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## Section 1: 8-K (8-K)

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported):  
February 23, 2010



**TCF FINANCIAL CORPORATION**  
(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of incorporation or organization)

**001-10253**  
(Commission File Number)

**41-1591444**  
(IRS Employer Identification No.)

**200 Lake Street East, Mail Code EX0-03-A, Wayzata, Minnesota 55391-1693**  
(Address of principal executive offices)

**(952) 745-2760**  
(Registrant's telephone number, including area code)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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### Item 8.01 Other Events

On February 23, 2010, TCF Financial Corporation (the "Company") entered into that certain Underwriting Agreement (the "Underwriting Agreement") with

Morgan Stanley & Co. Incorporated and J.P. Morgan Securities Inc., as managers of the several underwriters named in Schedule II thereto (collectively, the "Underwriters"), providing for the offer and sale by the Company of 10,715,000 shares of its common stock, par value \$.01 per share, at a price to the public of \$14.00 per share (the "Shares"). In addition, pursuant to the Underwriting Agreement, the Company granted to the Underwriters a 30-day option to purchase up to an additional 1,607,250 Shares, which the Underwriters exercised in full on February 24, 2010. The closing of the sale of the 12,322,250 Shares occurred on February 26, 2010.

Pursuant to the Underwriting Agreement, the Company agreed to a 90-day "lock-up" period, and its directors and certain of its executive officers entered into agreements in substantially the form included in the Underwriting Agreement pursuant to which they agreed to a 60-day "lock-up" period, with respect to the sales of specified securities, subject to certain exceptions.

The foregoing description of the material terms of the Underwriting Agreement is qualified in its entirety by reference to the Underwriting Agreement, which is attached hereto as Exhibit 1.1 and is incorporated herein by reference. The terms of the offering are described in the Company's Prospectus dated December 11, 2008, constituting a part of the Company's effective shelf registration statement on Form S-3, Registration No. 333-156068, as supplemented by a Prospectus Supplement dated February 23, 2010. A copy of the Company's press release announcing the exercise of the overallotment option and closing of the offering is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

#### Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
1.1	Underwriting Agreement dated February 23, 2010 by and among TCF Financial Corporation and Morgan Stanley & Co. Incorporated and J.P. Morgan Securities Inc., as managers of the several underwriters named in Schedule II thereto.
5.1	Opinion of Kaplan, Strangis and Kaplan, P.A.
99.1	Press Release of TCF Financial Corporation dated February 26, 2010.

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#### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

TCF FINANCIAL CORPORATION

/s/ William A. Cooper

William A. Cooper,  
Chairman and Chief Executive Officer  
(Principal Executive Officer)

/s/ Thomas F. Jasper

Thomas F. Jasper, Executive Vice President and  
Chief Financial Officer  
(Principal Financial Officer)

/s/ David M. Stautz

David M. Stautz, Senior Vice President,  
Controller and Assistant Treasurer  
(Principal Accounting Officer)

Dated: February 26, 2010

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## Section 2: EX-1.1 (EX-1.1)

Exhibit 1.1

TCF FINANCIAL CORPORATION

COMMON STOCK, \$0.01 PAR VALUE PER SHARE

## UNDERWRITING AGREEMENT

February 23, 2010

February 23, 2010

To the Managers named in Schedule I hereto  
for the Underwriters named in Schedule II hereto

Ladies and Gentlemen:

TCF Financial Corporation, a Delaware corporation (the “**Company**”), proposes to issue and sell to the several underwriters named in Schedule II hereto (the “**Underwriters**”), for whom you are acting as managers (the “**Managers**”), the number of shares of its common stock, \$0.01 par value per share, the “**Common Stock**”), set forth in Schedule I hereto (the “**Firm Shares**”). The Company also proposes to issue and sell to the several Underwriters not more than the number of additional shares of its Common Stock set forth in Schedule I hereto (the “**Additional Shares**”) if and to the extent that you, as Managers of the offering, shall have determined to exercise, on behalf of the Underwriters, the right to purchase such shares of Common Stock granted to the Underwriters in Section 2 hereof. The Firm Shares and the Additional Shares are hereinafter collectively referred to as the “**Shares**.” If the firm or firms listed in Schedule II hereto include only the Managers listed in Schedule I hereto, then the terms “Underwriters” and “Managers” as used herein shall each be deemed to refer to such firm or firms.

The Company has filed with the Securities and Exchange Commission (the “**Commission**”) a registration statement, including a prospectus, (the file number of which is set forth in Schedule I hereto) on Form S-3, relating to the securities (the “**Shelf Securities**”), including the Shares, to be issued from time to time by the Company. The registration statement as amended to the date of this Agreement, including the information (if any) deemed to be part of the registration statement at the time of effectiveness pursuant to Rule 430A or Rule 430 B under the Securities Act of 1933, as amended (the “**Securities Act**”), is hereinafter referred to as the “**Registration Statement**”, and the related prospectus covering the Shelf Securities dated December 11, 2008 in the form first used to confirm sales of the Shares (or in the form first made available to the Underwriters by the Company to meet requests of purchasers pursuant to Rule 173 under the Securities Act) is hereinafter referred to as the “**Basic Prospectus**.” The Basic Prospectus, as supplemented by the prospectus supplement specifically relating to the Shares in the form first used to confirm sales of the Shares (or in the form first made available to the Underwriters by the Company to meet requests of purchasers pursuant to Rule 173 under the Securities Act) is hereinafter referred to as the “**Prospectus**,” and the term “**preliminary prospectus**” means any preliminary form of the Prospectus. For purposes of this Agreement, “**free writing prospectus**” has the meaning set forth in Rule 405 under the Securities Act, “**Time of Sale Prospectus**” means the preliminary prospectus together with the free writing prospectuses, if any, each identified in Schedule I hereto, and “**broadly available road show**” means a “bona fide electronic road show” as defined in Rule 433(h)(5) under the Securities Act that

has been made available without restriction to any person. As used herein, the terms “Registration Statement,” “Basic Prospectus,” “preliminary prospectus,” “Time of Sale Prospectus” and “Prospectus” shall include the documents, if any, incorporated by reference therein (the “**Incorporated Documents**”). The terms “**supplement**,” “**amendment**,” and “**amend**” as used herein with respect to the Registration Statement, the Basic Prospectus, the Time of Sale Prospectus, any preliminary prospectus or free writing prospectus shall include all documents subsequently filed by the Company with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), that are deemed to be incorporated by reference therein.

