

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. \_\_\_\_\_-Civ-\_\_\_\_\_

WATERFORD TOWNSHIP GENERAL	)	<u>CLASS ACTION</u>
EMPLOYEES RETIREMENT SYSTEM,	)	
Individually and on Behalf of All Others	)	
Similarly Situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
BANKUNITED FINANCIAL	)	
CORPORATION, ALFRED R. CAMNER,	)	
RAMIRO A. ORTIZ and HUMBERTO L.	)	
LOPEZ,	)	
	)	
Defendants.	)	
_____	)	<u>DEMAND FOR JURY TRIAL</u>

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

## **INTRODUCTION AND OVERVIEW**

1. This is a class action for violations of the anti-fraud provisions of the federal securities laws on behalf of all purchasers of BankUnited Financial Corporation (“BankUnited” or the “Company”) common stock between April 18, 2006 and June 18, 2008 (the “Class Period”), who were damaged thereby (the “Class”).

2. BankUnited is the holding company for BankUnited, FSB, which provides consumer and commercial banking products and services to consumers and businesses located primarily in Florida. As of November 12, 2007, BankUnited, FSB operated 86 branches, two loan production offices, and seven offices outside of Florida. The Company was founded in 1984 and is headquartered in Coral Gables, Florida.

3. During the Class Period, defendants made false and misleading statements about BankUnited. Specifically, defendants misrepresented:

(a) The losses the Company was likely to suffer due to BankUnited’s poor underwriting standards, which losses would occur once interest rates reset on the billions of dollars of pay-option arms (adjustable rate mortgages where borrowers had the ability to choose their payment amount during the initial period of the loan);

(b) BankUnited’s sketchy appraisal process, which permitted borrowers to obtain mortgages in excess of their ability to pay and in excess of the value of the underlying property; and

(c) BankUnited’s policies with regard to “piggy-back” loans, which are essentially second mortgages made at the time a home is purchased to fund a down payment.

4. When the truth began to come to light, BankUnited's stock price plunged, damaging innocent investors. This decrease in BankUnited's stock price was a result of the artificial inflation caused by defendants' misleading statements coming out of the stock price.

### **JURISDICTION AND VENUE**

5. The claims asserted arise under §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("1934 Act") and Rule 10b-5. Jurisdiction is conferred by §27 of the 1934 Act. Venue is proper pursuant to §27 of the 1934 Act. BankUnited's headquarters are located in Coral Gables, Florida and false statements were made in this District and acts giving rise to the violations complained of occurred in this District.

### **THE PARTIES**

6. Plaintiff Waterford Township General Employees Retirement System purchased BankUnited common stock during the Class Period as set forth in the attached certification and was damaged thereby.

7. Defendant BankUnited is the holding company for BankUnited, FSB, which provides consumer and commercial banking products and services to consumers and businesses located primarily in Florida. BankUnited's stock is traded under the symbol BKUNA on the Nasdaq, which is an efficient market.

8. Defendant Alfred R. Camner ("Camner") was, at all relevant times, Chairman of the Board and Chief Executive Officer ("CEO") of the Company.

9. Defendant Ramiro A. Ortiz ("Ortiz") was, at all relevant times, President and Chief Operating Officer ("COO") and a director of the Company.

10. Defendant Humberto L. Lopez (“Lopez”) was, at all relevant times, Senior Executive Vice President and Chief Financial Officer (“CFO”) of the Company.

### **OVERVIEW OF THE SCHEME TO DEFRAUD**

11. During the Class Period, the defendants had both the motive and opportunity to conduct fraud. They also had actual knowledge of the misleading nature of the statements they made or acted in reckless disregard of the true information known to them at the time. In so doing, the defendants participated in a scheme to defraud and committed acts, practices and participated in a course of business that operated as a fraud or deceit on purchasers of BankUnited common stock during the Class Period.

### **FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD**

12. On April 18, 2006, the Company issued a press release entitled “BankUnited Announces Record Quarterly Net Income, Up 45% from the Prior Year; Assets Reach \$12.2 Billion,” which stated in part:

BankUnited Financial Corporation, parent company of BankUnited FSB, today reported record net income of \$19.7 million for the quarter ended March 31, 2006, up 45% from \$13.6 million for the same quarter last year. Basic and diluted earnings were \$0.57 and \$0.54 per share, respectively, for the quarter, up from \$0.45 and \$0.42 per share, respectively, for the same quarter last year. Earnings per share for this quarter 2006 include the dilutive effect of 5.75 million shares of Class A common stock issued in the January 2006 public offering.

Net income for the six months ended March 31, 2006, was \$35.9 million, up 28% from \$28.1 million for the same period in the prior year. Basic and diluted earnings per share for the six month period were \$1.10 and \$1.04, respectively, as compared to \$0.93 and \$0.87 for the same period in the prior year.

\* \* \*

Loan Production and Balances

\* \* \*

During the quarter, BankUnited originated \$1.4 billion of MTA option ARM residential loans, an increase of 96% over the second quarter of last year. For the quarter ended March 31, 2006, option ARM loans comprised 90% of BankUnited's residential loan production compared to 80% during the second quarter last year.

The majority of MTA option ARM residential loans in BankUnited's portfolio contain payment options that enable borrowers to select from different types of mortgage payments each month. If the borrower selects a minimum payment option, interest may be added to the original loan balance resulting in negative amortization. The average Loan-to-Value (LTV) of BankUnited's loans as of March 31, 2006, at inception is 76%. The average LTV of this portfolio after the inclusion of the purchase mortgage insurance is 73%. Generally, loans produced with LTV's greater than 80% require purchase mortgage insurance. Current LTVs may actually be lower than stated due to appreciation of housing markets as well as reduction of principal. The average balance of an MTA option ARM residential loan in the portfolio as of March 31, 2006, is \$295,000. As of March 31, 2006, the portfolio of option ARM loans of \$5.3 billion had negative amortization of \$37.3 million, or 0.7%. As of March 31, 2006, less than 3% of the MTA option ARM residential loans in the portfolio had negative amortization greater than 3% of the original principal amount.

\* \* \*

#### Asset Quality

Non-performing assets as a percentage of total assets remained the same at 0.09% from the previous quarter, and decreased from 0.21% at March 31, 2005. There is no guarantee that BankUnited's low levels of non-performing assets will be sustainable in the future. The allowance for loan losses as a percentage of total loans was 0.31% as of March 31, 2006, compared to 0.36% as of March 31, 2005, and 0.32% as of Dec. 31, 2005.

13. On July 14, 2006, the Company issued a press release entitled "BankUnited Announces Record Quarterly Net Income, Expanded Net-interest Margin and Loan Production; Assets of Largest Bank Headquartered in Florida Reach \$12.9 Billion," which stated in part:

BankUnited Financial Corporation, parent company of BankUnited FSB, today reported record net income of \$23.8 million for the quarter ended June 30, 2006, compared to \$(14.8) million for the same quarter last year.

Basic and diluted earnings for the third quarter of 2006 were \$0.65 and \$0.62 per share, respectively, up from \$(0.50) and \$(0.50) per share, respectively, for the same quarter last year. Earnings per share for this quarter ended June 30, 2006,

include the fully dilutive effect of 5.75 million shares of Class A common stock issued in the January 2006 public offering.

Net income for the nine months ended June 30, 2006, was \$59.7 million, compared to \$13.2 million for the same period in the prior year. Basic and diluted earnings per share for the nine-month period were \$1.77 and \$1.66, respectively, as compared to \$0.43 and \$0.41 for the same period in the prior year.

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#### Loan Production and Balances

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Residential mortgage loan originations, which include specialty consumer mortgage loans originated through branch offices, were \$1.6 billion for the quarter, up 42% over the third quarter of last year. Residential mortgage loan balances increased \$633 million during the quarter to \$8.9 billion at June 30, 2006. Although the national housing market is showing signs of a slowdown, BankUnited continues to experience strong loan production.

During the quarter BankUnited originated \$1.5 billion of Monthly Treasury Average (MTA) option ARM residential loans, an increase of 60% over the third quarter of last year. For the quarter ended June 30, 2006, option ARM loans comprised 92% of BankUnited's residential loan production, compared to 82% during the third quarter last year.

The majority of these loans contain payment options that enable borrowers to select from different types of mortgage payments each month. If the borrower selects a minimum payment option, interest may be added to the original loan balance, which results in negative amortization. The average Loan-to-Value (LTV) of BankUnited's MTA loans at inception was 77%, as of June 30, 2006. The average LTV of the MTA portfolio after the inclusion of the purchase mortgage insurance was 73%. In almost all circumstances, loans produced with LTVs greater than 80% require the purchase of mortgage insurance. Current LTVs may actually be lower than stated due to appreciation of housing markets as well as reduction of principal. The average balance of an MTA loan in the portfolio as of June 30, 2006, was \$299,000. As of June 30, 2006, the portfolio of MTA loans of \$6.0 billion had negative amortization of \$57 million, or 1%. As of June 30, 2006, less than 4% of MTA loans in the portfolio had negative amortization greater than 3% of the original principal amount.

