect compensation and benefits costs to increase in 2013 as we expand our operations in the Tri-State area.

Prior to the consummation of the IPO, our employee compensation and benefits expense included expense related to PIUs issued to certain members of executive management. The PIUs were divided into two equal types of profits interests. Half of the PIUs, referred to as time-based PIUs, vested with the passage of time following the grant date. Compensation expense related to time-based PIUs was recorded on a straight line basis over the vesting period based on their fair value. Fair value of the time-based PIUs was estimated using a Black-Scholes option pricing model incorporating estimates of the per share value of our common stock and assumptions as to expected volatility, dividends, expected term, and risk-free rates. The remaining half of the PIUs, referred to as IRR-based PIUs, vested immediately prior to the consummation of the IPO and compensation expense related to the IRR-based PIUs was recorded at that time. In conjunction with the IPO, the PIUs were exchanged for a combination of vested and unvested common shares and vested and unvested stock options. The equity instruments issued in exchange for PIUs included:

- 3,863,491 vested common shares

- 1,931,745 unvested common shares

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3,023,314 vested stock options

1,511,656 unvested stock options

The unvested instruments corresponded to the unvested time-based PIUs and continued to vest according to the original vesting schedule of such time-based PIUs. The remainder of these instruments vested in 2012. At the time of the IPO, we recorded additional compensation expense of approximately $110.4 million related to the vesting of the IRR-based PIUs and the adjustment of the fair value of the vested portion of time-based PIUs. This charge to compensation expense was offset by a credit to paid-in capital and therefore did not impact the Company's capital position. Fair value of the PIUs at the date of the IPO was measured based on the fair value of the common shares and options for which they were exchanged. The common shares were valued at the IPO price of $27. Fair value of the options was estimated using a Black-Scholes option pricing model. See Note 17 to the consolidated financial statements for more information about the valuation of these instruments. Employee compensation and benefits expense included $13.2 million, $141.0 million, inclusive of the $110.4 million charge recorded in conjunction with the IPO, and $36.2 million for the years ended December 31, 2012, 2011 and 2010, respectively, related to PIUs and instruments issued in exchange for PIUs.

Occupancy and equipment

Occupancy and equipment expense increased by $17.8 million or 48.5% for the year ended December 31, 2012 as compared to the year ended December 31, 2011 and by $8.0 million, or 27.8% for the year ended December 31, 2011 as compared to the year ended December 31, 2010. These increases related primarily to the expansion and refurbishment of our branch network and enhancements to our technology platforms including, for 2012, certain costs related to three branches that we plan to open in Manhattan in 2013. We expect occupancy and equipment costs to increase in 2013 as we expand our operations in the Tri-State area.

OREO and foreclosure related components of non-interest expense

At December 31, 2012 as well as during the years ended December 31, 2012, 2011 and 2010, all of our OREO properties were covered by the Loss Sharing Agreements. Therefore, any losses from sale or impairment of OREO were substantially offset by non-interest income related to indemnification by the FDIC. Generally, OREO and foreclosure related expenses are also reimbursed under the terms of the Loss Sharing Agreements.

Impairment of OREO declined by $14.7 million to $9.9 million for the year ended December 31, 2012 from $24.6 million for the year ended December 31, 2011. This decline resulted from a reduction in the level of OREO inventory and recovery in home prices during 2012. In contrast, deterioration in home prices led to an increase in impairment of OREO of $8.5 million to $24.6 million for the year ended December 31, 2011 as compared to $16.1 million for the year ended December 31, 2010.

Net gains on the sale of OREO totaled $4.2 million for the year ended December 31, 2012, as compared to net losses on the sale of OREO of $23.6 million for the year ended December 31, 2011. The impact of gains and losses on OREO sales declined in part because of a decline in the level of OREO sale activity. As illustrated in the tables below, the percentage of total residential units sold at a gain increased in 2012 as compared to 2011, the average gain on units sold at a gain increased, and the average loss on units sold at a loss declined, reflecting improvements in real estate values.

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The following tables summarize OREO sale activity for the years ended December 31, 2012 and 2011 (dollars in thousands):

	2012 Units sold	2012 Percent of Total Units	2012 Total Gain (Loss)	2011 Units sold	2011 Percent of Total Units	2011 Total Gain (Loss)
Residential OREO sales	1,326	96.9%	$ 2,798	2,785	98.6%	$ (24,068)
Commercial OREO sales	42	3.1%	1,366	40	1.4%	492
	1,368	100.0%	$ 4,164	2,825	100.0%	$ (23,576)

	2012 Units sold	2012 Percent of Total Units	2012 Average Gain or (Loss)	2011 Units sold	2011 Percent of Total Units	2011 Average Gain or (Loss)
Residential OREO sales:						
Units sold at a gain	659	49.7%	$ 22	870	31.2%	$ 16
Units sold at a loss	667	50.3%	$ (17)	1,915	68.8%	$ (20)
	1,326	100.0%	$ 2	2,785	100.0%	$ (9)

The increase in net losses on sales of OREO for the year ended December 31, 2011 compared to the year ended December 31, 2010 resulted from deterioration in home prices and the high level of OREO sale activity in 2011.

In total, foreclosure and OREO related expenses decreased by $11.7 million for the year ended December 31, 2012 as compared to the year ended December 31, 2011 and by $17.7 million for the year ended December 31, 2011 as compared to the year ended December 31, 2010. These declines were primarily attributable to decreases in the levels of foreclosure activity and OREO inventory. There were 1,027, 2,214 and 4,774 residential units in the foreclosure pipeline and 402, 778 and 1,318 residential units in OREO inventory at December 31, 2012, 2011 and 2010, respectively.