1. *Representations and Warranties.* The Company represents and warrants to and agrees with each of the Underwriters that:

(a) The Registration Statement has become effective; no stop order suspending the effectiveness of the Registration Statement is in effect, and no proceedings for such purpose are pending before or threatened by the Commission. If the Registration Statement is an automatic shelf registration statement as defined in Rule 405 under the Securities Act, the Company is a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) eligible to use the Registration Statement as an automatic shelf registration statement and the Company has not received notice that the Commission objects to the use of the Registration Statement as an automatic shelf registration statement.

(b) (i) the Registration Statement as of the date hereof does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) the Registration Statement and the Prospectus comply, and as amended or supplemented, if applicable, will comply in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder, (iii) the Time of Sale Prospectus does not, and at the time of each sale of the Shares in connection with the offering when the Prospectus is not yet available to prospective purchasers and at the Closing Date (as defined in Section 4), the Time of Sale Prospectus, as then amended or supplemented by the Company, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, (iv) each broadly available road show, if any, when considered together with the Time of Sale Prospectus, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and (v) the Prospectus does not contain and, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to statements or omissions in the Registration Statement, the Time of Sale Prospectus or the Prospectus based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Managers expressly for use therein.

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(c) Each preliminary prospectus filed as part of the Registration Statement, or filed pursuant to Rule 424 under the Securities Act, complied when so filed in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder.

(d) The Company is not an “ineligible issuer” in connection with the offering pursuant to Rules 164, 405 and 433 under the Securities Act.

Any free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Each free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Except for the free writing prospectuses, if any, identified in Schedule I hereto forming part of the Time of Sale Prospectus, and electronic road shows, if any, each furnished to you before first use, the Company has not prepared, used or referred to, and will not, without your prior consent, prepare, use or refer to, any free writing prospectus.

(e) The Incorporated Documents, when they were filed with the Commission, conformed in all material respects to the requirements of the Exchange Act, and none of such documents contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and any further documents so filed and incorporated by reference in the Registration Statement, the Prospectus or the Time of Sale Prospectus, when such documents become effective or are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the Exchange Act, and will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(f) The financial statements and the related notes thereto included or incorporated by reference in the Registration Statement, the Prospectus and the Time of Sale Prospectus comply as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as applicable, and present fairly the consolidated financial position of the Company and its subsidiaries as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified; and such financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods covered thereby, and the supporting schedules to such financial statements included or incorporated by reference in the Registration Statement present fairly the information required to be stated therein.

(g) Except in each case as otherwise disclosed in the Registration Statement, the Prospectus and the Time of Sale Prospectus, since the date of the most recent financial statements of the Company included or incorporated by

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reference in the Registration Statement, the Prospectus and the Time of Sale Prospectus, (i) there has not been any material change in the capital stock (other than (x) the issuance of shares of Common Stock pursuant to this Agreement, and upon exercise of stock options and warrants described as outstanding, in, and the grant of options and awards, including but not limited to restricted stock and performance units, under any equity incentive plans in existence as of the date hereof and described in the Registration Statement, the Prospectus and the Time of Sale Prospectus, (y) the issuance of shares of Common Stock to the Company's employee plans, including but not limited to the employee stock purchase plan and supplemental employee retirement plan, that are in existence as of the date hereof and described in the Registration Statement, the Prospectus and the Time of Sale Prospectus and (z) pursuant to the exercise of currently outstanding warrants to purchase up to an aggregate of 3,199,988 shares of Common Stock, (ii) there has not been a material increase in the long-term debt of the Company and any of its subsidiaries on a consolidated basis, and (iii) there has not been a Material Adverse Effect (as defined below). As used herein, "**Material Adverse Effect**" means a material adverse effect on the business, properties, financial position or results of operations of the Company and its subsidiaries taken as a whole.

(h) The Company has been duly incorporated and is validly existing and in good standing under the laws of the State of Delaware, with all power and authority to own its properties and conduct its business as described in the Registration Statement, the Prospectus and the Time of Sale Prospectus; and the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified would not have a Material Adverse Effect.

(i) Each of the Company's significant subsidiaries has been duly incorporated or organized and is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with all power and authority to own its properties and conduct its business as described in the Registration Statement, the Prospectus and the Time of Sale Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a Material Adverse Effect; and all the outstanding shares of capital stock or other equity interests of each such significant subsidiary have been duly and validly authorized and issued, are fully paid and non-assessable (except, in the case of any foreign subsidiary, for directors' qualifying shares) and are owned directly or indirectly by the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party, except as otherwise described in the Registration Statement, the Prospectus or the Time of Sale Prospectus; the Company has no "significant subsidiary," as that term is defined in Rule 1-02(w) of Regulation S-X under the Act, or any other subsidiaries that, taken together, would comprise a "significant subsidiary," other than TCF National Bank and its subsidiaries (collectively, the "**Bank**").

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(j) The Company is duly registered as a bank holding company and qualified as a financial holding company under the Bank Holding Company Act of 1956, as amended.

(k) The Company and each of its subsidiaries are in compliance with all laws administered by the regulations of the Office of the Comptroller of Currency (the "**OCC**"), the Federal Deposit Insurance Corporation ("**FDIC**") and the Board of Governors of the Federal Reserve System (the "**Federal Reserve Board**") and any other federal or state bank regulatory authorities (collectively with the OCC, FDIC and the Federal Reserve Board, the "**Bank Regulatory Authorities**") with jurisdiction over the Company or any of its subsidiaries to the extent such laws or regulations apply to the Company or any of its subsidiaries, except where the failure to be so in compliance would not, individually or in the aggregate, have a Material Adverse Effect or cause the Company to lose its financial holding company status; and neither the Company nor any of its subsidiaries is a party to any written agreement or memorandum of understanding with, or is subject to any order or directive by, or has adopted any board resolutions at the request of, any Bank Regulatory Authority which restricts materially the conduct of its business, or in any material manner relates to its capital adequacy, its credit policies or its management, the deposit accounts of the Bank, are insured with the FDIC up to applicable limits to the fullest extent permitted by law; no proceeding for the termination or revocation of such insurance is pending or, to the knowledge of the Company or the Bank, threatened; and the Bank is the only bank subsidiary of the Company.