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## Asset Quality

Non-performing assets as a percentage of total assets increased slightly to 0.11% from the 0.09% for the previous quarter, and from 0.10% for the quarter ended June 30, 2005. There is no guarantee that BankUnited's low levels of non-performing assets will be sustainable in the future. The allowance for loan losses as a percentage of total loans was 0.31% as of June 30, 2006, compared to 0.33% as of June 30, 2005, and 0.31% as of March 31, 2006.

14. On August 9, 2006, defendants filed a Form 10-Q with the Securities and Exchange Commission ("SEC") for the quarter ending June 30, 2006, signed by defendant Lopez, which stated in part:

BankUnited has conservative underwriting standards that include evaluation of a borrower's debt service ability based on repayment of the loan at the fully indexed rate. . . .

As of June 30, 2006, the average balance of an option ARM loan was \$299 thousand and the average loan to value (LTV) ratio based on the initial appraisal of the collateral was 77% without considering purchase mortgage insurance (PMI). Generally, loans produced with LTV's greater than 80% require PMI. As of June 30, 2006, the average LTV ratio based on the initial appraisal of the collateral for the option ARM loan portfolio including PMI was 73%. LTV's may decline over time due to appreciation of housing markets as well as loan principal reduction.

15. As part of the August 9, 2006 Form 10-Q, defendant Camner signed a certification which stated:

I, Alfred R. Camner, certify that:

1. I have reviewed this quarterly report on Form 10-Q of BankUnited Financial Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

16. Defendant Lopez signed a substantially identical certification as well.

17. On October 24, 2006, the Company issued a press release entitled “BankUnited Announces Record Fiscal Year Net Income of \$83.9 Million; Double-Digit Increases Achieved in Income, Margin, Deposits and Loan Production.” The release stated in part:

BankUnited Financial Corporation, parent of BankUnited FSB, today reported record net income of \$24.2 million for the quarter ended Sept. 30, 2006, compared to net income of \$14.3 million for the same quarter last year. Basic and diluted earnings per share for the quarter were \$0.66 and \$0.63, respectively, up from \$ 0.47 and \$0.44 per share, respectively, for the same quarter last year.

Net income for the fiscal year ended Sept. 30, 2006, was \$83.9 million, compared to \$27.5 million for the fiscal year ended Sept. 30, 2005. Basic and diluted earnings per share for the fiscal year were \$2.43 and \$2.30, respectively, as compared to \$0.90 and \$0.85 for the 2005 fiscal year. Earnings per share for the 2006 fiscal year include the dilutive effect of 5.75 million shares of Class A common stock issued in the January 2006 public offering.

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#### Loan Production and Balances

\* \* \*

During the fourth quarter, BankUnited originated \$1.4 billion of Monthly Treasury Average (MTA) option-ARM residential loans, an increase of 32% over the fourth quarter of last year.

Option-ARM loans represented 58% of the total loan portfolio at the end of the fiscal year. The \$6.7 billion in option-ARM balances had negative amortization of \$89 million, or 1.3%. As of Sept. 30, 2006, less than 10% of option-ARM loans in the portfolio had negative amortization greater than 3% of the original principal amount. Option-ARM loans are designed to allow for negative amortization. As the MTA index re-prices upward, negative amortization is expected to increase. Conversely, as the MTA index re-prices downward, negative amortization is expected to decrease.

In almost all circumstances, loans originated with Loan to Values (LTVs) greater than 80% require the purchase of mortgage insurance. With the adjustment for coverage of mortgage insurance, the average LTV of the residential portfolio at inception was 71%. The average outstanding balance of a residential loan in the portfolio as of Sept. 30, 2006, was \$274,000.

The average LTV of the option-ARM portfolio after the adjustment for coverage of mortgage insurance was 73%. The average outstanding balance of an option-ARM loan in the portfolio as of Sept. 30, 2006, was \$303,000. Current LTVs may actually be lower than stated due to reduction of principal as well as appreciation of housing markets.

\* \* \*

#### Asset Quality

Non-performing assets as a percentage of total assets increased to 0.16% from 0.11% for the previous quarter, and was up from 0.08% at Sept. 30, 2005.

The allowance for loan losses as a percentage of total loans was 0.32% as of Sept. 30, 2006, compared to 0.32% as of Sept. 30, 2005, and 0.31% as of June 30, 2006.

Net recoveries for 2006 were 0.002% compared to net charge offs of 0.03% in 2005.

18. On December 14, 2006, defendants filed a Form 10-K with the SEC for the fiscal year ending September 30, 2006, signed by each of the Individual Defendants on behalf of BankUnited, which stated in part:

BankUnited's underwriting is performed internally and aims to limit risk by:

- analyzing the borrower's repayment ability at the fully indexed rate
- not allowing financing of the down payment through other loans at BankUnited
- requiring private mortgage insurance (PMI) on loans where the loan to value would exceed 80% without the insurance
- utilizing in-house appraisers to review external appraisals

19. Defendants Camner and Lopez each executed a certification submitted with this filing substantially identical to that set forth above.

20. On January 22, 2007, the Company issued a press release entitled “BankUnited Announces Record Quarterly Net Income, up 69% from Same Quarter Last Year; Total Assets Rise 23%, Reach \$13.8 Billion.” The release stated in part:

BankUnited Financial Corporation, parent of BankUnited FSB, today reported record net income of \$27.4 million for the quarter ended Dec. 31, 2006, up 69.2% from \$16.2 million for the quarter ended Dec. 31, 2005. Basic and diluted earnings were \$0.75 and \$0.71 per share, respectively, for the quarter, up from \$0.53 and \$0.50 per share, respectively, for the quarter ended Dec. 31, 2005. Earnings per share for the quarter ended Dec. 31, 2006 include the dilutive effect of 5.75 million shares of Class A common stock issued in the company’s January 2006 public offering.

\* \* \*

“While we expect the level of non-performing assets to increase, we do not anticipate that they will exceed levels that we have experienced in the past several cycles. We expect that our historically conservative credit standards and relatively low loan to values will keep our loss experience well below industry averages.”

\* \* \*

#### Loan Production and Balances

\* \* \*

Option-ARM loans represented 59% of the total loan portfolio at Dec. 31, 2006, compared to 51% of the total loan portfolio at Dec. 31, 2005. At Dec. 31, 2006, the portfolio of \$7.0 billion in option-ARM balances had negative amortization of \$129.7 million, or 1.9%. As of Dec. 31, 2006, 9% of option-ARM balances had negative amortization greater than 4% of the original principal amount. Option-ARM loans are designed to allow for negative amortization. As the MTA index re-prices upward, negative amortization is expected to increase. Conversely, as the MTA index re-prices downward, negative amortization is expected to decrease.

In almost all circumstances, loans originated with Loan to Values (LTV) greater than 80% require the purchase of mortgage insurance. At Dec. 31, 2006, including the adjustment for coverage of mortgage insurance, the average LTV of the residential portfolio at inception was 72%.

The average LTV of the option-ARM portfolio after the adjustment for coverage of mortgage insurance was 74% at Dec. 31, 2006. The average outstanding balance of an option-ARM loan in the portfolio as of Dec. 31, 2006, was \$306,159.

## Asset Quality

As a result of the continued softening in certain sectors of the housing market, non-performing assets as a percentage of total assets increased to 0.33% for the quarter ended Dec. 31, 2006, from 0.16% for the previous quarter, and from 0.09% for the quarter ended Dec. 31, 2005. When compared to BankUnited's overall portfolio, the level of non-performing assets remains relatively low when compared to industry standards.

During the quarter, BankUnited took steps to reduce its exposure on a previously disclosed commercial real estate lending relationship with total balances of \$17.3 million. BankUnited sold a \$7.0 million loan at a discount of \$1.3 million. This amount was reserved for at Dec. 31, 2006. The disposition of these two loans reduced BankUnited's exposure to \$3 million.

For the quarter ended Dec. 31, 2006, the provision for loan loss totaled \$4.0 million, compared to \$2.3 million for the quarter ended Dec. 31, 2005. Charge-offs remained low at \$1.2 million, or an annualized rate of 0.04% of average loans. Included in charge-offs is the aforementioned \$1.3 million loss on the \$7.0 million commercial real estate loan and net recoveries of \$144,000.

