

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

EASAN KATIR, Individually and On Behalf of All Others Similarly Situated,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	
vs.)	CLASS ACTION COMPLAINT
)	
AMERICAN CAPITAL LTD., MALON WILKUS and JOHN R. ERICKSON,)	
)	<u>JURY TRIAL DEMANDED</u>
Defendants.)	
)	

Plaintiff, Easan Katir ("Plaintiff"), alleges the following based upon the investigation by Plaintiff's counsel, which included, among other things, a review of the defendants' public documents, conference calls and announcements made by defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding American Capital Ltd., formerly known as American Capital Strategies Ltd. ("American Capital" or the "Company"), securities analysts' reports and advisories about the Company, and information readily available on the Internet, and Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION AND OVERVIEW

1. This is a federal class action on behalf of purchasers of American Capital's securities between October 30, 2007 and November 7, 2008 inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. American Capital is an "alternative asset management company" that claims to be the largest U.S. publicly traded private equity fund and one of the largest publicly traded alternative asset managers. American Capital, both directly and through its global asset management business, is an investor in management, employee and private equity buyouts. American Capital provides senior debt, mezzanine debt and equity to fund growth, acquisitions, recapitalizations and securitizations.

3. Throughout the Class Period and most of the Company's history, investors were lured to invest in American Capital's stock due to its large and dependable dividend payments. During the Class Period, investors were repeatedly assured that such dividend payments would continue, and that the Company was in sound financial condition.

4. However, on November 10, 2008, the Company shocked investors when it reported a quarterly loss, suspended dividends, and stated that it would retain capital gains from investments as opposed to distributing them to shareholders as previously stated.

5. Upon the release of this news, the Company's shares fell \$5.90 per share, or 42.85 percent, to close on November 10, 2008 at \$7.87 per share, on unusually heavy trading volume. As the market continued to absorb the Company's announcement, American Capital's shares continued to fall, and finally closed on November 12, 2008 at \$6.03 per share.

6. The Complaint alleges that, throughout the Class Period, defendants failed to disclose material adverse facts about the Company's financial well-being, business relationships, and prospects. Specifically, defendants failed to disclose or indicate the following: (1) that the Company had far greater exposure to disruptions in the credit markets than disclosed; (2) that the Company planned to retain capital gains from its investments rather than distributing them to shareholders; (3) that as a result, the Company would have to drastically alter its dividend policy;

(4) that the Company lacked adequate internal and financial controls; and (5) that, as a result of the foregoing, the Company's statements about its financial well-being, future business prospects and dividend payments were lacking in any reasonable basis when made.

7. As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class Members have suffered significant losses and damages.

JURISDICTION AND VENUE

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

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

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

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

PARTIES

12. Plaintiff, Easan Katir, as set forth in the accompanying certification, incorporated by reference herein, purchased American Capital's securities at artificially inflated prices during the Class Period and has been damaged thereby.

13. Defendant American Capital is a Delaware corporation with its principal executive offices located at 2 Bethesda Metro Center, 14th Floor, Bethesda, Maryland.

14. Defendant Malon Wilkus ("Wilkus") was, at all relevant times, the Company's Chief Executive Officer ("CEO"), and Chairman of the Board of Directors.

15. Defendant John R. Erickson ("Erickson") was, at all relevant times, the Company's Chief Financial Officer ("CFO") and President of Structured Finance.

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

SUBSTANTIVE ALLEGATIONS

Background

17. American Capital is an "alternative asset management company" that claims to be the largest U.S. publicly traded private equity fund and one of the largest publicly traded alternative asset managers. American Capital, both directly and through its global asset management business, is an investor in management, employee and private equity buyouts. American Capital provides senior debt, mezzanine debt and equity to fund growth, acquisitions, recapitalizations and securitizations.

Materially False and Misleading Statements Issued During the Class Period

18. The Class Period begins on October 30, 2007. On this day, the Company issued a press release entitled "American Capital Increases Q4 Dividend 14% to \$1.00, Reports \$0.82 NOI and \$1.20 Realized Earnings in Q3 2007, Forecast 13% Dividend Increase in 2008 to \$4.19." Therein, the Company stated, in relevant part:

2008 DIVIDEND GUIDANCE

American Capital provided its initial forecast of its 2008 dividends. American Capital forecasts that both its 2008 ordinary taxable income and its 2008 net long term capital gains will exceed its 2007 amounts. Based on these forecasts, *American Capital is forecasting total 2008 dividends of \$4.19 per share to be paid from ordinary taxable income and net long-term capital gains earned in taxable years ending in 2007 and 2008. American Capital anticipates that its 2008 ordinary taxable income and net long-term capital gains will exceed its dividends and it will retain the excess for future dividends.* The 2008 dividends per share are forecast to be in the following quarterly amounts. *This represents a 13% growth over the total 2007 dividends of \$3.72 per share.*

\$1.01 for Q1 2008, 14% increase over Q1 2007;

\$1.03 for Q2 2008, 13% increase over Q2 2007;

\$1.05 for Q3 2008, 14% increase over Q3 2007; and

\$1.10 for Q4 2008, 10% increase over Q4 2007. [Emphasis added.]

19. On October 31, 2007, the Company conducted an earnings conference call with analysts and investors. During the call, defendants stated, in pertinent part:

[Wilkus]: *So we've had an excellent year of ordinary taxable income that we're forecasting the full year to be outstanding, that it will exceed the dividend and we will spill over some of that dividend for future or some of that taxable income for future dividends.* Let's go to slide 5. In addition, we've chosen to change our dividend policy with respect to long term capital gains. Previously, the company permanently retained long term gains by paying a 35% tax for shareholders and treating gains as a deemed distribution. Our net long term capital gains earned during the tax year-ending in 2007 will be paid as part of the 2008 dividends and American Capital will pay a 4% excise tax on those gains in 2007. *So we are spilling over some of our long term -- or actually all of our long term capital gains into 2008 for the payment of 2008 dividends and starting in 2008 a portion of American Capital's dividends will be from that long term capital gains and this change will likely require more cash dividends than under the previous policy and the market -- and the reason for doing this is that we believe the market values the size, the growth and the predictability of dividends measured in part by the amount of taxable earnings retained for future dividends and this policy will allow us to retain more taxable earnings for the future dividends and shareholders should benefit from this change. Going to slide 6, we are really announcing an outstanding dividend increase for 2008.*

American Capital forecasts that both its 2008 ordinary taxable income and its 2008 net long term capital gains will exceed its 2007 amount. So in both cases we think these are going to exceed our amounts that we experienced in 2007 and so *we are forecasting \$4.19 total dividends per share for '08. That's a 13% increase over the 2007 dividends that have been paid and declared and we're forecasting these dividends to be paid from ordinary taxable income and net long term capital gains from taxable years ending in 2007 or 2008. So we're spilling some of our 2007 over. We will take both the 2007, 2008 and use it in part to pay the dividends and we actually anticipate we'll spill over additional amounts from 2008 into 2009.* The 2008 quarterly dividend per share forecast of one is on a quarterly basis \$1.01 for the 1st quarter which is a 13% increase over the '07 dividend, \$1.03 for the 2nd quarter, also a 13% increase, \$1.05 for the 3rd quarter, a 14% increase, and a \$1.10 for the 4th quarter of '08, a 10% increase over '04. *Collectively that all is a 13% increase over the '07 dividends. We think that should be considered really an outstanding development for shareholders at American Capital and you can see this on slide 7.*