(l) The Company has an authorized capitalization as described in the Registration Statement, the Prospectus and the Time of Sale Prospectus; all the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and are not subject to any pre-emptive or similar rights; except as described in or expressly contemplated by the Registration Statement, the Prospectus, and the Time of Sale Prospectus and other than (x) the issuance of shares of Common Stock pursuant to this Agreement, and upon exercise of stock options and warrants described as outstanding, in, and the grant of options and awards, including but not limited to restricted stock and performance units, under any equity incentive plans in existence as of the date hereof and as described in the Registration Statement, the Prospectus and the Time of Sale Prospectus, (y) the issuance of shares of Common Stock to the Company's employee plans, including but not limited to the employee stock purchase plan and supplemental employee retirement plan, that are in existence as of the date hereof and described in the Registration Statement, the Prospectus and the Time of Sale Prospectus and (z) the currently outstanding warrants to purchase up to an aggregate of 3,199,988 shares of Common Stock, there are no outstanding rights (including without limitation, pre-emptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interests in the Company or any of its significant subsidiaries, nor any contracts, commitments, agreements, understandings or arrangements of any kind relating to the issuance of any capital stock of the Company or any such significant subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options; and the capital stock of the Company conforms in all material respects to the

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description thereof contained in the Registration Statement, the Prospectus and the Time of Sale Prospectus.

(m) The Shares have been duly authorized by the Company and, when issued and delivered and paid for as provided herein, will be duly and validly issued, will be fully paid and nonassessable and will conform to the description thereof in the Registration Statement, the Prospectus, and the Time of Sale Prospectus; and the stockholders of the Company do not have any preemptive or similar rights with respect to the Shares.

(n) The Company has full right, power and authority to execute and deliver this Agreement and perform its obligations hereunder; and all action required to be taken for the due and proper authorization, execution and delivery by it of this Agreement and the consummation by it of the transactions contemplated hereby has been duly and validly taken.

(o) This Agreement has been duly authorized, executed and delivered by the Company.

(p) This Agreement conforms in all material respects to the description thereof contained in the Registration Statement, the Prospectus and the Time of Sale Prospectus.

(q) Neither the Company nor any of its subsidiaries is (i) in violation of its charter or by-laws or similar organizational documents, (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, have a Material Adverse Effect.

(r) The execution, delivery and performance by the Company of this Agreement, the issuance and sale of the Shares, the compliance by the Company with the terms hereof and the consummation of the transactions contemplated hereby will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any material indenture, mortgage, deed of trust, loan agreement or other material agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the charter or bylaws of the Company or (iii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (i) and (ii) above, for any such conflict, breach, violation or default that would not, individually or in the aggregate, have a Material Adverse Effect;

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and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the execution, delivery and performance by the Company of this Agreement, the issuance and sale of the Shares and compliance by the Company with the terms hereof and the consummation of the transactions contemplated hereby, except as have been made or obtained and except as may be required by and made with or obtained from state securities laws or regulations.

(s) Except as described in the Registration Statement, the Prospectus or the Time of Sale Prospectus, there is no legal, governmental or regulatory investigation, action, suit or proceeding pending, or to the knowledge of the Company, threatened to which the Company or any of its subsidiaries is a party or to which any property of the Company or any of its subsidiaries is the subject which would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(t) There are no contracts or other documents that are required under the Securities Act to be filed as exhibits to the Registration Statement and described in the Registration Statement, the Prospectus and the Time of Sale Prospectus that are not so filed as exhibits to the Registration Statement or described in the Registration Statement, the Prospectus and the Time of Sale Prospectus.

(u) KPMG LLP, who has audited certain financial statements of the Company and its subsidiaries, is an independent registered public accounting firm with respect to the Company and its subsidiaries, within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act.

(v) The Company is not and, after giving effect to the offering and sale of the Shares and the application of the net proceeds thereof as described in the Registration Statement, the Prospectus or the Time of Sale Prospectus, will not be required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Investment Company Act").

(w) The Company and its subsidiaries have filed all material tax returns required to be filed through the date hereof and paid all material federal, state, local and foreign taxes due on such returns. Except as otherwise disclosed in the Registration Statement, the Prospectus and the Time of Sale Prospectus, there is no tax deficiency that has been, or could reasonably be expected to be, asserted against the Company or any of its subsidiaries or any of their respective properties or assets, except those as would not, individually or in the aggregate, have a Material Adverse Effect.

(x) The Company maintains an effective system of “disclosure controls and procedures” (as defined in Rule 13a-15(e) under the Exchange Act) that is designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the

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Commission’s rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure. The Company and its subsidiaries have carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 under the Exchange Act.

(y) The Company maintains systems of “internal control over financial reporting” (as defined in Rule 13a-15(f) under the Exchange Act) that comply with the requirements of the Exchange Act and have been designed by, or under the supervision of, their respective principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. The Company’s internal control over financial reporting was effective as of December 31, 2009, and the Company is not aware of any material weaknesses in its internal controls over financial reporting at such time.

(z) There is and has been no failure on the part of the Company or, to the knowledge of the Company, any of the Company’s directors or officers, in their capacities as such, to comply in all material respects with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith, including Section 402 related to loans and Sections 302 and 906 related to certifications.

(aa) Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that could reasonably be expected to give rise to a valid claim against the Company or any of its subsidiaries or any Underwriter for a brokerage commission, finder’s fee or like payment in connection with the offering and sale of the Shares.

(bb) No person has the right to require the Company or any of its subsidiaries to register any securities for sale under the Securities Act by reason of the filing of the Registration Statement with the Commission or the issuance and sale of the Shares.

(cc) The Company will not take, directly or indirectly, any action designed to or that would reasonably be expected to cause or result in any stabilization or manipulation of the price of the Shares.

(dd) To the knowledge of the Company, the statistical and market-related data included or incorporated by reference in the Registration Statement, the Prospectus and the Time of Sale Prospectus are based on or derived from sources that are reliable and accurate in all material respects.

(ee) The Company is a “well-known seasoned issuer,” as defined under the Securities Act and at the times specified in the Securities Act in connection with the offering of the Shares. The Company has paid or will pay when due the registration fee for this offering pursuant to Rule 457 under the Securities Act.

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(ff) The Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the New York Stock Exchange (the “NYSE”), nor has the Company received any notification that the Commission or the NYSE is contemplating terminating such registration or listing. The Shares being sold hereunder have been approved for listing, subject only to official notice of issuance, on the NYSE.

(gg) There are no transfer taxes or other similar fees or charges under federal law or the laws of any state, or any political subdivision thereof, required to be paid in connection with the execution and delivery of this Agreement or the issuance and sale by the Company of the Shares.

(hh) Neither the Company nor any of its subsidiaries or affiliates, nor, to the knowledge of the Company, any director, officer, employee, agent or representative of the Company or of any of its subsidiaries or affiliates, has taken any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to (A) any “foreign official” (as such term is defined in the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “FCPA”)) in contravention of the FCPA or (B) any comparable person under the applicable anti-corruption statutes of jurisdictions where the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency; and the Company and its subsidiaries and affiliates have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintain and will continue to maintain policies and procedures designed to promote and achieve compliance with such laws and with the representation and warranty contained herein.