The allowance for loan losses as a percentage of total loans was 0.34% as of Dec. 31, 2006, compared to 0.32% for the quarter ended Sept. 30, 2006, and 0.32% as of Dec. 31, 2005.

21. On January 22, 2007, on the Company's earnings conference call, defendants made the following statements:

[Camner]: While we expect delinquencies to rise – they always do in these environments – the historically conservative underwriting process and loan-to-value standards should keep our loss experience well below industry averages. We do not expect nonperforming assets to exceed the highs we have experienced in the past several cycles. Those of you who have followed BankUnited for many years know that our highs are still low when compared to the rest of the thrift industry in that area.

\* \* \*

[Lopez]: Our mortgage offerings meet the needs of educated borrowers while maintaining our strict underwriting standards.

\* \* \*

As Fred mentioned, we're in the midst of a residential credit cycle, and we expected nonperforming assets to increase, and they have, reaching 33 basis points this quarter compared to 16 basis points last quarter. The increase was in the single-family residential loans, where our conservative underwriting standards and low LTVs should keep our charge-offs from increasing significantly. Our best estimate, given where we are in the housing cycle, is that nonperformers will increase to between 60 and 80 basis points of assets.

22. On February 7, 2007, defendants filed a Form 10-Q with the SEC for the quarter ending December 31, 2006, signed by defendant Lopez, which stated in part:

As of December 31, 2006, the average balance of an option ARM loan was \$306 thousand and the average loan to value (LTV) ratio based on the initial appraisal of the collateral was 79% without considering purchase mortgage insurance (PMI). Generally, loans produced with LTV's greater than 80% require PMI. As of December 31, 2006, the average LTV ratio based on the initial appraisal of the collateral for the option ARM loan portfolio including PMI was 74%.

23. Defendants Camner and Lopez each executed a certification submitted with this filing substantially identical to that set forth above.

24. On April 18, 2007, the Company issued a press release entitled "BankUnited Announces Record Second-Quarter Net Income; Margin, Assets and Total Deposits Rise." The release stated in part:

BankUnited Financial Corporation, parent company of BankUnited FSB, today reported net income of \$24.4 million for the quarter ended March 31, 2007, up 24% from \$19.7 million for the quarter ended March 31, 2006. Basic and diluted earnings were \$0.67 and \$0.64 per share, respectively, for the quarter, up from \$0.57 and \$0.54 per share, respectively, for the quarter ended March 31, 2006.

In the quarter, the company incurred \$1.1 million after-tax expense to call \$48 million of high-rate trust preferred securities and an after-tax loss of \$0.4 million on securities sold during the quarter.

Net income for the six months ended March 31, 2007, was \$51.8 million, up 44% from \$35.9 million for the same period in the prior year. Basic and diluted earnings per share for the six-month period were \$1.42 and \$1.35, respectively, as compared to \$1.10 and \$1.04 for the same period in the prior year.

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## Credit Quality Remains Strong

“Credit quality remains strong,” Camner continued. “Our history shows that we have been able to maintain a low level of net charge-offs even when non-performing assets have increased. While BankUnited’s non-performing assets increased to 0.53% this quarter, they are well below the industry average for all thrifts over \$5 billion in assets, of 0.89% at Dec. 31, 2006, and approximately half of the levels reported thus far this quarter by a number of major thrifts. Additionally, our levels came in better than we projected last quarter. This is because of our conservative underwriting. We do not engage in subprime lending and, as a portfolio lender, we treat each loan as if it is our own. In addition, we have high-touch underwriting processes, in-house appraisers in each market and well-trained, experienced underwriters. We have always underwritten our option-ARM loans at the fully indexed rate, long before the release of the inter-agency federal guidelines.

“Of the 31,700 residential loan files in our portfolio, 216 are in foreclosure. This quarter we experienced \$77,384 in net charge-offs against the \$9.4 billion residential loan portfolio. Based on extensive reviews of our portfolios, we do not at this time, anticipate significant losses. Based on recent appraisals, the current weighted average loan-to-value of the loans in foreclosure is approximately 79%. Since March 2005, we have sold more than \$3.0 billion in residential loans consisting of nearly 8,000 files. Only two of these files have been returned for early-payment default.

“I would also like to address the concerns over a possible spillover from the subprime market into the reduced documentation market. ***Our reduced documentation loans are counterbalanced by stringent requirements for other underwriting criteria, including lower loan-to-value ratios, higher FICO scores, credit enhancements such as mortgage insurance and lower debt-to-income ratios.*** Our experience has been that these loans when properly underwritten, perform as well if not better than, our full documentation loans. More detail about our loan portfolio is included in the addendum to the press release.

“In almost all circumstances, loans originated with Loan-to-Values (LTVs) greater than 80% require the purchase of mortgage insurance. The average FICO score of the entire residential portfolio at March 31, 2007, was 710, and including the adjustment for coverage of mortgage insurance, the average LTV at inception was 70%. The average FICO score of the option-ARM portfolio at March 31, 2007, was 709, and the average LTV after the adjustment for coverage of mortgage insurance was 73%.

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## Loan Balances and Production

\* \* \*

Of the total residential loan originations during the quarter, 85% were option-ARM products, a decrease of 5% when compared to the second quarter of fiscal 2006. The company has added a variety of new option-ARM products, many with higher start rates. These new products, along with more competitively priced traditional ARM products, will provide a diversified product offering.

Option-ARM loans represented 58.5% of the total loan portfolio at March 31, 2007, compared to 53.0% of the total loan portfolio at March 31, 2006. At March 31, 2007, the portfolio of \$6.9 billion in option-ARM balances had negative amortization of \$176 million, or 2.5%, compared to negative amortization of \$37.3 million or 0.7% at March 31, 2006, and up from negative amortization of \$129.7 million, or 1.9% at December 31, 2006. The average outstanding balance of an option-ARM loan in the portfolio as of March 31, 2007, was \$310,000.

#### Asset Quality

Non-performing assets as a percentage of total assets increased to 0.53% for the quarter ended March 31, 2007, from 0.33% for the previous quarter, and from 0.09% for the quarter ended March 31, 2006. The level of non-performing assets in the quarter was better than BankUnited's previously stated expectations. The level of non-performing assets is low when compared to both BankUnited's overall portfolio and industry averages.

For the quarter ended March 31, 2007, the provision for loan loss totaled \$4.0 million, compared to \$2.3 million for the quarter ended March 31, 2006. Net charge-offs remained low at \$1.4 million, or an annualized rate of 0.04% of average loans. Residential loan net charge-offs were \$77,384. Included in net charge-offs is a previously disclosed commercial real estate loan. The company disposed of a portion of the loan in December 2006, and sold another portion in early January for a \$1.3 million loss in this quarter.

The allowance for loan losses as a percentage of total loans was 0.35% as of March 31, 2007, compared to 0.34% for the quarter ended Dec. 31, 2006, and 0.31% as of March 31, 2006.

25. On April 19, 2007, on the Company's earnings conference call, defendants made the following statements:

[Camner]: When borrower situations change, we have a team of local counselors to assist them. We find that most individual scenarios are due to health, employment or property taxes and insurance increases. The so-called payment shock has always been reported in the media has been rarely a factor in our situation.

Probably because of not only our strong underwriting but in particular because we have always underwritten our loans at the fully indexed rate.

Our reduced documentation loans are counterbalanced by stringent requirements for other underwriting criteria including lower loan to value ratios, higher credit scores, and lower debt to income ratios. Historically it has been our experience that reduced documentation loans perform as well if not better than full document loans. In addition, we sold more than 3 billion residential loans in the last two years, a total of more than 8000 files. Of all these files, only two have been returned by the purchasers for early payment default.

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[Lopez]: We obviously closely monitor our loan portfolio to manage our risk and the provisions for loan losses is \$4 million this quarter, nearly 3 times our level of charge-offs. As you know, loan loss provisions are based on previous levels of losses. Our charge-offs have always been very low because of the quality of our borrowers and our underwriting standards.

26. On May 10, 2007, defendants filed a Form 10-Q with the SEC for the quarter ended March 31, 2007, signed by defendant Lopez, which stated in part:

As of March 31, 2007, the average balance of an option ARM loan was \$310 thousand and the average LTV ratio based on the initial appraisal of the collateral was 79% before considering PMI. Generally, loans produced with LTV's greater than 80% require PMI. As of March 31, 2007, the average LTV ratio based on the initial appraisal of the collateral for the option ARM loan portfolio including PMI was 73%.

27. Defendants Camner and Lopez each executed a certification submitted with this filing substantially identical to that set forth above.