You can see an outstanding history of dividends. This doesn't take you back the whole 10 years of since we went public, but if it did, you would see increases in dividends every single year since we went public and *you can see the forecasted guidance of dividends in '08 and those should be viewed as quite substantial*

and interestingly -- currently based on the 4th quarter \$1 dividend that we declared and based on our stock price yesterday, we're trading at a 10% dividend yield. This 13% growth rate added to that yield should give us a 23% total return by the end of 2008 assuming that we continue to trade at a 10% dividend yield at the end of 2008 based on the 4th quarter dividend at that time. ***So a 23% dividend yield which is already structured into our -- I'm sorry, 23% total return that's already structured in the dividend yield and based on our guidance with respect to our growth rate of the dividend and we would think that that would be viewed quite positively in the market.***

Moving to slide 8, we had outstanding realized earnings for the quarter, but let's start with our NOI. We had \$0.82 per share, a 5% increase over the 3rd quarter of '06 and that's versus our guidance of \$0.79 to \$0.83 per basic share. ***So we're solidly performed as we expected.*** On a trailing 12-month basis, our NOI return on equity is 11% which is really excellent and then moving on to our realized earnings, we had \$1.20, a 5% increase over the 3rd quarter of '06, a 60% last 12 months return on equity and it's 130% of our 3rd quarter '07 dividend of \$0.92. On an LTM basis, our realized earnings is 129% of our \$3.60 dividend and over the last three years, our realized earnings was 126% of our \$9.92 in dividends. So we have for quite some time been earning substantially more realized earnings than we pay out in dividends and ***our change in dividend policy will now allow us No. 1, to reserve more earnings that can be used to cover future dividends on a temporary basis.*** We're paying a 4% excise tax on spillovers and that -- and keep in mind we've been doing that and so we anticipate we will be able to do that only a few more quarters in terms of building up that reserve and then we will be compelled to be paying it out based on this policy and ***the nice part of it with that reserve we believe we can make it very steady, highly predictable and without much fluctuations and certainly we are confident enough to forecast the dividend guidance that we did for 2008.***

* * *

So we still believe that we present an extraordinary opportunity to the marketplace because of the quality of our underlying assets and how they perform and how that translates ultimately to the returns that we can provide to our shareholders and so if you turn to our summary slide 39, ***we're in an outstanding investment environment. We're forecasting \$4.19 in dividend, a 13% growth rate on top of our 10% yield today or our 23% total return if we're trading at the same 2% yield at the end of next year. We think that's a no brainer return, an incredible return and keep in mind the other extraordinary thing, keep in mind half of that return is going to be in cash dividends that the market can't reprice and we can't restate. The capital market conditions have resulted in fewer competitors for us so, this is a great time for us. The credit crunch has increased spread, so it should improve our NOI and subsequently our dividends.*** The commercial credit markets remain excellent. I should say commercial credit remains excellent.

* * *

[Analyst]: Just a quick question on the '08 dividend guidance. How much of the dividend are expected to be paid out of '08 capital gains?

[Wilkus]: The '08 dividends?

[Analyst]: Yes.

[Wilkus]: Well, you could see that *our ordinary taxable income has been doing a superb job of covering our dividends and we don't see any reason why that won't continue*. So -- but on the other hand, since we are spilling over the capital gains and we can only do that for so long, we will have to use a chunk of the capital gains to pay the dividend. *We will report that, but we will spill over then the net operating income over into 2009. So we expect to have outstanding coverage by our taxable income of our dividend in '08.*

[Erickson]: Yes. I mean we didn't give detailed guidance on, this but *you will be able to see that our '07 capital gains that are being spilled over are significant, so, you know, based on where we have set the dividend if we pay the level that we've set, you could really see with the numbers there's not a need to use any of the '08 capital gains to pay that level of dividend*. I mean, you know, what has been happening is over the past three years, we've been distributing less than our realized earnings, you know, as I think Malon mentioned on the call, the realized earnings have been running 26% higher than our dividend. And so -- I think that if you look, we grew the dividend from '06 to '07 12% without using capital gains and *you could, in fact, look at this increase of 13% as being modest now that we're flowing capital gains in there not really relying heavily on future capital gains, you know, because just increase in the growth rate of 1% to some extent would be modest*. If you assume our earnings are going to change and grow next year as they have this year, so there's really not a reliance in looking out towards '08. We feel like with the spillover and we started spilling over I think it was probably two years ago. *We already built up over two quarters cushion with this spilling over of the capital gains. So we've got plenty of cushion to cover the dividend forecast without having to really rely on '08 capital gains.*

* * *

[Analyst]: Just a follow-up question on the dividend policy going for the payout on long term gains, *does that inject more volatility into the dividend* I mean if you're going –

[Wilkus]: *No. Just the opposite*. I mean that's the thing I find so interesting. All of a sudden we add in more capital to the potential that can fund the dividend. So historically for 10 years now we have only funded the dividend with ordinary taxable income.

Now we've announced we're going to add another stream of cash flow of earnings that can fund the dividend and now people are thinking this can become more volatile. Well, that would be the case if we took it to the max but we have never taken the dividend to the max. *We always have earned dramatically more realized earnings than we've had -- have paid out as dividends and we intend to continue to do that. We plan to actually have the dividends be more consistent to provide more confidence in the dividend by building up the reserve to the extent that the tax laws allow and that's quite meaningful. It's not -- you can't do it forever, but it's at a very, very meaningful amount.* We think we can get three, maybe four quarters of reserves and then that reserves will go up and down depending on some lumpiness of our taxable income and so we just think we've -- so keep in mind our return -- our realized return on equity for five years has been 16%, right? 16% and yet our dividend growth this quarter last year was 12% this year, '08 we're forecasting 13%. So we're still reserving out 3% of our return on equity that we're not paying out. Now ultimately with this policy we will have to - - if we continue to have 16% return on equity for the next five years, within about a year we're going to have to go to a 16% payout ratio, but we'll still have a lot of reserves so that if it dips below 16, our ROE that we will have a period, probably a whole year, of capacity to absorb that dip and so this is -- I mean *I think folks don't realize how much more we could have paid out as dividend over the years. It's a lot.*