(ii) Except as otherwise disclosed in the Prospectus or the Incorporated Documents, the operations of the Company and its subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Anti-Money Laundering Laws”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Company, threatened, which would reasonably be expected to result in a Material Adverse Effect.

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(jj) (i) The Company represents that neither the Company nor any of its subsidiaries (collectively, the “**Entity**”) or, to the knowledge of the Company, any director, officer, employee, agent, affiliate or representative of the Entity, is an individual or entity (“**Person**”) that is, or is owned or controlled by a Person that is:

(A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury’s Office of Foreign Assets Control (“**OFAC**”), the United Nations Security Council (“**UNSC**”), the European Union (“**EU**”), Her Majesty’s Treasury (“**HMT**”), or other relevant sanctions authority (collectively, “**Sanctions**”), nor

(B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Burma/Myanmar, Cuba, Iran, North Korea, Sudan and Syria).

(ii) The Entity represents and covenants that it will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:

(A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) The Entity represents and covenants that, for the past 5 years, it has not knowingly engaged in, is not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(kk) The statements relating to regulatory matters, documents or proceedings included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2009 under the caption “Item I. Business—Regulation,” to the extent that they constitute summaries of matters of law or regulation or legal conclusions, are accurate in all material respects.

2. *Agreements to Sell and Purchase.* The Company hereby agrees to sell to the several Underwriters, and each Underwriter, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agrees, severally and not jointly, to purchase from the Company the respective numbers of Firm Shares set forth in Schedule II hereto opposite its name at the purchase price set forth in Schedule I hereto (the “**Purchase Price**”).

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On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Company agrees to sell to the Underwriters the Additional Shares, and the Underwriters shall have the right to purchase, severally and not jointly, up to the number of Additional Shares set forth in Schedule I hereto at the Purchase Price; provided, however, that the amount paid by the Underwriters for any Additional Shares shall be reduced by an amount per share equal to any dividends declared by the Company and payable on the Firm Shares but not payable on such Additional Shares. You may exercise this right on behalf of the Underwriters in whole or from time to time in part by giving written notice not later than 30 days after the date of the Prospectus. Any exercise notice shall specify the number of Additional Shares to be purchased by the Underwriters and the date on which such shares are to be purchased. Each purchase date must be at least one business day after the written notice is given and may not be earlier than the closing date for the Firm Shares nor later than ten business days after the date of such notice. Additional Shares may be purchased as provided in Section 4 hereof solely for the purpose of covering over-allotments made in connection with the offering of the Firm Shares. On each day, if any, that Additional Shares are to be purchased (an “**Option Closing Date**”), each Underwriter agrees, severally and not jointly, to purchase the number of Additional Shares (subject to such adjustments to eliminate fractional shares as you may determine) that bears the same proportion to the total number of Additional Shares to be purchased on such Option Closing Date as the number of Firm Shares set forth in Schedule II hereto opposite the name of such Underwriter bears to the total number of Firm Shares.

3. *Public Offering.* The Company is advised by you that the Underwriters propose to make a public offering of their respective portions of the Shares as soon after the Registration Statement and this Agreement have become effective as in your judgment is advisable. The Company is further advised by you that the Shares are to be offered to the public upon the terms set forth in the Prospectus.

4. *Payment and Delivery.* Payment for the Firm Shares shall be made to the Company by wire transfer payable in same-day funds to an account specified by the Company on the closing date and time set forth in Schedule I hereto, or at such other time on the same or such other date, not later than the fifth business day thereafter, as may be designated in writing by you. The time and date of such payment are hereinafter referred to as the “**Closing Date**.”

Payment for any Additional Shares shall be made to the Company by wire transfer payable in same-day funds to an account specified by the Company on the date specified in the corresponding notice described in Section 2 or at such other time on the same or on such other date, in any event not later than the tenth business day thereafter, as may be designated in writing by you.

The Firm Shares and the Additional Shares shall be registered in such names and in such denominations as you shall request in writing not later than one full business day prior to the Closing Date or the applicable Option Closing Date, as the case may be, for the respective accounts of the several Underwriters, with

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any transfer taxes payable in connection with the transfer of the Shares to the Underwriters duly paid, against payment of the Purchase Price therefor.

5. *Conditions to the Underwriters’ Obligations.* The several obligations of the Underwriters are subject to the following conditions:

(a) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date:

(i) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the securities of the Company or any of its subsidiaries by any “nationally recognized statistical rating organization,” as such term is defined for purposes of Rule 436(g)(2) under the Securities Act; and

(ii) there shall not have occurred any change, or any development involving a prospective change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Prospectus as of the date of this Agreement that, in your judgment, is material and adverse and that makes it, in your judgment, impracticable to market the Shares on the terms and in the manner contemplated in the Time of Sale Prospectus.

(b) The Underwriters shall have received on the Closing Date a certificate, dated the Closing Date and signed by an executive officer of the Company, to the effect that the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Date and that the Company has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date.

The officer signing and delivering such certificate may rely upon the best of his or her knowledge as to proceedings threatened.

(c) (1) The Underwriters shall have received on the Closing Date an opinion and negative assurance letter of Kaplan, Strangis & Kaplan, P.A., outside counsel for the Company, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriters, to the effect set forth in Exhibit B-1 hereto, and such counsel shall have received such documents and information as they may reasonably request to enable them to pass upon such matters; and (2) the Underwriters shall have received on the Closing Date an opinion of Joseph Green, Senior Vice President and General Counsel of the Company, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriters, to the effect set forth in Exhibit B-2 hereto.

(d) The Underwriters shall have received on the Closing Date an opinion and negative assurance letter of Simpson Thacher & Bartlett LLP,

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counsel for the Underwriters, dated the Closing Date, with respect to such matters covering as the Managers may reasonably request, and such counsel shall have received such documents and information as they may reasonably request to enable them to pass upon such matters.

(e) The Underwriters shall have received, on each of the date hereof and the Closing Date, a letter dated the date hereof or the Closing Date, as the case may be, in form and substance satisfactory to the Underwriters, from KPMG LLP, independent public accountants, containing statements and information of the type ordinarily included in accountants’ “comfort letters” to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the Time of Sale Prospectus and the Prospectus; *provided* that the letter delivered on the Closing Date shall use a “cut-off date” not earlier than the date hereof.

(f) The “lock-up” agreements, each substantially in the form of Exhibit A hereto, between you and each of the executive officers and directors of the Company listed on Schedule III hereto relating to sales and certain other dispositions of shares of Common Stock or certain other securities, delivered to you on or before the date hereof, shall be in full force and effect on the Closing Date.