28. On July 12, 2007, the Company issued a press release entitled "BankUnited Issues Interim Update; Company to Release Third-Quarter Earnings Results on July 26, 2007," which stated in part:

BankUnited Financial Corporation, parent company of BankUnited FSB, today issued an interim update for the third fiscal quarter ended June 30, 2007. BankUnited will issue a full earnings report on Thursday, July 26, 2007, prior to the market opening.

The company said that it expects earnings for the third fiscal quarter of 2007 to be approximately even with the \$0.62 per diluted common share reported for the same quarter of 2006. During the quarter, the company repurchased approximately 1 million shares of its Class A Common Stock.

#### Loan Sales

Although there were gains available at times on option ARM whole loan sales, the company deemed these gain-on-sale margins as insufficient and elected to hold loans in the third quarter. The company anticipates that the gain-on-sale of loans will be approximately \$500,000 for the third fiscal quarter, compared to \$3.5 million for the prior quarter.

#### Asset Quality

BankUnited continues to experience low net-charge offs. Net charge-offs are expected to total approximately \$1.1 million, which is slightly below the previous quarter and approximately 0.04% annualized of average total loans. The company continues to believe that losses will not be significantly higher than historical levels. BankUnited expects to report total non-performing assets of approximately \$125 million, or 0.86% of total assets.

29. On July 26, 2007, the Company issued a press release entitled “BankUnited Announces Third-Quarter Earnings of \$0.62 per Share; Margin, Loan Balances and Deposits Increase, Net Charge-Offs Remain Low.” The release stated in part:

BankUnited Financial Corporation, parent company of BankUnited FSB, today reported net income of \$23.2 million for the quarter ended June 30, 2007, down 2.6% from \$23.8 million for the quarter ended June 30, 2006. At \$0.65 and \$0.62 per share, respectively, basic and diluted earnings for the period ended June 30, 2007, were the same as for the quarter ended June 30, 2006.

Net income for the nine months ended June 30, 2007, was a record \$75 million, up 25.6% from \$59.7 million for the same period in fiscal 2006. Basic and diluted earnings per share for the nine-month period were \$2.06 and \$1.97, respectively, as compared to \$1.77 and \$1.66 for the same period in fiscal 2006.

\* \* \*

“As we announced on July 12, our net charge-offs of \$1.1 million, corresponding to an annualized rate of just 0.04% of average loans, declined slightly from the previous quarter. We do not expect our loan losses in the coming months to be significantly higher than levels we experienced in comparable periods in the past,

although we expect that non-performing assets will increase. These expectations are based, in part, on BankUnited's avoidance of subprime lending, our employment of well-trained and experienced underwriters and appraisers, and the continual enhancement of our collections process. Further, unlike many in the industry, we have always underwritten our loans at the fully indexed rate and have not engaged in home equity piggyback lending. Our home equity lines, which as of June 30, 2007, comprised less than 3% of assets, are relationship driven, primarily from our branches, and almost always have a combined loan-to-value (LTV) less than 90%."

\* \* \*

### Asset Quality

Net charge-offs remained low at \$1.1 million, or an annualized rate of 0.04% of average loans. Non-performing assets as a percentage of total assets increased to 0.86% for the quarter ended June 30, 2007, from 0.53% for the previous quarter, and from 0.11% for the quarter ended June 30, 2006.

Based on recent appraisals, the current weighted average loan-to-value of the loans in foreclosure is 79%.

For the quarter ended June 30, 2007, the provision for loan losses totaled \$4.4 million, compared to \$1.2 million for the quarter ended June 30, 2006. In association with the increase in non-performing assets, BankUnited increased the provision for loan losses over the last year and anticipates that this trend will continue in future quarters. BankUnited increased its allowance for loan loss as a percentage of total loans to 0.36% as of June 30, 2007, compared to 0.35% as of March 31, 2007, and 0.31% as of June 30, 2006.

30. On July 26, 2007, on the Company's earnings conference call, defendants made the following statements:

[Camner]: Credit quality has been a hallmark of our Company since the beginning. Our history shows that we've been able to maintain a low level of charge-offs even when non-performing assets increase. As a portfolio lender, we treat each loan as our own. It's important to remember that we have always underwritten our mortgages at the fully indexed rate. This is not the case with some other companies in our sector. In addition, we do not engage in sub prime lending and we do not provide home equity piggybacking of loans.

\* \* \*

There's been a great deal of discussion in the public in the last few days regarding home equity loans and lines. Just to give some detail regarding our home

equity loans and lines portfolio at June 30th, 2007, they total approximately \$403 million and comprise less than 3% of our total assets. These loans were generated for our branch system, are relationship-based, none were purchased, and none are piggybacks, because as we've mentioned in the past, we do not allow piggyback loans.

\* \* \*

Non-interest income was \$8.3 million, a decrease of 20% compared to the quarter ended June 30th, '06. This decrease is due primarily to the gain on sale issues we covered in the prerelease of July 12. The secondary market has long shown an appetite for BankUnited generated loans because of our stringent underwriting and conservative credit standards.

\* \* \*

We have what we believe is very strong underwriting. We have good LTVs. And where we can, we're going to work with borrowers. Where it doesn't work out, we're going to have to foreclose and we're going to end up selling those houses. And we're going to have room on the sale so that we really expect very little in the way of losses. We just don't look for significant losses out of this portfolio. And the numbers on the foreclosures thus far with appraisals that we've been doing bear that out.

\* \* \*

[Camner]: The reason that we are not reporting what they are reporting and well behind them is because we felt our underwriting was much stricter from the get go, including the very concept that many of these big entities were out there making 1% start-rate loans and underwriting the people with 1%. You can qualify anybody at 1%.

\* \* \*

Number one, we are a bank. I know a lot of emphasis is on the residential. I can understand it in terms of this market. I know a lot of people keep putting emphasis on the monthly option ARM; that's been a very declining part of our overall situation. And otherwise, we have historically had very conservative underwriting. We don't feel we've gotten away from that. We feel that that is going to bring us through. Some other people, some other entities very well-known in the market have been popping up and suddenly reporting things. We feel we've been giving you our story all along just as it is

31. On August 9, 2007, defendants filed a Form 10-Q with the SEC for the quarter ended June 30, 2007, signed by defendant Lopez, which stated in part:

The decrease in residential loan originations for the third quarter of fiscal 2007 compared to the third fiscal quarter of fiscal 2006 reflects a continued tightening in credit standards as well as reduced overall demand in the national housing markets. BankUnited's has diversified its product offerings and has begun to significantly move away from products that adjust monthly and are tied to the Monthly Treasury Average Index ("MTA"). Net charge-offs for the quarter were \$1.1 million corresponding to an annualized rate of 0.04% of average loans. BankUnited does not expect loan losses in the coming months to be significantly higher than levels experienced in comparable periods in the past, although non-performing assets are expected to increase. Non-performing assets as of June 30, 2007 were 0.86% of total assets. These expectations are based, in part, on BankUnited's:

- avoidance of sub-prime lending;
- employment of well-trained and experienced underwriters and appraisers;
- continual enhancement of the collections process;
- 19% of BankUnited's residential loan portfolio has mortgage insurance;
- underwriting loans at the fully indexed rate which is the banks historical practice although many in the industry did not follow this practice; and
- avoidance of home equity piggyback lending.

\* \* \*

As of June 30, 2007, the average balance of an option ARM loan was \$315 thousand and the average LTV ratio based on the initial appraisal of the collateral was 80% before considering MI. Generally, loans produced with LTV's greater than 80% require MI. As of June 30, 2007, the weighted average LTV ratio based on the initial appraisal of the collateral for the option ARM loan portfolio including MI was 76%.

\* \* \*

[T]he vast majority of non-performing loans are secured by real estate, and based on recent appraisals, the weighted average loan to value of loans in foreclosure was 79% as of June 30, 2007.

32. Defendants Camner and Lopez each executed a certification submitted with this filing substantially identical to that set forth above.

33. On October 3, 2007, the Company issued a press release entitled “BankUnited Issues Interim Update,” which stated in part:

BankUnited Financial Corporation, parent company of BankUnited FSB today issued an interim update for the fourth fiscal quarter ended Sept. 30, 2007. BankUnited will issue a full earnings report on Tuesday, Oct. 23, 2007, prior to the market opening.

The company said that although it expects to report record GAAP earnings for the fiscal year, it anticipates operating earnings for the fourth fiscal quarter of 2007 to be \$0.41 to \$0.46 per diluted share. This compares to \$0.63 reported for the fourth quarter of 2006. This does not include other than temporary impairments on various investment securities of approximately \$3.3 million after-tax, which, if taken by the company, will further impact non-operating earnings by approximately \$0.09 per share. The mark-to-market adjustment on these securities had previously been reflected in the equity of the company. Operating earnings are a non-GAAP financial measure as defined by SEC Regulation G that BankUnited believes is useful to investors in evaluating the company’s capital position. However, the company does not intend for the operating earnings number to be considered in isolation or as a substitute for any GAAP measure.