[Erickson]: Just in the excess realized earnings over the dividend for the last three years was like \$0.45 in '05, \$1.10 in '06 and \$0.79 in '07 and so, you know, there has been substantial earnings. The other thing to keep in mind is our portfolio is extremely granular. It's not as though we have three or four companies where we're expecting all our capital gains to come from so you either sell them or you don't. *We have a granular portfolio [inaudible] investments where we have a number of companies that we're planning to put up for sale in the near term that have good unrealized depreciation and there will be more companies in '09 and more companies in 2010. You know, so it's going to be a regular harvest moon. Now certainly we can go through a recession or a tough environment, but that's why two years ago we started to bank the dividend paying excise tax and that's, you know, we've put ourselves in a position to absorb a downturn. So, you know, I would echo Malon's sentiment we've actually been very conservative and have plenty of excess capacity.* So that we don't want to pay out 100% of everything so that you do start to see the dividend having to move up and down with the realized earnings. *We are going to keep it at a conservative level to where we continue to spill over and bank, so then if you do have a negative environment, you've got the ability to keep that dividend going at the same rate and, you know, just eat into the spilled over earnings that you would have had for the following year.*

[Wilkus]: Yes. One thing I've always been surprised at is that relative to other BDCs we've had one of the best coverages of ordinary taxable income to our dividends and we have managed to that where it seems that at least in some cases BDCs have not concentrated on their ordinary income and used gains to make

their dividends, but so even -- so there's two -- you can think of it kind of two kinds of companies, one more like finance companies in the BDC world where all they really have is ordinary taxable income to cover their dividends. We've really been highly competitive with them in terms of how we've covered the dividend plus we've done the banking of our gains, but we have not created a set of assets where we were looking for home runs from several of our portfolio companies so that we could cover the dividends. We've had very constant, very regular harvesting of gains and by the way, we've also have taken our lumps as rapidly as we can and we think appropriate and so there's not a lot of depreciation on our balance sheet relative to other firms out there because we've recognized those depreciations through losses even in this last quarter. We had -- you know, we had \$92 million of portfolio company net gains if you want to take that chart, I don't quite know the number off the top of my head, but we had significant amount of losses that we recognized in the 3rd quarter as well and we keep doing that quarter after quarter. So we have a very clean balance sheet today.

* * *

[Analyst]: ... And then a little bit more clarification on the dividend policy. I just want to establish you talked about sort of building a reserve. Are you intending to pay the dividend, pay long term capital gains on a regular basis through the dividend or is it -- you mention getting, I think Malon to a three or four quarter kind of a reserve or is that the intention and you don't plan on paying long term capital gains through the dividend, only in the event of having to dip into the reserve that you would build up?

[Wilkus]: We'll be compelled to pay first with long term capital gains and it will be the ordinary taxable income that we will spill over from year to year to year and so you will see our dividend composed more of long term capital gains but you need to pay attention to our total ordinary taxable -- or I'm sorry, a total taxable income and you will see that frankly we could have paid it with -- you will see, I believe, that we will -- we could have paid the future dividends with ordinary taxable income or almost entirely with ordinary taxable income, but it will get reported as being paid from long term capital gains to some extent and then ordinary taxable income to another extent and we will try to keep you apprised of how much we are covering the dividend with realized earnings just as we have been. I don't -- people don't see it written very often, but we've been dramatically covering the dividend with realized earnings and we don't see that changing. By upping our growth rate, keep in mind we grew 12% last year and we only upped it to 13%. So we really haven't upped it very much from our prior growth rate, but we've -- and you can just compare it to the return on equity. The realized return on equity is 16%. So by definition we're keeping 3%, if we have 16% return on equity through 2008, then by definition we've kept 3% return on equity as some form of retention either ordinary taxable income or long term capital gains. [Emphasis added.]

20. On February 13, 2008, the Company issued a press release entitled "American

Capital Declares \$1.01 Q1 2008 Dividend; Reports \$3.42 NOI and \$4.65 Realized Earnings in 2007; Forecast 13% Dividend Increase in 2008 to \$4.19." Therein, the Company stated, in relevant part:

2008 DIVIDEND FORECAST

American Capital reiterates its 2008 dividend forecast of \$4.19 per share, a 13% growth over total 2007 dividends of \$3.72 per share. The remaining 2008 dividends per share are forecast to be in the following quarterly amounts.

\$1.03 for Q2 2008, 13% increase over Q2 2007;

\$1.05 for Q3 2008, 14% increase over Q3 2007; and

\$1.10 for Q4 2008, 10% increase over Q4 2007.

* * *

2008 FORECASTS

American Capital is forecasting \$0.73 to \$0.78 in net operating income (earnings less appreciation, depreciation, gains and loss ("NOI")) per diluted share for first quarter 2008.

American Capital is forecasting it will have between \$19 billion and \$26 billion of alternative assets under management by year end, of which between \$7 billion and \$14 billion will be in external funds managed by American Capital, LLC; the balance will be approximately \$12 billion on American Capital's balance sheet.

American Capital reiterates its forecast that its 2008 ordinary taxable income will exceed its 2007 ordinary taxable income. American Capital forecasts that almost half of its 2008 ordinary taxable income will be rolled over into 2009 to pay 2009 dividends.

American Capital reiterates its forecast that its 2008 taxable net long term capital gains will exceed its 2007 taxable net long term capital gains. American Capital forecasts that all of its 2008 taxable net long term capital gains will be rolled over into 2009 to pay 2009 dividends.

American Capital is forecasting that it will roll over \$500 million of ordinary taxable income and net long term capital gains from 2008 into 2009.

The preceding dividend forecast and other forecasts above assume that for 2008 there will be a recession in the U.S., no new capital will be raised at American Capital and American Capital will produce significant internally generated liquidity available for new investments. [Emphasis added.]

21. Also on February 13, 2008, the Company conducted an earnings conference call with analysis and investors. During the call, defendants stated, in pertinent part:

[Wilkus]: We realized earnings per basic share covered our 2007 dividends by 125%. Just simply outstanding coverage of our dividends, we had \$3.72 in total dividends paid in '07, a 12% increase in '06, and that was paid \$111 million from our '06 ordinary taxable income that we rolled over into '07, and -- to pay the dividend. And it was paid by \$544 million in 2007 ordinary taxable income.

As you can see later, that was not all of our ordinary taxable income in '07, we rolled over quite a bit in '08. And none of the dividend in '07 use up any of our net taxable long term gains, which we have rolled over into '08 to cover the '08 dividends and we'll talk about that in a minute.