The several obligations of the Underwriters to purchase Additional Shares hereunder are subject to the delivery to you on the applicable Option Closing Date of such documents as you may reasonably request with respect to the good standing of the Company, the due authorization and issuance of the Additional Shares to be sold on such Option Closing Date and other matters related to the issuance of such Additional Shares.

6. *Covenants of the Company.* The Company covenants with each Underwriter as follows:

(a) To furnish to you, without charge, a signed copy of the Registration Statement (including exhibits thereto and documents incorporated by reference therein) and to deliver to each of the Underwriters during the period mentioned in Section 6(e) or 6(f) below, as many copies of the Time of Sale Prospectus, the Prospectus, any documents incorporated by reference therein and any supplements and amendments thereto or to the Registration Statement as you may reasonably request.

(b) Before amending or supplementing the Registration Statement, the Time of Sale Prospectus or the Prospectus, to furnish to you a copy of each such proposed amendment or supplement and not to file any such proposed amendment or supplement to which you reasonably object.

(c) To furnish to you a copy of each proposed free writing prospectus to be prepared by or on behalf of, used by, or referred to by the Company and not to use or refer to any proposed free writing prospectus to which you reasonably object.

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(d) Not to take any action that would result in an Underwriter or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of the Underwriter that the Underwriter otherwise would not have been required to file thereunder.

(e) If the Time of Sale Prospectus is being used to solicit offers to buy the Shares at a time when the Prospectus is not yet available to prospective purchasers and any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Time of Sale Prospectus in order to make the statements therein, in the light of the circumstances, not misleading, or if any event shall occur or condition exist as a result of which the Time of Sale Prospectus conflicts with the information contained in the Registration Statement then on file, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Time of Sale Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to any dealer upon request, either amendments or supplements to the Time of Sale Prospectus so that the statements in the Time of Sale Prospectus as so amended or supplemented will not, in the light of the circumstances when the Time of Sale Prospectus is delivered to a prospective purchaser, be misleading or so that the Time of Sale Prospectus, as amended or supplemented, will no longer conflict with the Registration Statement, or so that the Time of Sale Prospectus, as amended or supplemented, will comply with applicable law.

(f) If, during such period after the first date of the public offering of the Shares as in the opinion of counsel for the Underwriters the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is required by law to be delivered in connection with sales by an Underwriter or dealer, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is delivered to a purchaser, not misleading, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to the dealers (whose names and addresses you will furnish to the Company) to which Shares may have been sold by you on behalf of the Underwriters and to any other dealers upon request, either amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances when the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with applicable law.

(g) To endeavor to qualify the Shares for offer and sale under the securities or Blue Sky laws of such jurisdictions as you shall reasonably request.

(h) To make generally available to the Company's security holders and to you as soon as practicable an earnings statement (which need not be

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audited) covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the date of this Agreement which shall satisfy the provisions of Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder; provided that the Company may make such earnings statements generally available by filing quarterly and annual reports with the Commission as may be required by the Exchange Act.

(i) Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including: (i) the fees, disbursements and expenses of the Company's counsel and the Company's accountants in connection with the registration and delivery of the Shares under the Securities Act and all other fees or expenses in connection with the preparation and filing of the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, the Prospectus, any free writing prospectus prepared by or on behalf of, used by, or referred to by the Company and amendments and supplements to any of the foregoing, including the filing fees payable to the Commission relating to the Shares (within the time required by Rule 456 (b)(1), if applicable), all printing costs associated therewith, and the mailing and delivering of copies thereof to the Underwriters and dealers, in the quantities hereinabove specified, (ii) all costs and expenses related to the transfer and delivery of the Shares to the Underwriters, including any transfer or other taxes payable thereon, (iii) the cost of printing or producing any Blue Sky or Legal Investment memorandum in connection with the offer and sale of the Shares under state securities laws and all expenses in connection with the qualification of the Shares for offer and sale under state securities laws as provided in Section 6(g) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky or Legal Investment memorandum, (iv) all filing fees and the reasonable fees and disbursements of counsel to the Underwriters incurred in connection with the review and qualification of the offering of the Shares by the Financial Industry Regulatory Authority, Inc., (v) all costs and expenses incident to listing the Shares on the NYSE, (vi) the cost of printing certificates representing the Shares, (vii) the costs and charges of any transfer agent, registrar or depository, (viii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Shares, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives and officers of the Company and any such consultants, (ix) the document production charges and expenses associated with printing this Agreement and (x) all other costs and expenses incident to the performance of the obligations of the Company hereunder for which provision is not otherwise made in this Section. It is understood, however, that except as provided in this Section, Section 8 entitled "Indemnity and Contribution" and the last paragraph of Section 10 below, the Underwriters will pay all of their costs and expenses, including fees and

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disbursements of their counsel, stock transfer taxes payable on resale of any of the Shares by them and any advertising expenses connected with any offers they may make.

(j) If the third anniversary of the initial effective date of the Registration Statement occurs before all the Shares have been sold by the Underwriters, prior to the third anniversary to file a new shelf registration statement and to take any other action necessary to permit the public offering of the Shares to continue without interruption; references herein to the Registration Statement shall include the new registration statement declared effective by the Commission;

(k) The Company also covenants with each Underwriter that, without the prior written consent of the Manager identified in Schedule I with the authorization to release this lock-up on behalf of the Underwriters, it will not, during the restricted period set forth in Schedule I hereto, (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise or (3) file any registration statement with the Commission relating to the offering of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock. The foregoing sentence shall not apply to (a) the Shares to be sold hereunder, (b) the issuance by the Company of shares of Common Stock upon the exercise of stock options and warrants described as outstanding, in, and the grant of options and awards, including but not limited to restricted stock and performance units, under any equity incentive plans in existence as of the date hereof and described in the Registration Statement, the Prospectus and the Time of Sale Prospectus, (c) the issuance of shares of Common Stock to the Company's employee plans, including but not limited to the employee stock purchase plan and supplemental employee retirement plan, that are in existence as of the date hereof and described in the Registration Statement, the Prospectus and the Time of Sale Prospectus and (d) pursuant to the exercise of currently outstanding warrants to purchase up to an aggregate of 3,199,988 shares of Common Stock, or (e) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Common Stock, provided that such plan does not provide for the transfer of Common Stock during the restricted period, or (f) issuance of shares of Common Stock in connection with dividend reinvestment plans that are in existence as of the date

hereof.

7. *Covenants of the Underwriters.* Each Underwriter severally covenants with the Company not to take any action that would result in the Company being required to file with the Commission under Rule 433(d) a free writing prospectus prepared by or on behalf of such Underwriter that otherwise

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would not be required to be filed by the Company thereunder, but for the action of the Underwriter.