\* \* \*

– Net charge-offs related to the residential portfolio are expected to total \$3 million, which includes anticipated recoveries of approximately \$1.2 million from mortgage insurance. Net charge-offs on the consumer loan portfolio are expected to total approximately \$600,000. BankUnited expects to report total net charge-offs of approximately \$3.9 million, or approximately 0.06% annualized of average total loans.

34. On October 23, 2007, the Company issued a press release entitled “BankUnited Announces Fourth Quarter and Fiscal Year 2007 Results; Fourth Quarter Loan Loss Provision Increased to \$19.1 Million.” The release stated in part:

BankUnited Financial Corporation, parent of BankUnited FSB, today reported net income of \$81.4 million for the fiscal year ended Sept. 30, 2007, compared to \$83.9 million for the fiscal year ended Sept. 30, 2006.

Diluted earnings per share for the 2007 fiscal year were \$2.14, compared to \$2.30 for the 2006 fiscal year. Excluding a \$5.0 million pre-tax charge (\$3.3 million after-tax), or \$0.09 per diluted share, for other-than-temporary impairments on various investment securities, earnings were \$84.7 million, or \$2.23 per diluted share, for the fiscal year ended Sept. 30, 2007.

Net income for the quarter ended Sept. 30, 2007, was \$6.4 million, or \$0.17, per diluted share, compared to \$0.63 per share for the same quarter last year. Excluding the \$5.0 million pre-tax charge (\$3.3 million after-tax), or \$0.09 per diluted share, for other-than-temporary impairments on various investment securities, earnings were \$9.7 million, or \$0.26 per diluted share, for the fourth quarter of fiscal 2007.

\* \* \*

“In our pre-release we reported a loan loss provision of \$8 to \$10 million. We have increased the provision to \$19.1 million. This change is based on industry trends, including further difficulties in the housing markets, particularly in certain geographic areas that have been impacted by price decreases.

\* \* \*

#### Asset Quality

\* \* \*

Residential net charge-offs in the fourth quarter were \$2.9 million, net of \$1.2 million in estimated recoveries from mortgage insurance. Consumer loan net charge-offs in the fourth quarter were \$619,000, and commercial portfolio net charge-offs were \$2.1 million. Total net charge-offs for the quarter ended Sept. 30, 2007, were \$5.6 million, net of estimated insurance recoveries, compared to net recoveries of \$571,000 for the quarter ended Sept. 30, 2006.

\* \* \*

For fiscal 2007, net charge-offs related to the residential portfolio were \$4.0 million, net of \$1.2 million in estimated recoveries from mortgage insurance. Total net charge-offs for fiscal 2007 were \$9.3 million, net of estimated insurance recoveries. This represents 0.03% and 0.08% of average annual loans, respectively.

At Sept. 30, 2007, BankUnited had 541 loans in foreclosure, which represents 1.5% of the company's 35,188 residential loans. Based on recent appraisals, the current weighted average loan-to-value of the loans in foreclosure as of Sept. 30, 2007, was approximately 86%, including the effects of mortgage insurance.

For the quarter ended Sept. 30, 2007, the provision for loan loss totaled \$19.1 million, compared to \$4.6 million for the quarter ended Sept. 30, 2006.

The allowance for loan loss was \$58.6 million at Sept. 30, 2007, compared to \$36.4 million at Sept. 30, 2006. The allowance for loan losses as a percentage of total loans was 0.46% as of Sept. 30, 2007, compared to 0.32% as of Sept. 30, 2006, and 0.37% as of June 30, 2007.

\* \* \*

As of Sept. 30, 2007, BankUnited's option-ARM balances totaled \$7.6 billion, which represented 70% of the residential loan portfolio and 60% of the total loan portfolio. For the quarter ended Sept. 30, 2007, the growth in negative amortization was \$48 million, compared to \$46.4 million for the quarter ended June 30, 2007. Of the \$7.6 billion in option-ARM balances, \$6.5 billion had negative amortization of \$270 million, or 3.55%, of the option-ARM portfolio.

In almost all circumstances, loans originated with loan-to-value (LTV) ratios greater than 80% require the purchase of mortgage insurance. With the adjustment for coverage of mortgage insurance, the average LTV of the residential portfolio at inception was 74.3%. The average outstanding balance of a residential loan in the portfolio as of Sept. 30, 2007, was \$287,000.

35. On October 23, 2007, on the Company's earnings conference call, defendants made the following statements:

[Camner]: It bears repeating what we don't do. We don't engage in sub-prime lending. We don't piggyback mortgages.

\* \* \*

Just to reiterate, different from a lot of these others, we did not do piggybacks, we didn't do sub prime, we originated fully indexed rate, and we applied reasonable tests to our stated income situation. So to us, that makes this ultimately a lot different, and I think also our ultimate LTV situation appears to be a lot different as well.

\* \* \*

Jefferson Harralson – KBW – Analyst

And then lastly, the LTV on the fresh appraisals, you mentioned it went from 79% to 86. At what level, I guess what accounts for that increase, I suppose, is just a lot more sharp appraisals, but at what level does that start worrying you about the collectibility of your loans?

[Camner]: Number one is, we ask for very tough appraisals, when we ask them to go and value these.

\* \* \*

Al Savastano – Fox-Pitt Kelton – Analyst

Three, hopefully, quick questions here. First on the appraised values for the loans that are in LTV, that were in – I’m sorry, foreclosure, what was the change in appraisal values from the original appraisal?

[Camner]: They are all over the ballpark. At a few locations, they can be dramatically different. In others, there is only modest, probably overall, they can be somewhere – I would say approximately averaging 10%. I don’t have an exact figure. And, again, this really relates to having the 2006 ones come through. Because the 2006 loans, I think for everybody, there a few locations plus or minus a month, but basically 2006 loans are the primary problem, and the real question for everybody, that you can ask in terms of what is happening to other people, ultimately is, is this an accelerated happening, because of the bubbling effect of prices in 2006, or is it a more prolonged effect? And we don’t have an answer to that one yet. That is obviously the old-fashioned \$64,000 question.

There’s some evidence that this is a – because of the bubbling effect, that you will see an acceleration of those come through, and that this will not – this will be a sort of narrowed bell curve, they’ll come through, they’ll hit hard, and because the people who are overstressed and they’re overstretched and they’re bailing out now.

36. On November 29, 2007, defendants filed a Form 10-K with the SEC for the fiscal year ended September 30, 2007, signed by each of the Individual Defendants, which stated in part:

Our underwriting is performed internally and aims to limit risk by:

- qualifying the borrowers by analyzing their ability to make a fully amortizing repayment at the fully indexed loan rate
- not allowing financing of the down payment through other loans at BankUnited

- requiring mortgage insurance (MI) on loans where the loan to value exceeds 80% without the insurance
- utilizing in-house appraisers to review external appraisals.

\* \* \*

The various risks of our loan portfolio are mitigated by our underwriting requirements, which include credit qualifications and loan to value ratios directly correlated to potential risk. In almost all circumstances, loans originated with loan to value ratios greater than 80% require the purchase of mortgage insurance. After an adjustment for the coverage of mortgage insurance, the average loan to value ratio of the residential loan portfolio at inception was 74%.

37. Defendants Camner and Lopez each executed a certification submitted with this filing substantially identical to that set forth above.

38. On January 24, 2008, the Company issued a press release entitled “BankUnited Announces First-Quarter Results for Fiscal 2008; Company Developing Strategic Plan to Reposition for the Future.” The release stated in part:

BankUnited Financial Corporation, parent company of BankUnited FSB, today reported a loss of \$25.5 million, or \$0.73 per diluted share, for the quarter ended Dec. 31, 2007, compared to earnings of \$27.4 million, or \$0.71 per diluted share, for the quarter ended Dec. 31, 2006. BankUnited recorded a \$65 million provision for loan losses. Excluding the provision, operating earnings were \$17.3 million.

“Clearly, we are disappointed with this quarter’s loss,” said Alfred R. Camner, BankUnited’s chairman and chief executive officer. “The extraordinary deterioration of the housing and mortgage markets and overall instability in the economy continue to impact financial services companies, and we do not anticipate a recovery of the housing market in the near term.

“Although net-charge offs for the quarter were a modest \$6 million, we recorded a \$65 million provision, which we deemed as a prudent step given market conditions and the anticipation of rising non-performing assets. This provision increased our allowance for loan losses to \$118 million, or 0.93% of our total loan portfolio.