You go to slide six, you'll see that *we are forecasting a 13% increase in our '08 dividends*. We've already declared \$1.01 dividend for the first quarter and that's a 13% growth over our Q1 '07 dividends. It's \$0.01 increase over Q4 '07 and is expected to be paid from 2007 excess ordinary taxable income. So this is -- just to make clear here, the first quarter of '07 dividend is going to be paid from last year's excess ordinary taxable income. *We are forecasting \$4.19 for the whole year in dividends, that would be a 13% increase over '07*. And we're anticipating that the second quarter '08 dividends will include -- will be paid in part by the '07 net taxable long term capital gains. So you won't see -- so for people who are getting their forms, you will see -- you won't see until the second quarter the use of the '07 long term capital gains to cover the dividends. *Our 2008 quarterly dividend per share forecast is -- as we have already declared \$1.01 for the first quarter, \$1.03 for the second, \$1.05 to the third and \$1.10 for the fourth quarter, those will be 13%, 13%, 14% and 10% increase over their prior quarters of '07.*

* * *

Now, let's go to our 2008 forecast. We're forecasting that even through a recession, we will be paying out \$4.19 in dividends for the year, and almost half is forecast to be paid from 2007 taxable income. We're also trying to make it as clear as a bell that our -- we forecast our realized earnings in '08 will exceed our dividend. And we're giving guidance that in the first quarter, we're -- we expect that a \$0.73 to \$0.78 in net operating income on a diluted basis. And we're also trying to be as clear as a bell as well, that 2008 net taxable long term capital gains will exceed our 2007 net taxable long term capital gains. *And that '08 net taxable long term capital gains, all of will be -- is being forecast to be rolled over into 2009 to pay the 2009 dividends.*

* * *

[Investor]: So just in summary, you're willing to accept volatility within the NAV for the returns that you're going to gain -- the ultimate returns you expect to --

[Wilkus]: In the world of private equity, in the world of illiquid assets, that's what we invest in. I know you guys all invest in public assets, right, with tremendous liquidity. We invest in -- our shareholders are coming to us because we're one of the few ways in which they can participate in the private finance business where we're investing companies with very little liquidity, you don't have hour liquidity, you don't come close to having daily liquidity, you don't have weekly liquidity. It takes months to sell most of the assets that is we invest in. And in that world, you will have depreciation and it's just -- it's just, you hold it through to the right time to sell it. You make a very thoughtful decision about when to sell, and that doesn't disturb us at all.

[Erickson]: Well now, and keep in mind, there's a big difference in realized losses and mark to market losses. So if we make an investment and realize a loss, that's not a good thing. If when we buy a triple B that's yielding 14% and we underwrite in every piece of collateral within that bond, and we feel like we're going to collect our 14% over our 10 year holding period, if the market later decides that it should be a 20% return rather than 14%, well, that 14% is going into our NOI and paying our dividend every single quarter and what I care about is the performance of the underlying collateral. If I absorb more losses and don't get all my money at the end of the day, yes, that's the situation I care about, and I don't want to be depreciating the bond because the collateral's not performing. *If the collateral's performing and paying my -- paying my interest and repaying my principal over that 10 year life, and I collect my 14% every quarter, then the fact that the market decided for some period of time should be trading at a 20% return rather than 14% doesn't really impact us and doesn't really -- it doesn't impact our ability to pay dividend, doesn't impact our financial performance other than the unrealized appreciation which will come back over time as the asset performs.* The shorter that bond becomes, the more you collect of the income, and the more [inaudible] performs, that depreciation will come back. [Emphasis added.]

22. On May 6, 2008, the Company issued a press release entitled "American Capital Declares \$1.03 Q2 2008 Dividend Reports \$0.77 NOI and \$0.94 Realized Earnings in Q1 2008." Therein, the Company stated, in relevant part:

2008 DIVIDEND FORECAST

American Capital reiterates its 2008 dividend forecast of \$4.19 per share, a 13% growth over total 2007 dividends of \$3.72 per share.

The remaining 2008 dividends per share are forecast to be in the following quarterly amounts.

\$1.05 for Q3 2008, 14% increase over Q3 2007; and

\$1.10 for Q4 2008, 10% increase over Q4 2007.

2008 FORECASTS

American Capital is forecasting \$0.68 to \$0.75 in net operating income (earnings less appreciation, depreciation, gains and loss ("NOI")) per diluted share for the second quarter of 2008.

American Capital is forecasting its Earnings less appreciation and depreciation ("Realized Earnings") for the second quarter of 2008 will exceed \$1.10 per diluted share.

American Capital reiterates its forecast that it will have between \$19 billion and \$26 billion of alternative assets under management by year end, of which between \$7 billion and \$14 billion will be in external funds managed by American Capital, LLC; the balance will be approximately \$12 billion on American Capital's balance sheet.

American Capital reiterates its forecast that its 2008 ordinary taxable income will exceed its 2007 ordinary taxable income. American Capital forecasts that almost half of its 2008 ordinary taxable income will be rolled over into 2009 to pay 2009 dividends.

American Capital reiterates its forecast that its 2008 taxable net long term capital gains will exceed its 2007 taxable net long term capital gains. American Capital forecasts that all of its 2008 taxable net long term capital gains will be rolled over into 2009 to pay 2009 dividends.

American Capital reiterates its forecast that it will roll over more than \$500 million of ordinary taxable income and net long term capital gains from 2008 into 2009.

The preceding dividend forecast and other forecasts above assume that for 2008 there will be a recession in the U.S., no new capital will be raised at American Capital, American Capital will produce significant internally generated liquidity available for new investments and American Capital buyout investment volume will increasingly be funded by funds under management. [Emphasis added.]

23. On May 7, 2008, the Company conducted an earnings conference call with analysts and investors. During the call, defendants stated, in pertinent part:

[Wilkus]: I do want to say that I know I think most of our analysts are probably tired of hearing it but I think our shareholders are loving it, that it's a great time to be leveraged less than one to one, debt to equity, and as you see, all the troubles in the financial institutions today, I think people and our shareholders are realizing

more and more, it's to those firms that are properly capitalized that the opportunities are available. So going to slide four, the key take-aways for this quarter is that we've had, this is an outstanding investment environment, and that's why we love being leveraged one to one, because we can take advantage of it. ***And our investment portfolio is performing quite well. Commercial credit remains excellent, the faults remain low, and the credit crunch has improved pricing, which should be, over the next several years, be accretive to future (inaudible) realized earnings and dividends.***

We had \$1 billion in the first quarter of unrealized depreciation, and so I want to make sure that what you take away from this is that \$127 million is due to the performance on our private finance portfolio, and the balance is due to declining public trading prices, widening spreads, and the implementation and induction of FAS 127. But we believe a lot of that declining public trading prices, widening spreads, those will eventually work back through the system and we'll talk a lot more about that in a couple minutes.

This is a great time to have a seasoned portfolio. So over -- so we're experiencing great liquidity and that's because we have substantial control over a large portion of our portfolio and it's generating significant levels of liquidity, 931 million in the first quarter. Just want to review our dividends. Again, we reiterated our 419 -- \$4.19 in dividends for 2008, 13% increase over '07, almost half of that dividend we're forecasting to be paid from income that we earned in 2007 that we rolled over into 2008. That means the income we're earning in 2008 we will be able to over a very large amount of that into '09. We also want to make clear, we are forecasting that our 2008 realized earnings will exceed our 2008 dividends. So we expect to perform this year for our shareholders.