8. *Indemnity and Contribution.* (a) The Company agrees to indemnify and hold harmless each Underwriter, each person, if any, who controls any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act and each affiliate of any Underwriter within the meaning of Rule 405 under the Securities Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereof, any preliminary prospectus, the Time of Sale Prospectus, any issuer free writing prospectus as defined in Rule 433(h) under the Securities Act, any Company information that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act, or the Prospectus or any amendment or supplement thereto, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through you expressly for use therein.

(b) Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, its directors, its officers who sign the Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company to such Underwriter, but only with reference to information relating to such Underwriter furnished to the Company in writing by such Underwriter through you expressly for use in the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, any issuer free writing prospectus or the Prospectus or any amendment or supplement thereto.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 8 or 8(b), such person (the “**indemnified party**”) shall promptly notify the person against whom such indemnity may be sought (the “**indemnifying party**”) in writing. No indemnification provided for in Section 8(a) or (b) shall be available to any party who shall fail to give notice as provided in this Section 8(c) if the party to whom notice was not given was unaware of the proceeding to which such notice would have related and was materially prejudiced by the failure to give such notice, but the failure to give such notice shall not relieve the indemnifying party or parties for any liability which it or they may have to the indemnified party for contribution otherwise than on account of the provisions of Section 8(a) or (b). In case any such proceeding shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the

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indemnified party and payment of the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests and the indemnified party shall have been advised by such counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the indemnifying party (in which case the indemnifying party shall not have the right to assume the defense of such action on behalf of the indemnified party), or (iii) the indemnifying party shall have failed to assume the defense and employ counsel. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties, which firm shall be designated in writing by the indemnified party (which, in the case that an underwriter is the indemnified party, shall be designated in writing by the Managers authorized to appoint counsel under this Section set forth in Schedule I hereto), and that all such fees and expenses shall be reimbursed as they are incurred. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) To the extent the indemnification provided for in Section 8 or 8(b) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other hand from the offering of the Shares or (ii) if the allocation provided by clause 8(d) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause 8(d) above but also the relative fault of the Company on the one hand and of the Underwriters on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other hand

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in connection with the offering of the Shares shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Shares (before deducting expenses) received by the Company and the total underwriting discounts and commissions received by the Underwriters bear to the aggregate initial public offering price of the Shares set forth in the Prospectus. The relative fault of the Company on the one hand and the Underwriters on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Underwriters' respective obligations to contribute pursuant to this Section 8 are several in proportion to the respective number of Shares they have purchased hereunder, and not joint.

(e) The Company and the Underwriters agree that it would not be just or equitable if contribution pursuant to this Section 8 were determined by *pro rata* allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in Section 8(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 8(d) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The remedies provided for in this Section 8 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(f) The indemnity and contribution provisions contained in this Section 8 and the representations, warranties and other statements of the Company contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Underwriter, any person controlling any Underwriter or any affiliate of any Underwriter or by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) acceptance of and payment for any of the Shares.

9. *Termination.* The Underwriters may terminate this Agreement by notice given by you to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date (i) trading generally shall have been suspended or materially limited on, or by, as the case may be, any of the New York Stock Exchange, the American Stock Exchange or the NASDAQ Global

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Market, (ii) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market, (iii) a material disruption in securities settlement, payment or clearance services in the United States shall have occurred, (iv) any moratorium on commercial banking activities shall have been declared by Federal or New York State authorities or (v) there shall have occurred any outbreak or escalation of hostilities, or any change in financial markets or any calamity or crisis that, in your judgment, is material and adverse and which, singly or together with any other event specified in this clause 9, makes it, in your judgment, impracticable or inadvisable to proceed with the offer, sale or delivery of the Shares on the terms and in the manner contemplated in the Time of Sale Prospectus or the Prospectus.

10. *Effectiveness; Defaulting Underwriters.* This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If, on the Closing Date or an Option Closing Date, as the case may be, any one or more of the Underwriters shall fail or refuse to purchase Shares that it has or they have agreed to purchase hereunder on such date, and the aggregate number of Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase is not more than one-tenth of the aggregate number of the Shares to be purchased on such date, the other Underwriters shall be obligated severally in the proportions that the number of Firm Shares set forth opposite their respective names in Schedule II bears to the aggregate number of Firm Shares set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as you may specify, to purchase the Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase on such date; *provided* that in no event shall the number of Shares that any Underwriter has agreed to purchase pursuant to this Agreement be increased pursuant to this Section 10 by an amount in excess of one-ninth of such number of Shares without the written consent of such Underwriter. If, on the Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Firm Shares and the aggregate number of Firm Shares with respect to which such default occurs is more than one-tenth of the aggregate number of Firm Shares to be purchased on such date, and arrangements satisfactory to you and the Company for the purchase of such Firm Shares are not made within 36 hours after such default, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter or the Company. In any such case either you or the Company shall have the right to postpone the Closing Date, but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement, in the Time of Sale Prospectus, in the Prospectus or in any other documents or arrangements may be effected. If, on an Option Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Additional Shares and the aggregate number of Additional Shares with respect to which such default occurs is more than one-tenth of the aggregate number of Additional Shares to be purchased on such Option Closing Date, the non-defaulting Underwriters shall have the option to (i) terminate their obligation hereunder to purchase the Additional Shares to be sold on such Option Closing Date or (ii) purchase not less than the number of Additional Shares that such non-defaulting Underwriters would have been obligated to purchase in the absence of such

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default. Any action taken under this paragraph shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

If this Agreement shall be terminated by the Underwriters, or any of them, because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Company shall be unable to perform its obligations under this Agreement, the Company will reimburse the Underwriters or such Underwriters as have so terminated this Agreement with respect to themselves, severally, for all out-of-pocket expenses (including the fees and disbursements of their counsel) reasonably incurred by such Underwriters in connection with this Agreement or the offering contemplated hereunder.

11. *Entire Agreement.* (a) This Agreement, together with any contemporaneous written agreements and any prior written agreements (to the extent not superseded by this Agreement) that relate to the offering of the Shares, represents the entire agreement between the Company and the Underwriters with respect to the preparation of any preliminary prospectus, the Time of Sale Prospectus, the Prospectus, the conduct of the offering, and the purchase and sale of the Shares.

(b) The Company acknowledges that in connection with the offering of the Shares: (i) the Underwriters have acted at arm's length, are not agents of, and owe no fiduciary duties to, the Company or any other person, (ii) the Underwriters owe the Company only those duties and obligations set forth in this Agreement and prior written agreements (to the extent not superseded by this Agreement), if any, and (iii) the Underwriters may have interests that differ from those of the Company. The Company waives to the full extent permitted by applicable law any claims it may have against the Underwriters arising from an alleged breach of fiduciary duty in connection with the offering of the Shares.