“This provision, together with actions we are taking now, should better position and strengthen the company for the future.”

\* \* \*

## Credit Standards

“BankUnited has adhered to conservative underwriting standards,” Camner explained. “Our guidelines have been substantially consistent with the inter-agency lending guidelines since long before their issuance in September 2006. We are not a subprime lender, and we do not engage in piggybacking in which a borrower is made a second mortgage simultaneously with a first mortgage. And, unlike others in the industry, we have underwritten to the fully indexed rate and followed strict policies for outside appraisals combined with internal appraisal reviews conducted by our own staff.

“Reduced documentation loans undergo a reasonableness test on income. In almost all circumstances, loans originated with loan-to-value ratios (LTVs) over 80% require the purchase of mortgage insurance. Several years ago, we began to restrict the number of residential loans for luxury high-rise condos, including those located in downtown Miami. Additionally, the company has not been involved in any construction lending for these high-rise condos.

“We have been very proactive in addressing the rise in non-performing assets and have strengthened our risk management programs accordingly. We remain focused on managing exposure to the loans that we deem to be most at risk.”

\* \* \*

## First-Quarter 2008 Results

### Asset Quality

Net charge-offs for the quarter ended Dec. 31, 2007, remained low at \$6.0 million, or an annualized rate of 0.19% of average loans, compared to \$5.6 million, or an annualized rate of 0.18% for the quarter ended Sept. 30, 2007.

Residential and consumer residential net-charge offs in the first quarter were \$5.4 million, net of \$2.2 million in estimated recoveries from mortgage insurance. Commercial and commercial real estate net-charge offs were \$498,000.

The ratio of non-performing assets as a percentage of total assets increased to 2.99% at Dec. 31, 2007, up from 1.39% at Sept. 30, 2007. The allowance for loan loss was \$117.7 million at Dec. 31, 2007, compared to \$58.6 million at Sept. 30, 2007, and \$39.2 million at Dec. 31, 2006. The allowance for loan losses as a percentage of total loan portfolio was 0.93% at Dec. 31, 2007, compared to 0.46% at Sept. 30, 2007, and 0.34% at Dec. 31, 2006.

## Loan Production and Balances

The total loan portfolio was \$12.6 billion at Dec. 31, 2007, compared to \$12.6 billion at Sept. 30, 2007, and \$11.6 billion at Dec. 31, 2006.

\* \* \*

As of Dec. 31, 2007, BankUnited's option-ARM balances totaled \$7.5 billion, which represented 70% of total residential loans and 59% of total loans. For the quarter ended Dec. 31, 2007, the growth in negative amortization was \$47 million, compared to \$48 million for the quarter ended Sept. 30, 2007. Of the \$7.5 billion in option-ARM balances, \$6.9 billion had negative amortization of \$317 million, or 4.2%, of the option-ARM portfolio.

In almost all circumstances, loans originated with LTV ratios greater than 80% require the purchase of mortgage insurance. With the adjustment for coverage of mortgage insurance, the average LTV of the residential portfolio at inception was 74.7%. The average outstanding balance of a residential loan in the portfolio as of Dec. 31, 2007, was \$290,000.

39. On January 24, 2008, on the Company's earnings conference call, defendants made the following statements:

[Camner]: We are focusing on managing exposure to at-risk loans and helping customers who have changed life situations. Our history of stringent underwriting leads us to believe the charge-offs will remain moderate.

\* \* \*

Matthew Kelley – Sterne, Agee – Analyst

Yes. You know, when you look at the increase in MTAs it's really pretty shocking, and then rapid. And I think that's really the bulk of the concern. I think that the crux of your argument that your reserves are adequate now really rest in the assumption that while severity will remain modest, when you look at what S&P, for example, is forecasting for loss severity for the option ARM product it's up in the 30% range and you guys are in the 11% range. And so help us understand why you think loss severity is going to remain under control for the next couple of quarters as MTAs continue to move higher as you've indicated.

[Lopez]: Matt, I think it all goes back to when the loan was originated. I think our underwriting standards are probably some of the strongest in the industry. Again, we never dabbled in the subprime, we don't do piggybacks, we have low LTVs – we start at about 74% LTV – FICO is at 709. So it's a good quality portfolio. And, yes,

obviously there's been some price depreciation and devaluations; but again, starting with that lower LTV, we have a lot more cushion to absorb that. It's kind of like not every MTA is created equally. If we were sitting with an original of 90% and then had appreciation we'd be looking at maybe the severity rate that you mentioned of 30%, but we haven't. So I think [sic] it all goes down to the beginning, of when the loan was originated and the underwriting criteria that we used.

\* \* \*

[Camner]: Our third major theme is credit standards. If you make a reference, we're on slide 8. We have been different from other lenders; it's something we need to emphasize because there seems to be a constant concept of trying to throw us in with others. And so we'll get back to some of these statements, we've made them before but I think it needs much more emphasis by many who have listened to us in the past and perhaps missed it. We don't engage in subprime lending. We did not and don't piggyback mortgages. We don't originate 100% financed residential properties. We have minimal exposure to luxury high-rise condos in downtown Miami. We underwrote our optioned loans at the fully indexed rate, always have. We required loans with LTVs greater than 80% to have mortgage insurance.

\* \* \*

Matthew Kelley – Sterne, Agee – Analyst

And what were the actual losses on the homes that were disposed of during the quarter? If you look at the gross charge-offs, what were the losses on those loans?

[Lopez]: I have a number for you, actually. It's going back for 15 quarters it was a total of about \$7 million. The losses in this particular quarter for the residential side were about \$4.4 million.

Matthew Kelley – Sterne, Agee – Analyst

Is that the net of recoveries – or, insurance, I mean?

[Lopez]: That is net of insurance. Now, we booked the insurance with a 10% valuation, but, yes, that number is net of insurance.

\* \* \*

[Camner]: We also had – as the time went on, as time elapsed over the last several years, required larger and larger portions of our loans to have an in-house appraisal review as it was processed through; because we were concerned about appraisals starting to have some question marks. So that also protected us in the end. We had a

lot of turn-down loans that other people made, that we didn't make because we didn't think the appraisals were any good.

40. On February 12, 2008, defendants filed a Form 10-Q with the SEC for the quarter ended December 31, 2007, signed by defendant Lopez, which stated in part:

#### Credit Standards

BankUnited has adhered to conservative underwriting standards. Our guidelines have been substantially consistent with the inter-agency lending guidelines even before their issuance in September 2006. We are not a subprime lender and we do not make piggyback loans in which a borrower is made a second mortgage simultaneously with a first mortgage. And, unlike some lenders in the industry, we have underwritten to the fully indexed rate and followed strict policies for outside appraisals combined with internal appraisal reviews conducted by our own staff.

\* \* \*

The various risks of our loan portfolio are mitigated by our underwriting requirements, which include credit qualifications and LTV ratios directly correlated to potential risk. In almost all circumstances, loans originated with LTV ratios greater than 80% require the purchase of mortgage insurance.

41. Defendants Camner and Lopez each executed a certification submitted with this filing substantially identical to that set forth above.

#### **THE TRUTH BEGINS TO COME TO LIGHT**

42. On May 12, 2008, defendants filed a Form 10-Q with the SEC for the quarter ended March 31, 2008, signed by defendant Lopez, which stated in part:

BankUnited's underwriting standards have been substantially consistent with the inter-agency lending guidelines even before their issuance in September 2006. We are not a subprime lender and we do not make piggyback loans in which a borrower is made a second mortgage simultaneously with a first mortgage. Unlike some lenders in the industry, we have underwritten to the fully indexed rate since April 2008 and followed strict policies for outside appraisals combined with internal appraisal reviews.

\* \* \*

The various risks of our loan portfolio are mitigated by our underwriting requirements, which include credit qualifications and LTV ratios directly correlated to potential risk. In almost all circumstances, loans originated with LTV ratios greater than 80% require the purchase of mortgage insurance.

43. Defendants Camner and Lopez each executed a certification submitted with this filing substantially identical to that set forth above.

44. On May 12, 2008, the Company issued a press release entitled “BankUnited Announces Second-Quarter Results for Fiscal 2008; Provision for Loan Losses Increases by \$94 Million.” The release stated in part:

BankUnited Financial Corporation, parent company of BankUnited FSB, today reported a loss of \$65.8 million, or \$1.88 per diluted share, for the quarter ended March 31, 2008, compared to earnings of \$24.4 million, or \$0.64 per diluted share, for the quarter ended March 31, 2007.

- The company increased the provision for loan losses from \$4 million for the quarter ended March 31, 2007, to \$98.0 million for the quarter ended March 31, 2008, in response to a weaker economy, deteriorating residential housing markets and increased foreclosures.
- The allowance for loan losses was increased to \$202.3 million, or 1.61% of total loans, as of March 31, 2008.