The second quarter forecast is for \$0.68 to \$0.75 in NOI per diluted share. We also expect our realized earnings will exceed \$1.10 per diluted share. And that would not only then cover our second quarter dividend, but the slight amount that we didn't cover in the first quarter with realized earnings. ***And then we wanted to reiterate our forecast that over \$500 million of 2008 taxable income will be rolled over into 2009 to cover the 2009 dividends.*** And that's versus the 360 million that we rolled over from last year to this year. So again, we expect to be performing in an outstanding way this year. Moving to slide seven, we paid \$1.01 in the first quarter, a 13% growth. Our realized earnings per share was 93% of that Q1 dividend, so virtually covered by our realized earnings. ***And the forecast is that our -- to our first quarter dividend will be paid from ordinary income for tax purposes and rolled over, taxed income that was rolled over from '07.***

Now, for the second quarter dividend, which we declare now at \$1.03, \$0.70 of that will be paid from net long-term capital gains, rolled over from 2007. And that will be taxed by the way at a 15% capital gains rate and John wanted me to remind everyone that if you have your shares lent out and that they're on borrow, and that's quite possibly the case if you have it in a margin account, then the income that you will get to replace that dividend will generally be taxed at

ordinary rates. So if you want that capital gains tax rate, you might want to take it off borrow. And then you can see our forecast for the rest of the year adding up to the 419 in dividends and on slide eight you can see a wonderful growth rate in our dividend. ***You can see how well we performed growing our dividends in the last recession, and we see no reason why we won't continue to perform well in this recession, if indeed we're in one, and if we move into one, we expect to perform.***

* * *

[Analyst]: Last question on operating expenses, in the last cycle you did a good job of cutting costs throughout the cycle. Given the level of growth this year do you believe you can keep your operating expenses to assets below 3%? I think you were at 3.3% last year, is it going to be tough to just to maintain at that level?

[Wilkus]: I don't know how you're calculating that. We have a different calculation on that, and I don't know if you're - -we are at - - from our calculation of that, we are at 2.1%, and it's just slightly up from the 1.9% of all of 2007, and that, by the way, I believe, would be one of the lowest if not the lowest operating expense ratio of any firm in our industry.

[Erickson]: That's assets under management, so that includes all of your assets- -

[Wilkus]: That's a very good point, and that's probably why you're coming to your conclusion, Carl, if you don't include the other assets or funds we are managing, your really not running the right number.

[Analyst]: Okay, and ***do you feel like you can maintain that at those levels***[?]

[Erickson]: ***We do, and we also believe that we will size ourselves properly, and so we intend to perform in terms of our realized earnings covering our dividend, and we expect to do that one way or the other.***

* * *

[Wilkus]: And by the way, in that transitionary period, where you move from being able to raise lots of equity, which we are doing in the last several years, to going in to being able to operate and perform well for the shareholders in the steady state, you will naturally see a somewhat decline in NOI, and a greater reliance on realized gains, but that's just a transitionary period. It won't last long, because as we get this huge amount of liquidity and we already showed you 50% of liquidity, we are putting it into higher spreads, and that, over time, that will show up back in to NOI. Plus, as we already discussed, there is also some internal adjustments that you make. So that's what we are going through right now. ***But the bottom line is that we will earning our dividend, we are only paying a dividend that indeed we've earned, and actually we're earning more than our dividend we're and going to roll over more into next year than we did from last year to this year. I got to say I just think this is, I am so proud of what we are doing here, and we don't seem to get much credit for it, I have to say.***

* * *

[Analyst]: I was just wondering if you could talk about, just looking over the next several years, *are there any circumstances now that you could envision that would impair your ability to pay and/or grow the dividend?*

[Erickson]: *No, I think we've certainly given the spillover in the way we positioned ourselves. We certainly don't envision a scenario where we can't pay the dividend. What I would say is when you go through a downturn, a recessionary environment, what that does do is, it changes your ability to grow the dividend, so we've had a great recent track record of growing the dividend at double-digit rates.* But if you go through the last recession I think we were at down at low single-digit rates, and so the growth rate for '09 in 2010, may change somewhat based on the environment we are in today. Once we can get back in to more of a normalized environment in terms of taking our leverage up, raising a creative capital and doing more investing activities the growth rate will come back, but certainly this environment will change the outlook of the growth rate in '09 and 2010.

[Wilkus]: If you look at slides 46 and 47, we try to have given the market a tremendous amount of information about this year, and actually some about next year, *that should give tremendous comfort to people about our ability to pay the dividend, and pay the dividends that we are forecasting that has been a 13% growth rate in the dividends for '08, and then we're making it clear we expect to roll over 500 million of ordinary taxable income and taxable gains into '09. I don't know how we can give people more comfort about the dividend than what we are doing.* [Emphasis added.]

24. On August 5, 2008, the Company issued a press release entitled "American Capital Declares \$1.05 Q3 2008 Dividend, Reports \$0.71 NOI and \$0.95 Realized Earnings in Q2 2008." Therein, the Company stated, in relevant part:

American Capital, Ltd. (NASDAQ: ACAS) ("American Capital" or the "Company") announced today its third quarter 2008 dividend and its results for the second quarter of 2008.

THIRD QUARTER 2008 DIVIDEND DECLARATION

American Capital's Board of Directors has declared a third quarter 2008 regular dividend of \$1.05 per share to record holders as of October 6, 2008, payable on October 14, 2008. This is a 14% increase over the third quarter 2007 dividend of \$0.92 per share. American Capital has paid a total of \$2.5 billion in dividends and paid or declared dividends of \$29.25 per share since its August 1997 IPO at \$15.00 per share.

2008 DIVIDEND FORECAST

American Capital reiterates its 2008 dividend forecast of \$4.19 per share, a 13% growth over total 2007 dividends of \$3.72 per share. The fourth quarter of 2008 dividend per share is forecast to be \$1.10 per share, a 10% increase over the fourth quarter of 2007 dividend.

2008 FORECASTS

American Capital is forecasting \$0.68 to \$0.75 in Net Operating Income (earnings less appreciation, depreciation, gains and loss ("NOI")) per diluted share for the third quarter of 2008. American Capital is forecasting that its Earnings less appreciation and depreciation ("Realized Earnings") per diluted share for the third quarter of 2008 will exceed \$1.05 per diluted share.

American Capital is revising downward its assets under management forecast to have between \$17 billion and \$20 billion as of year end, of which between \$7 billion and \$10 billion is expected to be in external funds managed by American Capital, LLC, a wholly-owned portfolio company of American Capital, and the balance is expected to be approximately \$10 billion on American Capital's balance sheet.

American Capital reiterates its forecast that it will roll over more than \$500 million of ordinary taxable income and net long term capital gains from 2008 to pay 2009 dividends.

The preceding dividend forecast and other forecasts above assume that for 2008 there will be a recession in the U.S., no new capital will be raised at American Capital, and that American Capital will produce sufficient liquidity from debt repayments and exits for new investments. [Emphasis added.]

25. On August 6, 2008, the Company conducted an earnings conference call with analysts and investors. During the call, defendants stated, in pertinent part:

[Wilkus]: We successfully are operating in our steady-state mode. While the recession -- we believe we most likely are in a recession today. And in that steady-state mode, we were able to pay a 2008 dividend that's well covered, and we are forecasting the whole '08 dividend to be well covered. And in fact, we are planning to roll over over [sic] \$500 million of taxable income from '08 into '09 to pay 2009 dividends.