12. *Counterparts.* This Agreement may be signed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

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13. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

14. *Headings.* The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

15. *Notices.* All communications hereunder shall be in writing and effective only upon receipt and if to the Underwriters shall be delivered, mailed or sent to you at the address set forth in Schedule I hereto; and if to the Company shall be delivered, mailed or sent to the address set forth in Schedule I hereto.

Very truly yours,

TCF FINANCIAL CORPORATION

By: /s/ Thomas F. Jasper

Name: Thomas F. Jasper

Title: Executive Vice President  
and Chief Financial Officer

Accepted as of the date hereof

Morgan Stanley & Co. Incorporated  
J.P. Morgan Securities Inc.

Acting severally on behalf of themselves and  
the several Underwriters named in  
Schedule II hereto.

By: Morgan Stanley & Co. Incorporated

By: /s/ W. Grant Gregory, Jr.

Name: W. Grant Gregory, Jr.

Title: Managing Director

By: J.P. Morgan Securities Inc.

By: /s/ Usman Ghani

Name: Usman Ghani

Title: Executive Director

## SCHEDULE I

### Managers:

Manager authorized to release lock-up under Section 6:

Morgan Stanley & Co. Incorporated and J.P. Morgan Securities Inc.

Manager authorized to appoint counsel under Section 8:

Morgan Stanley & Co. Incorporated and J.P. Morgan Securities Inc.

Registration Statement File No.:

333-156068

Time of Sale Prospectus:

Prospectus dated December 11, 2008 relating to the Shelf Securities

the preliminary prospectus supplement dated February 22, 2010 relating to the Shares

Price to the Public: \$14.00 per share

Number of Firm Shares: 10,715,000

Number of Additional Shares: 1,607,250

Lock-up Restricted Period:

90 days for the Company; 60 days for the executive officers and

Title of Shares to be purchased: Common Stock, \$0.01 par value per share  
 Number of Firm Shares: 10,715,000  
 Number of Additional Shares: 1,607,250  
 Purchase Price: \$13.37 a share  
 Initial Public Offering Price: \$14.00 a share  
 Selling Concession: \$0.378 a share  
 Reallowance: \$0.100 a share  
 Closing Date and Time: February 26, 2010 10:00 a.m.  
 Closing Location: Simpson Thacher & Bartlett LLP  
 425 Lexington Avenue  
 New York, New York 10017

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Address for Notices to Underwriters: Morgan Stanley & Co. Incorporated,  
 1585 Broadway, New York, NY 10036,  
 to the attention of Eric Benedict  
 (facsimile number (212) 507-4115  
  
 J.P. Morgan Securities Inc.,  
 383 Madison Avenue, New York, New York 10179,  
 to the attention of the Equity Syndicate Desk  
 (facsimile number (212) 622-8358);  
  
 Address for Notices to the Company: TCF Financial Corporation,  
 200 East Lake Street, Wayzata, Minnesota 55391,  
 to the attention of General Counsel  
 (facsimile number (952) 475-7975);

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**SCHEDULE II**

<b>Underwriter</b>	<b>Number of Firm Shares To Be Purchased</b>
Morgan Stanley & Co. Incorporated.	4,286,000
J.P. Morgan Securities Inc	4,286,000
RBC Capital Markets Corporation	1,071,500
Stifel, Nicolaus & Company, Incorporated	1,071,500
Total:	<u>10,715,000</u>

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**SCHEDULE III**

William A. Cooper  
 Peter Bell  
 William F. Bieber  
 Theodore J. Bigos  
 Thomas A. Cusick  
 Luella G. Goldberg  
 George G. Johnson  
 Vance K. Opperman  
 Gregory J. Pulles  
 Gerald A. Schwalbach  
 Douglas A. Scovanner  
 Ralph Strangis  
 Barry N. Winslow  
 Neil W. Brown  
 Thomas F. Jasper  
 Craig R. Dahl  
 Earl D. Stratton

FORM OF LOCK-UP LETTER

February , 2010

Morgan Stanley & Co. Incorporated  
J.P. Morgan Securities Inc.

c/o Morgan Stanley & Co. Incorporated  
1585 Broadway  
New York, NY 10036

c/o J.P. Morgan Securities Inc.  
383 Madison Ave  
New York, NY 10179

Ladies and Gentlemen:

The undersigned understands that Morgan Stanley & Co. Incorporated (“**Morgan Stanley**”) and J.P. Morgan Securities Inc. (“**J.P. Morgan**”) propose to enter into an Underwriting Agreement (the “**Underwriting Agreement**”) with TCF Financial Corporation, a Delaware corporation (the “**Company**”), providing for the public offering (the “**Public Offering**”) by the several Underwriters, including Morgan Stanley and J.P. Morgan (the “**Underwriters**”), of shares (the “**Shares**”) of the common stock (par value \$0.01 per share) of the Company (the “**Common Stock**”) with an aggregate offering price of up to \$150 million, subject to an over-allotment option.

To induce the Underwriters that may participate in the Public Offering to continue their efforts in connection with the Public Offering, the undersigned hereby agrees that, without the prior written consent of Morgan Stanley and J.P. Morgan on behalf of the Underwriters, it will not, during the period commencing on the date hereof and ending 60 days after the date of the final prospectus relating to the Public Offering (the “**Prospectus**”), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether

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any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (a) transactions relating to shares of Common Stock or other securities acquired in open market transactions after the completion of the Public Offering; (b) transfers of shares of Common Stock or any security convertible into Common Stock as a bona fide gift; (c) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Common Stock; *provided* that such plan does not provide for the transfer of Common Stock during the restricted period; (d) (i) pledges of shares of Common Stock in existence prior to the date hereof to secure loans with financial institutions, (ii) re-pledges of shares of Common Stock that were pledged prior to the date hereof to secure loans with financial institutions, or (iii) sales or transfers by any pledgee of such shares of Common Stock in accordance with the terms thereof; (e) transfers or other dispositions (i) by will or other testamentary document or applicable laws of intestacy, (ii) by distribution to partners, members or shareholders of entities controlled by the undersigned, to the undersigned’s affiliates or to any investment fund or other entity controlled or managed by the undersigned, (iii) by distribution to any charitable organization, family foundation or donor-advised fund at sponsoring organizations and (iv) to a trust, including without exception, any grantor retained annuity trust, for the direct or indirect benefit of the undersigned or the immediate family members of the undersigned, or to any corporation, partnership, limited liability company or other entity all of the beneficial ownership interests of which are held by the undersigned or immediate family members of the undersigned; (f) (i) the sale of shares of Common Stock pursuant to the “cashless” exercise at expiration of stock options granted pursuant to existing stock incentive compensation plans of the Company described in the most recent preliminary Prospectus (the term “cashless” exercise being intended to include sale of a portion of the option shares or previously owned shares to the Company or in the open market to cover payment of the exercise price) and (ii) the sale of Common Shares in respect of tax withholding payments due upon the exercise of stock options or the vesting of restricted stock grants pursuant to existing stock incentive compensation plans of the Company described in the most recent preliminary Prospectus; and (g) pursuant to a judicial decree; *provided* that in the case of any transfer or distribution pursuant to clauses (b) and (e) above, (i) each transferee or distributee shall sign and deliver a lock-up letter substantially in the form of this letter; and *provided further* that in the case of any transfer or distribution pursuant to clause (b), (e) and (g), no filing under Section 16(a) of the Exchange Act reporting a reduction in beneficial ownership of shares of Common Stock shall be required or shall be voluntarily made during the restricted period referred to in the foregoing sentence, unless required following any subsequent transaction not prohibited by this letter. In addition, the undersigned agrees that, without the prior written consent of Morgan Stanley and J.P. Morgan on behalf of the Underwriters, it will not, during the period commencing on the date hereof and ending 60 days after the date of the Prospectus, make any demand for or exercise any right with respect to, the registration of any shares of Common Stock or any

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security convertible into or exercisable or exchangeable for Common Stock. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company’s transfer agent and registrar against the transfer of the undersigned’s shares of Common Stock except in compliance with

the foregoing restrictions.

The undersigned understands that the Company and the Underwriters are relying upon this agreement in proceeding toward consummation of the Public Offering. The undersigned further understands that this agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

Whether or not the Public Offering actually occurs depends on a number of factors, including market conditions. Any Public Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Company and the Underwriters.

Very truly yours,

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

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**EXHIBIT B-1**

[Opinion of Counsel]

**EXHIBIT B-2**

[Opinion of Counsel]

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## Section 3: EX-5.1 (EX-5.1)

**Exhibit 5.1**

[LETTERHEAD OF KAPLAN, STRANGIS AND KAPLAN, P.A.]

February 26, 2010

TCF Financial Corporation  
200 Lake Street East  
Wayzata, MN 55391-1693

Re: TCF Financial Corporation  
Registration Statement on Form S-3 (Registration No. 333-156068)

Ladies and Gentlemen:

We have examined (i) the Registration Statement on Form S-3 (Registration No. 333-156068) filed by TCF Financial Corporation (the "Company") on December 11, 2008 with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act") for the registration of the Company's preferred stock, common stock, warrants and units (the "Registration Statement"); (ii) the prospectus dated December 11, 2008 that is part of the Registration Statement, together with the documents incorporated therein by reference; (iii) the preliminary prospectus supplement dated February 22, 2010, in the form filed with the Commission pursuant to Rule 424(b) under the Securities Act on the same date; and (iv) the final prospectus supplement dated February 23, 2010, in the form filed with the Commission pursuant to Rule 424(b) under the Securities Act on the same date in connection with the offering by the Company of 12,322,250 shares (the "Underwritten Securities") of the Company's common stock, par value \$.01 per share.

In rendering the opinions expressed below, we have also examined originals or copies, certified or otherwise identified to our satisfaction, of the Amended and Restated Certificate of Incorporation of the Company and all amendments thereto; the Amended and Restated Bylaws of the Company and all amendments thereto; resolutions adopted at meetings of the Board of Directors of the Company and committees thereof; and such other documents, corporate records and instruments as we have deemed necessary or advisable for the purpose of this opinion.

In our examination of the foregoing documents, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed or photostatic copies and the authenticity of the originals of such copies. As

to any matters of fact, we have relied to the extent we deemed appropriate and without independent investigation upon statements and representations of officers and other representatives of the Company and others.

Based upon and subject to the foregoing and subject to the additional qualifications set forth below, we are of the opinion that the Underwritten Securities, when issued against payment therefor, will be legally issued, fully paid and non-assessable.

This opinion is limited to matters governed by the General Corporation Law of the State of Delaware. Our opinions are limited to the specific issues addressed and are limited in all respects to laws and facts in existence on the date of this letter. We assume no obligation to update or supplement this opinion letter to reflect any facts or circumstances that may hereafter come to our attention or any changes in applicable law which may hereafter occur.

This opinion is being furnished to you in accordance with the requirements of Item 601(b)(5) of Regulation S-K promulgated under the Securities Act. We hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement and to the use of our name therein and in the related prospectus under the caption "Legal Matters." In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ KAPLAN, STRANGIS AND KAPLAN, P.A.

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## Section 4: EX-99.1 (EX-99.1)

Exhibit 99.1

## NEWS RELEASE

**CONTACT:** Jason Korstange  
(952) 745-2755  
[www.tcfbank.com](http://www.tcfbank.com)

**FOR IMMEDIATE RELEASE**



200 Lake Street East, Wayzata, MN 55391-1693

### TCF Closes \$172.5 Million Common Stock Offering

WAYZATA, MN, February 26, 2010 – TCF Financial Corporation (“TCF”) (NYSE:TCB) today announced that the company raised gross proceeds of \$172.5 million through its previously announced public common stock offering. In connection with the offering, TCF issued 12,322,250 shares of common stock, including 1,607,250 shares issued pursuant to the full exercise of the underwriters’ over-allotment option, at a public offering price of \$14.00 per share. Net proceeds of the offering to TCF after deducting underwriting discounts and commissions and estimated offering expenses were approximately \$164.5 million. Morgan Stanley and J.P. Morgan acted as joint lead book-running managers. RBC Capital Markets and Stifel Nicolaus served as co-managers.

This announcement shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any offer or sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction. The offering will be made only by means of a prospectus supplement and accompanying prospectus, copies of which may be obtained from Morgan Stanley at 180 Varick Street, 2<sup>nd</sup> Floor, New York, NY 10014, Attention: Prospectus Department or by email at [prospectus@morganstanley.com](mailto:prospectus@morganstanley.com) and from J.P. Morgan via Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, NY 11717 or by calling toll-free (866) 803-9204.

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TCF is a Wayzata, Minnesota-based national financial holding company with \$17.9 billion in total assets. The company has 443 banking offices in Minnesota, Illinois, Michigan, Colorado, Wisconsin, Indiana, Arizona and South Dakota, providing retail and commercial banking services. TCF also conducts commercial leasing and equipment finance business in all 50 states and commercial inventory finance business in the U.S. and Canada. For more information about TCF, please visit [www.tcfbank.com](http://www.tcfbank.com).

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