\* \* \*

“We increased our provision for loan losses as a result of rising non-performing assets. Our allowance currently totals \$202.3 million, or 1.61% of total loans. When considered in proportion to NPAs, losses have remained low. However, we believe it is prudent to maintain a loss reserve that reflects the ongoing deterioration of the housing markets and general economy. We may require future additional provisions as we work our way through this economic cycle.”

\* \* \*

#### Asset Quality and Credit Standards

The ratio of non-performing assets as a percentage of total assets increased to 4.75% at March 31, 2008, from 2.99% at Dec. 31, 2007, and 0.53% at March 31, 2007.

For the quarter ended March 31, 2008, the provision for loan loss totaled \$98.0 million, compared to \$65.0 million for the quarter ended Dec. 31, 2007, and \$4.0 million for the quarter ended March 31, 2007.

Net charge-offs for the quarter ended March 31, 2008, were \$13.3 million, or an annualized rate of 0.42 % of average total loans. This compares to \$6.0 million, or an annualized rate of 0.19% of average total loans for the quarter ended Dec. 31, 2007, and \$1.4 million, or an annualized rate of 0.04% of average total loans, for the quarter ended March 31, 2007.

Residential and consumer residential net-charge offs for the quarter were \$13.1 million, net of \$6.0 million in estimated recoveries from mortgage insurance. Net charge-offs on the consumer portfolio were \$128,000, and commercial and commercial real estate net-charge offs were \$154,000.

The total allowance for loan losses was \$202.3 million at March 31, 2008, compared to \$117.7 million at Dec. 31, 2007, and \$41.8 million at March 31, 2007. The allowance for loan losses as a percentage of the total loan portfolio was 1.61% at March 31, 2008, compared to 0.93% at Dec. 31, 2007, and 0.35% at March 31, 2007.

\* \* \*

BankUnited has adhered to conservative underwriting standards. The company's guidelines have been substantially consistent with the inter-agency lending guidelines since long before their issuance in September 2006. BankUnited is not a subprime lender, and the company has not engaged in piggybacking in which a borrower is made a second mortgage simultaneously with a first mortgage. BankUnited has underwritten to the fully indexed rate and followed strict policies for outside appraisals combined with internal appraisal reviews conducted by the company's own staff.

BankUnited's underwriting standards provide that, in most cases, borrowers of loans originated with loan-to-value (LTV) ratios greater than 80% are required to purchase mortgage insurance. Nineteen percent, or \$1.9 billion, of the residential loan portfolio had mortgage insurance as of March 31, 2008. The average LTV of the residential portfolio at inception was 79.4% at March 31, 2008. With the adjustment for coverage of mortgage insurance, the average LTV of the residential portfolio at inception was 75.2%.

The average outstanding balance of a residential loan in the portfolio as of March 31, 2008, was \$292,000. Option-ARM balances totaled \$7.4 billion, which represented 69% of total residential loan balances and 59% of total loan balances. The growth in negative amortization for the quarter ended March 31, 2008, was \$37 million, compared to \$47 million for the quarter ended Dec. 31, 2007. Of the \$7.4

billion in option-ARM balances, \$6.7 billion had negative amortization of \$354 million, or 4.8%, of the option-ARM portfolio.

BankUnited's option ARM loans are re-amortized over the remaining term at the earlier of five years from inception of the loan or upon reaching 115% of the original principal balance. As of March 31, 2008, a total of 41 loans had reached the maximum 115% of the original loan amount. These 41 loans had an aggregate balance of \$13.6 million, or 0.13% of the total residential loan balance as of March 31, 2008. The period from inception to the point at which the loans reached the 115% maximum amount ranged from 30 months to 51 months. The company estimates that approximately \$90 million will reach the maximum 115% limit during the remaining quarters of fiscal 2008.

\* \* \*

#### Loan Balances

The total loan portfolio was \$12.5 billion at March 31, 2008, compared to \$12.6 billion at Dec. 31, 2007, and \$11.8 billion at March 31, 2007.

\* \* \*

Residential loan balances were \$9.8 billion at March 31, 2008, compared to \$9.9 billion at Dec. 31, 2007, and \$9.4 billion at March 31, 2007.

45. On May 12, 2008, on the Company's earnings conference call, defendants made the following statements:

[Camner]: Our weighted-average FICO at inception was 709. We had a strong appraisal review process including in-house reviews when needed based on our underwriter's judgment and experience, as well as other factors that were essentially automatic for those reviews.

\* \* \*

We felt we had been very conservative. This never gets around the fact that if you have housing you've got housing and we're in a housing problem nationally. But we want to give these reminders. We had no subprime lending. We did not have piggybacking of loans. And our loans with LTVs higher than 80% required mortgage insurance. And those loans that we made – the adjustable rate loans – were always underwritten to fully index rate and there are very few apparently out there who can truly said that.

\* \* \*

Brian Roman – Robeco Investment Management – Analyst

What do you think?

[Camner]: It's hard – . Well, we think that our underwriting and our situation with respect to resets and with respect to the fact that our borrowers were – . Let me go to kind of a backward situation. You're somebody who are in the "liar loan" category or into any particularly category of loan. If you want to go into some of the really big entities that are out there and who had qualification at 1% start rate and you didn't have to qualify at 7% of 7.5%, but you had to qualify at 1%, it doesn't take much to get that qualification done.

So why, on a really original basis, do you come into our shop? Do you come into our shop if you're going to have a good chance of your appraisal being reviewed versus somebody else's shop where the appraisals weren't particularly reviewed and if they were, they weren't reviewed by regional people. We could go down through a whole category of these. We had higher FICOs and frequently – . It just is a number of items. We didn't allow the piggybacks. You came to us, you're going to end up with mortgage insurance and you're going to cost a little bit more.

\* \* \*

Donald Geiss

Good afternoon, gentlemen. First, my disclosure. I am neither an analyst nor an accountant nor a banker. I like to deal in very simple concepts. I think this question has probably been answered, but maybe you could summarize – somebody could summarize this response for me in 25 words or less. ***How did we fairly quickly go from a well-operating bank that I've been invested in for ten plus years to suddenly a \$65 million quarterly loss and a \$200 million loss provision.*** 25 words or less, please. Thank you.

[Camner]: Well, I guess the best way to describe this, Donald, is that since World War II on a housing down-turn position, we haven't had one this strong and sudden and combined with an unfortunate credit squeeze and I'd also have to say that for those people who created our accounting rules, they helped create a spiral down with respect to what happened in the secondary markets on mortgage securities.

So there are a lot of mortgage securities out there, including those backed by government agencies, that have incredible pricing problems because no one wants to buy them that's a bank because if they put them on their books then they have to re-market them if they decline in value again.

Mark-to-market accounting has been a disaster for the entire industry. We've got an over-building of housing nationally from the national home builders who all

had light bulbs that when demand slowed down they cut valuations of land but keep building houses and since they all did it together we even made the inventory worse.

And you put all that together and easy credit times that came out of the original Fed situation, but the ultimate responsibility in this Company as far as sales, and while we maintain much more conservative underwriting than just about any other of the entities out there, I've got to say that nevertheless we still ended up with some concentrations in some of the track housing areas that in retrospect I would rather not have.

\* \* \*

[Camner]: Thank you. I believe that is our last question for this conference call. I thank all of you. Of course, the Management Team is available to those of you that still need additional follow-up information, as we have always made ourselves available in the past. A lot of what we've done in the previous three years relating to underwriting standards, we believe will keep our losses manageable and certainly more moderate than many of the institutions out there whose underwriting standards had substantial deterioration

46. As a result of this disclosure, BankUnited's stock price declined 9.5% in two trading days as artificial inflation came out of the stock price.

47. On June 18, 2008, after the markets closed, the Company issued a press release entitled "BankUnited Financial Corporation Announces Public Offering of Stock," which stated in part:

BankUnited Financial Corporation today announced the launch of a public offering of its Class A common stock, with gross proceeds of \$400 million. The offering is expected to be pursuant to customary underwriting terms for a firm commitment offering of this type.

UBS Investment Bank (UBS) and Keefe, Bruyette & Woods (KBW) are acting as joint book-running managers for the offering. Sandler O'Neill and Stifel Nicolaus are acting as co-managers for the offering.

BankUnited expects to use the net proceeds from this offering for general corporate purposes, including contributing capital to its bank subsidiary.

48. As a result of this disclosure, BankUnited's stock price declined 44% in two trading days as artificial inflation came out of the stock price.