Because of this liquidity crisis, we really have had our access to capital substantially reduced, and essentially increasing our cost of capital on the one hand. And then, on the other hand, we've seen improved middle market pricing. Also improvements in leverage levels and in the terms of investments. *So new investments should be accretive to our earnings and dividends.* So this liquidity crisis is doing two things. It's making our cost of capital more expensive, and we

would certainly hope the markets will help us in that. But at the same time, we're seeing great opportunities because middle market pricing has improved quite dramatically.

And we go into this liquidity crisis with an extremely seasoned portfolio, with our average yield on our portfolio, however, below the current middle market yields and rates. So that's why you've seen depreciation in our portfolio, because we have a legacy portfolio, and current market rates have changed. But, on the other hand, we are redeploying our capital rather quickly into higher-yielding assets, and our control buyout portfolio gives us tremendous, really, control over a large portion of our assets, allowing us to generate significant liquidity at attractive valuations.

So our investment portfolio going into this is performing well, and it continues to perform well. Our private finance portfolio is reporting sales and EBITDA up, and that's based on a weighting of our investments or a weighting of our portfolio based on the fair value of our investments. And our structured products portfolio is performing as underwritten. So we feel very good about our portfolio in this climate, and then we feel that this is an outstanding investment environment. We don't have as much capital to invest as we have had in the past because, for the most part, we are simply redeploying capital that comes back to us. But, we are getting a very large amount of capital coming back to us which we're redeploying. As a result, I think we will become this year one of the leading investors in the middle market worldwide. Nonetheless, it's far less capital than we have been able to deploy in the past on an annual basis. And so, despite there is an outstanding investment environment, we are constrained by these capital limitations.

Going on to slide seven -- slide six, our dividend; slide seven, our forecast for the year for the dividend. ***We're continuing to reiterate the \$4.19 in 2008 dividend. We believe it's well covered, as we will discuss. The \$4.19 is a 13% increase over our '07 dividend, and almost half of the 2008 dividend we are forecasting to be paid from 2007 taxable income because, as you recall, we rolled over \$361 million of taxable income from '07 into '08 to cover the '08 dividend.***

Our third-quarter forecast is for our net operating income to be between \$0.68 and \$0.75 per diluted share, and that our realized earnings is forecast to exceed \$1.05 per diluted share, which, by the way, is the dividend that we are announcing for the third quarter, \$1.05 in dividends.

So we are reiterating our forecast. I think we've reiterated this now about four times, of having \$500 million of taxable income rolling over from '08 into '09 to cover '09 dividends. And that's a substantial increase over the \$361 million that we rolled over from '07 into '08.

Moving to slide eight, as you can see now, we've paid out \$29.25 per share in paid or declared dividends since our IPO at \$15 a share. And, we paid out \$1.03

in our second quarter, which, to remind you, then would be a 13% growth over the second quarter of '07. And our realized earnings per basic share was 92% of that Q2 \$1.03 dividend. So we are doing a decent job of covering the dividend for the second quarter, in particular, and that was paid from long-term capital gains and ordinary income for tax purposes that had been rolled over from 2007. So, not only did we produce the 92% of all of the realized earnings needed to pay the dividend, I think when you add back to that the collection of PIK and OID, which isn't in the realized earnings numbers, we virtually cover the dividend that we paid in the second quarter.

But in reality, that dividend really came and is being covered by the income we produce in '07. So we are really able to retain this income in the second quarter and, together with the fourth-quarter income, and roll over that income into '09.

Now, as of this earnings call, we -- or release yesterday, we declared the \$1.05 and the third quarter dividend, and we then gave a -- reiterated our forecast of \$1.10 for the fourth quarter of this year, dividend. And you can turn to slide nine and see this long track record of dividend payments, and *you can see that we have been able to do that whether interest rates are high or low, and we've been able to grow our dividends through the course of the last recession.*

* * *

Now, this is, I think, an extremely good track record of covering the dividend. I think it's one of the best track records of covering the dividend. But some people have had some concerns about using realized earnings. And so, if you go into slide 12, *we've just taken a different approach and hopefully addressed some of the concerns about covering the dividend.* ... And over to the right of it, the blue section represents our cash flow from operations. You can pull this right off our cash flow statement, and it's what I think people would very conventionally think is the cash flows that you have from your operations and available to pay things such as distributions and dividends.

* * *

And then, of course, we have added our net realized gains on top of that stack, totaling, \$2.574 billion to cover the \$2.36 billion in dividends that we've paid. So we've had 109% dividend coverage.

So if you look to the left of that chart you can see what we've done since 2005. The reason we use 2005 is that's when we initiated the policy of rolling over taxable income that exceeded the amount of our dividend. *And we could use it, then, to pay the subsequent year's dividend requirement. We've been building up that amount year after year, the amount of the rollover. And we've just discussed what that \$500 million -- this is the \$500 million we are talking about rolling over from '08 into '09.*

And you can see that we have actually exceeded, since 2005, coverage of the dividend by 20%, so 120% of the dividend is covered with our cash flow, and that cash flow being cash flow from operations, collection of PIK and OID and net realized gains. We think that's a terrific track record. ***It allows us, then, to have substantial rollover of essentially -- or retention of realized earnings that can be used in the subsequent year to cover the dividend.*** And it is these numbers which continue to show our track record. ***And, of course, it's our forecast of these numbers that give us the confidence to forecast and declare the kind of dividends that we've been doing for the year.***

* * *

We've successfully -- ***we're successfully operating in a steady-state mode while in a recession and producing or continuing to give guidance of \$4.19 in dividends for the year or 13% growth. The dividend is covered well. We are planning to roll over \$500 million of taxable income into '09. This liquidity crisis, though it has reduced our access to capital and increased our capital cost, on the other hand, it has given us great investment opportunities in the middle market that we think will be highly accretive to our earnings.***

We have a seasoned portfolio, and it's capable of producing lots of liquidity, allowing us to redeploy our assets into higher yields. And in part it's because we have great control over our portfolio. And the portfolio itself is performing well, and the latest statistics from the portfolio is that sales and EBITDA are up when you weight it on a fair value basis of our investment. And our structured products is performing well.

* * *

[Analyst]: I didn't want to belabor this point because you did spend a fair amount of time talking about the dividend. But in the slide deck you skipped a slide that was of interest to me and related to the dividend; slide number 19, please? The question that I have is, and it's on the point you are trying to highlight here, that your anticipated realizable value is in excess of your current carrying value for these classes of investments. But is it fair to come to the conclusion that, if your realizable value is \$10.2 billion on cost of roughly \$10.7 billion, is there an expectation of a net realized loss on these positions far in excess of your anticipated realized gains, everything else equal?

[Erickson]: No, we don't think that's the case at all because, if you remember, in some cases companies depreciate because multiples have gone down or the environment for selling them is not good. And certainly, we proved through the last recession that we have companies that are depreciated that will recover. So, when we calculate the realizable value, we are not looking at the current fair value of a portfolio company that we think might re-appreciate. We are really looking at things like CMBS portfolio, where the mark to market through a bond yield analysis has depreciated what we think the realizable value is.

But in the case of the bulk of our private finance portfolio where we have control companies, we think there's a number of cases where we have taken depreciation that's really related to where multiples are and mark to market. I think, for example, [SMG] is a company you'll see this quarter where (inaudible) is going to have depreciation, and that has really been multiple driven. We've brought the multiple in on the company, but it's performing quite well. And so you can't look at that and say that that's what we will ultimately realize for the portfolio. We expect companies like SMG to be significant realized gains when we go to exit them down the road. But that could be the two, three, four years from now.

* * *

[Analyst]: The dividend growth that you've had over the past few years -- I can see through the slides and going through the numbers that realized earnings has covered it. ***But if we assume that we stay in -- the current environment that we have today lasts for a while and we generally see slower deal activity, when you think about dividend growth for 2009, do you think that you can justify to having similar growth rates on a year-over-year basis, similar to what you've had?***

[Wilkus]: No. The answer is no. If you look at the last recession, we went into that recession with a high dividend growth rate and we really came out of it at a significant lower dividend growth rate. That's to be expected. ***It never declined, as you well know. And we don't anticipate it's going to decline in the course of this recession. But we also don't anticipate growing it at the rates that we have grown it in the past.***

[Erickson]: Now, fortunately, we'll set that guidance in February. So hopefully, we'll have more insight into what we think about '09, and we'll make a decision on what to do over the \$4.19 that we are paying this year, if anything. So we'll look at that carefully, and hopefully we'll have six more months of insight, and also reviewing that much more portfolio performance data and make an assessment of what an appropriate dividend rate is at that time. [Emphasis added.]

26. The statements contained in ¶¶ 18 – 25 were materially false and misleading when made because defendants failed to disclose or indicate the following: (1) that the Company had far greater exposure to disruptions in the credit markets than disclosed; (2) that the Company planned to retain capital gains from its investments rather than distributing them to shareholders; (3) that as a result, the Company would have to drastically alter its dividend policy; (4) that the Company lacked adequate internal and financial controls; and (5) that, as a result of the

foregoing, the Company's statements about its financial well-being, future business prospects and dividend payments were lacking in any reasonable basis when made.

The Truth Begins to Emerge

27. On November 10, 2008, the Company shocked investors when it issued a press release entitled "American Capital Announces Plan To Acquire European Capital, Revises Dividend Policy and Reports Q3 2008 Earnings." Therein, the Company stated, in relevant part:

DIVIDEND POLICY REVISION

American Capital is revising its dividend policy to more proactively manage its capital base in the current volatile markets. American Capital has elected to retain its 2008 net long-term capital gains and will retain future net long-term capital gains and treat them as deemed distributions.

American Capital will pay no further dividends for the remainder of 2008. American Capital will evaluate the declaration of its quarterly dividend after financial results are determined each quarter, so that it may more precisely assess its taxable income, cash flow and changes in fair value to better manage American Capital's tangible net worth in the current volatile markets.

* * *

THIRD QUARTER 2008 RESULTS

American Capital also announced today its results for the third quarter of 2008.

Highlights:

\$0.74 net operating income ("NOI") per diluted share

\$0.72 earnings less appreciation and depreciation ("Realized Earnings") per diluted share after \$0.26 per diluted share of taxes on retained long-term capital gains

\$2.63 net loss per diluted share, due to net depreciation

* * *

Realized Earnings

Realized Earnings decreased 39% to \$0.72 per diluted share for the third quarter of 2008, compared to \$1.18 per diluted share for the third quarter of 2007. Included in the Realized Earnings for the third quarter of 2008 are taxes on

retained long-term capital gains paid on behalf of the shareholders of \$0.26 per diluted share. The Realized Earnings before taxes on retained gains decreased 17% to \$0.98 per diluted share for the third quarter of 2008 compared to the third quarter of 2007. Realized Earnings return on equity at cost for the twelve months through the third quarter of 2008 was 12%. The third quarter of 2008 forecast for Realized Earnings was to exceed \$1.05 per diluted share and did not contemplate the tax on the retained long-term capital gains.

Earnings

American Capital's Earnings for the third quarter of 2008 was a loss of \$2.63 per diluted share, a decrease of \$2.74 per diluted share from the third quarter of 2007 earnings of \$0.11 per diluted share. This loss was driven by \$698 million of net unrealized depreciation, offset by \$150 million of Realized Earnings. Earnings return on equity for the twelve months through the third quarter of 2008 was (28)%.

* * *

Through the third quarter of 2008, American Capital has had to depreciate its assets by about \$731 million beyond what we believe will be the realizable value of our assets on settlement or maturity of our investments, after taking into account credit quality. This gives us great concern, since American Capital is subject to minimum tangible net worth requirements under our loan agreements. Therefore, American Capital is implementing a number of measures to build our capital base and delever our balance sheet. ***Our decisions to retain capital gains, reduce our dividend, implement further cost reductions, eliminate our stock buy-back program and acquire European Capital will build our capital base and generally reduce our debt. It is a great time to be levered less than 1:1 debt to equity, however it has become evident that in this environment, there is a need to be levered even less.***"

For the third quarter of 2008, net appreciation, depreciation, gains and losses totaled \$(701) million, consisting of \$51 million of net realized gains, less \$(54) million in taxes paid by American Capital on behalf of its shareholders on retained capital gains, and \$(698) million of net depreciation, compared to \$(132) million of net appreciation, depreciation, gains and losses for the third quarter of 2007.

* * *

"We are in the midst of a severe recession and tremendous volatility in every financial market," said John Erickson, American Capital Chief Financial Officer. ***"In this environment, we must focus on reducing our leverage and building our capital base. Therefore, we must take the disappointing but prudent step of adjusting our dividend policy to retain more of our income."*** [Emphasis added.]

28. Also on November 10, 2008, the Company conducted an earnings conference call

with analysts and investors. During the call, defendants stated, in pertinent part:

[Wilkus]: Now as you know, through this quarter, American Capital has depreciated our assets, \$731 million below what we believe is realizable value. But that's required under GAAP, and yet, we are faced with a fixed tangible net worth requirement under our credit facilities.

And so, we have determined that though our cash flows are doing well, our portfolio is doing well, even despite the recession, we think we have to focus on conservation and growth of capital.

So, we have taken a number of actions that include the retention of our capital gains. We have revised our dividend policy, which I will speak to in a minute. We are focusing on operational efficiencies. We have acquired the public vote of European capital with, by using American Capital stock, and that also will increase our book value, or our tangible net worth. And we have terminated our share repurchase plan.

So let's move to slide 7, and I would like to discuss our revised dividend policy. And again, the purpose of this is to preserve our capital base. Our policy is revised so that we can manage our capital base proactively in this highly volatile market, and what we have done is retained our net long-term capital gains and treat them as being distributions. We will talk about that specific development on the next slide.

* * *

In addition, *the Board has decided not to pay a dividend in the remainder of 2008*. Now, we intend to declare dividends of our spillover amount of \$300 million, we will have to declare that by June 15, 2009, and we will have to pay it out by September 30, 2009. So, as of now we are currently forecasting that we will pay a dividend of \$300 million and declare it by June 15 of '09.