## POST CLASS PERIOD STATEMENTS

49. On August 8, 2008, the Company issued a press release entitled “BankUnited Announces Fiscal 2008 Third-Quarter Results; BankUnited Financial Corporation Contributes \$80 Million of Capital to BankUnited FSB.” The release stated in part:

BankUnited Financial Corporation, parent company of BankUnited FSB, today reported a loss of \$117.7 million, or a loss of \$3.35 per diluted share for the quarter ended June 30, 2008, compared to earnings of \$23.2 million, or \$0.62 per diluted share, for the quarter ended June 30, 2007. The loss was primarily attributable to a \$130 million provision for loan losses.

\* \* \*

“Like many companies in the financial services industry, we have been impacted by the residential downturn,” said Alfred R. Camner, BankUnited’s chairman and chief executive officer. “This quarter was a mix of strong results from our core banking operations offset by continued deterioration in the mortgage portfolio. We are aggressively managing non-performing assets and increased our provision for loan losses to \$130 million, bringing our reserve for loan losses to \$309.6 million. Historically, our underwriting standards required, in almost all cases, mortgage insurance on loans originated with a loan-to-value (LTV) ratio greater than 80%. As of June 30, 2008, approximately 40% of our non-performing loans were covered by mortgage insurance.

\* \* \*

### Asset Quality and Credit Standards

The ratio of non-performing assets as a percentage of total assets increased to 7.73% at June 30, 2008, from 4.75% at March 31, 2008, and 0.86% at June 30, 2007.

For the quarter ended June 30, 2008, the provision for loan losses totaled \$130 million, compared to \$98 million for the quarter ended March 31, 2008, and \$4.4 million for the quarter ended June 30, 2007.

Net charge-offs for the quarter ended June 30, 2008, were \$22.7 million, or an annualized rate of 0.73% of average total loans. This compares to \$13.3 million, or an annualized rate of 0.42% of average total loans, for the quarter ended March 31, 2008, and \$1.1 million, or an annualized rate of 0.04% of average total loans, for the quarter ended June 30, 2007.

Residential and consumer residential net-charge offs for the quarter were \$22.4 million, net of \$10.7 million in estimated recoveries from mortgage insurance. Net charge-offs on the consumer portfolio were \$64,000, and commercial and commercial real estate net-charge offs were \$165,000.

The total allowance for loan losses was \$309.6 million at June 30, 2008, compared to \$202.3 million at March 31, 2008, and \$45.1 million at June 30, 2007. The allowance for loan losses as a percentage of the total loan portfolio was 2.52% at June 30, 2008, compared to 1.61% at March 31, 2008, and 0.36% at June 30, 2007.

BankUnited's underwriting standards provide that, in almost all cases, borrowers of loans originated with loan-to-value (LTV) ratios greater than 80% are required to purchase mortgage insurance. Nineteen percent, or \$1.8 billion, of the residential loan portfolio had mortgage insurance as of June 30, 2008. The average LTV at inception of the residential portfolio as of June 30, 2008 was 79.9%. With the adjustment for coverage of mortgage insurance, the average LTV at inception of that portfolio was 75.6%.

\* \* \*

#### Loan Balances

Total net loans at June 30, 2008, were \$12.0 billion, compared to \$12.3 billion at March 31, 2008, and \$12.3 billion as of June 30, 2007.

\* \* \*

Residential loan balances decreased \$302 million during the quarter to \$9.5 billion at June 30, 2008, a 3.3% decrease from \$9.8 billion at June 30, 2007.

The average outstanding balance of a residential loan in the portfolio as of June 30, 2008 was \$293,213. Option-ARM balances totaled \$7.1 billion, which represented 68.2% of total residential loan balances and 57.5% of total loan balances. The growth in negative amortization for the quarter ended June 30, 2008, was \$22.3 million, compared to \$37 million for the quarter ended March 31, 2008, and \$46.4 million for the quarter ended June 30, 2007. Of the \$7.1 billion in option-ARM balances, \$6.5 billion had negative amortization of \$376 million, or 5.3% of the option-ARM portfolio.

BankUnited's option ARM loans are re-amortized over the remaining term at the earlier of five years from inception of the loan or upon reaching 115% of the original principal balance. As of June 30, 2008, a total of 128 loans had reached the maximum 115% of the original loan amount. These 128 loans had an aggregate balance of \$42.9 million, or 0.41% of the total residential loan balance as of June 30, 2008. The period from inception to the point at which the loans reached the 115%

maximum amount ranged from 27 months to 50 months. Of the 128 loans that had reached the reset mark, 120, or 94% were performing as of June 30, 2008. The company estimates that approximately \$48 million of option ARM loans will reach the 115% limit during the remaining quarter of fiscal 2008, and that \$686 million will reach the 115% limit during fiscal year 2009.

#### **DEFENDANTS' STATEMENTS WERE FALSE**

50. Defendants' statements during the Class Period set forth above were materially false and misleading because defendants misrepresented:

(d) The losses the Company was likely to suffer due to BankUnited's poor underwriting standards, which losses would occur once interest rates reset on the billions of dollars of pay-option arms (adjustable rate mortgages where borrowers had the ability to choose their payment amount during the initial period of the loan);

(e) BankUnited's sketchy appraisal process, which permitted borrowers to obtain mortgages in excess of their ability to pay and in excess of the value of the underlying property; and

(f) BankUnited's policies with regard to "piggy-back" loans, which are essentially second mortgages made at the time a home is purchased to fund a down payment.

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

51. During the Class Period, as detailed herein, defendants made false and misleading statements regarding the Company's business and future prospects and engaged in a scheme to deceive the market. This artificially inflated BankUnited's stock price and operated as a fraud or deceit on the Class. Later, when defendants' prior misrepresentations and fraudulent conduct became apparent to the market, BankUnited's stock price fell precipitously, as the prior artificial inflation came out of the stock price over time. As a result of their purchases of BankUnited

common stock during the Class Period, plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

### **NO SAFE HARBOR**

52. BankUnited's verbal "Safe Harbor" warnings accompanying its oral forward-looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability.

53. The defendants are also liable for any false or misleading FLS pleaded because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and/or approved by an executive officer of BankUnited who knew that the FLS was false. None of the historic or present tense statements made by defendants were assumptions underlying or relating to any plan, projection or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by defendants expressly related to or stated to be dependent on those historic or present tense statements when made. On the contrary, such statements concealed critical data about the Company's business and prospects.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET**

54. Plaintiff will rely upon the presumption of reliance established by the fraud-on-the-market doctrine in that, among other things:

- (a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- (b) The omissions and misrepresentations were material;
- (c) The Company's stock traded in an efficient market;

(d) The misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company's stock; and

(e) Plaintiff and other members of the Class purchased BankUnited common stock between the time defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

55. At all relevant times, the market for BankUnited common stock was efficient for the following reasons, among others:

(a) As a regulated issuer, BankUnited filed periodic public reports with the SEC; and

(b) BankUnited regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the major news wire services and through other wide-ranging public disclosures, such as communications with the financial press, securities analysts and other similar reporting services.

## COUNT I

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

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

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

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

(a) Employed devices, schemes, and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of BankUnited common stock during the Class Period.

59. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for BankUnited common stock. Plaintiff and the Class would not have purchased BankUnited common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

60. As a direct and proximate result of these defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of BankUnited common stock during the Class Period.

## **COUNT II**

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

61. Plaintiff incorporates ¶¶1-60 by reference.

62. The Individual Defendants acted as controlling persons of BankUnited within the meaning of §20 of the 1934 Act. By virtue of their positions and their power to control public statements about BankUnited, the Individual Defendants had the power and ability to control the actions of BankUnited and its employees. BankUnited controlled the Individual Defendants and its

other officers and employees. By reason of such conduct, defendants are liable pursuant to §20(a) of the 1934 Act.

### **CLASS ACTION ALLEGATIONS**

63. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased BankUnited common stock during the Class Period (the “Class”). Excluded from the Class are defendants, directors and officers of BankUnited and their families and affiliates.

64. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. BankUnited had more than 35 million shares of stock outstanding, owned by thousands of persons.

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

- (a) Whether the 1934 Act was violated by defendants;
- (b) Whether defendants omitted and/or misrepresented material facts;
- (c) Whether defendants’ statements omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) Whether defendants knew or recklessly disregarded that their statements were false and misleading;
- (e) Whether the price of BankUnited common stock was artificially inflated; and

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

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

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

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

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for judgment as follows:

- A. Declaring this action to be a proper class action pursuant to Fed. R. Civ. P. 23;
- B. Awarding plaintiff and the members of the Class damages and interest;
- C. Awarding plaintiff's reasonable costs, including attorneys' fees; and
- D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

#### **JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: September 16, 2008

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