* * *

Now on slide 9, we also wanted to point out that *the end of September we had forecast over \$500 million of taxable income will be rolled over from '08 to pay 2009 dividends. The actual amount has developed to \$455 million of taxable income that would be rolled over to 2008 to pay 2009 dividends. However, we are doing \$155 million of that amount in the form of the deed distributions we just discussed of our long term capital gains, and therefore reduced the rollover down to \$300 million.*

So let me just go over that again. We thought we would be doing \$500 million due to several transactions that didn't occur or that we now no longer expect to occur, we have brought that down by \$45 million to \$455 million. Of that amount, we are paying out the 155 million of deed distribution, and that remains

the 300 million that we expect to rollover into next year. And then keep in mind, we'll also be making income next year as well.

* * *

[Analyst]: Mr. Wilkus, you stated that after each quarter you were going to consider, the Board was going to consider the results of the quarter as to determining a possible dividend for that quarter. But, are you stating later that, even in January of this year, if you have a good quarter this fourth quarter, you are not going to consider a dividend?

[Wilkus]: No, I haven't said that. I know that probably is a little confusing. ***What we have said is that we are not going to pay a dividend for the rest of this year.*** We have paid out quite a large amount of dividends up until now, as you know. But ***we don't plan to pay a dividend between now and December 31.*** [Emphasis added.]

29. On this news, the Company's shares fell \$5.90 per share, or 42.85 percent, to close on November 10, 2008 at \$7.87 per share, on unusually heavy trading volume. As the market continued to absorb the Company's announcement, American Capital's shares continued to fall, and finally closed on November 12, 2008 at \$6.03 per share.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

30. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased American Capital's securities between October 30, 2007 and November 7, 2008, inclusive (the "Class Period") and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

31. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, American Capital's securities were actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time

and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by American Capital or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

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

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

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

- (a) whether the federal securities laws were violated by defendants' acts as alleged herein;
- (b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of American Capital; and
- (c) to what extent the members of the Class have sustained damages and the proper measure of damages.

35. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and

burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

UNDISCLOSED ADVERSE FACTS

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

37. During the Class Period, defendants materially misled the investing public, thereby inflating the price of American Capital's securities, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

38. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about American Capital's financial well-being, business relationships, and prospects. These material misstatements and omissions had the cause and effect of creating in the market an

unrealistically positive assessment of American Capital and its financial well-being, business relationships, and prospects, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein.

LOSS CAUSATION

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

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

SCIENTER ALLEGATIONS

41. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding American Capital, their control over, and/or receipt and/or modification of American Capital's allegedly materially misleading

misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning American Capital, participated in the fraudulent scheme alleged herein.

42. During the Class Period, the defendants took advantage of the artificially inflated price of the Company's securities by completing public offerings. For example, on November 21, 2007, the Company completed a public offering of 4 million shares of its common stock, and received gross proceeds of over \$157 million by selling its stock to investors at a price of \$39.43 per share. Subsequently, on March 25, 2008, the Company completed a public offering of 8.7 million shares of its common stock, and received additional gross proceeds of over \$316 million by selling its stock to investors at a price of \$36.41 per share.

43. Additionally, during the Class Period, and with the Company's securities trading at artificially inflated prices, Company insiders sold 193,334 shares of the Company's stock for gross proceeds of \$6,253,957. This trading by Company insiders is evidenced by the following chart:

Date of Trade	Inside Trader	Number of Shares	Price per Share	Gross Proceeds
October 27, 2008	Cline, Roland	441	\$10.26	\$4,524
October 27, 2008	Wagner, Ira	2,289	\$10.24 - \$10.26	\$23,000
August 27, 2008	Graff, Brian	10,033	\$20.74	\$208,084
August 27, 2008	Flax, Samuel Allan	1,536	\$20.80	\$31,948
August 27, 2008	Winn, Darin	3,467	\$20.77	\$72,009
August 27, 2008	Cline, Roland	1,329	\$20.77	\$27,603
August 27, 2008	Wagner, Ira	14,231	\$20.75	\$295,293
August 7, 2008	Graff, Brian	133	\$21.30	\$2,832
August 7, 2008	Flax, Samuel Allan	163	\$21.30	\$3,471
August 7, 2008	Winn, Darin	111	\$21.29	\$2,363

August 7, 2008	Cline, Roland	53	\$21.32	\$1,129
August 7, 2008	Wagner, Ira	205	\$21.30	\$4,366
July 29, 2008	Cline, Roland	447	\$19.94	\$8,913
July 29, 2008	Wagner, Ira	2,317	\$19.94	\$46,200
July 23, 2008	Graff, Brian	6,929	\$22.81	\$158,050
July 23, 2008	Flax, Samuel Allan	3,730	\$22.80	\$85,044
July 23, 2008	Winn, Darin	2,526	\$22.79	\$57,567
July 23, 2008	Cline, Roland	969	\$22.78	\$22,073
July 23, 2008	Wagner, Ira	10,368	\$22.82	\$236,597
June 3, 2008	Graff, Brian	857	\$31.43	\$26,935
May 12, 2008	Graff, Brian	11,372	\$31.79 - \$31.80	\$362,000
May 12, 2008	Wagner, Ira	20,110	\$31.79	\$639,296
December 3, 2007	Wagner, Ira	1,073	\$38.00	\$40,774
November 27, 2007	Cline, Roland	372	\$35.39	\$13,165
November 27, 2007	Wagner, Ira	858	\$35.39	\$30,364
November 19, 2007	Wagner, Ira	44,800	\$38.02	\$1,703,296
November 14, 2007	Wagner, Ira	5,000	\$40.90	\$204,500
November 5, 2007	Wagner, Ira	2,000	\$40.87	\$81,740
November 2, 2007	Cline, Roland	26,948	\$40.99	\$1,092,301
November 2, 2007	Wagner, Ira	18,667	\$41.17	\$768,520
	TOTALS:	193,334		\$6,253,957

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

44. At all relevant times, the market for American Capital's securities was an efficient market for the following reasons, among others:

- (a) American Capital's securities met the requirements for listing, and were listed and actively traded on the NASDAQ, a highly efficient and automated market;
- (b) As a regulated issuer, American Capital filed periodic public reports with the SEC and the NASDAQ;
- (c) American Capital regularly communicated with public investors via

established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

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

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

NO SAFE HARBOR

46. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the

extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of American Capital who knew that those statements were false when made.

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

47. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

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

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

alleged below.

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

51. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of American Capital's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about American Capital and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of American Capital's securities during the Class Period.

52. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of, and had access to, other members of the

Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

53. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing American Capital's financial well-being, business relationships, and prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' overstatements and misstatements of the Company's financial well-being, business relationships, and prospects throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

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

Capital's securities during the Class Period at artificially high prices and were damaged thereby.

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

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

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

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

58. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

59. The Individual Defendants acted as controlling persons of American Capital within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control,

directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

60. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

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

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

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

- (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: December 15, 2008

Respectfully submitted,

By: _____

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