ACTIVISION INC /NY
Form S-8 POS
February 09, 2005

As filed with the Securities and Exchange Commission on February 9, 2005.

Registration No. 333-85383

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 3

TO

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

ACTIVISION, INC.

(Exact name of Registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	**95-4803544** (I.R.S. Employer Identification No.)
3100 Ocean Park Boulevard **Santa Monica, California** (Address of Principal Executive Offices)	**90405** (Zip Code)

Activision, Inc. 1999 Incentive Plan
(Full title of the plan)

Ronald Doornink
President
Activision, Inc.
3100 Ocean Park Boulevard
Santa Monica, California 90405
(310) 255-2000
(Name, address and telephone number of agent for service)

Copies to:
Kenneth L. Henderson, Esq.

Bryan Cave LLP
1290 Avenue of the Americas
New York, New York 10104

Approximate date of proposed sale to the public:
From time to time after the effective date of this Registration Statement.

EXPLANATORY NOTE

This Post-Effective Amendment No. 3 contains the form of reoffer prospectus to be used by certain officers, directors and employees of the Registrant with respect to the control securities acquired by them pursuant to the Registrant s employee benefit plan.

The form of reoffer prospectus contained herein is also being filed as part of Post-Effective Amendments to the Registration Statements on Form S-8 identified by the following Registration Numbers: 333-06130, 033-63638, 333-06054, 033-48411, 033-91074, 333-40727, 333-61573, 333-58922, 333-72014, 333-87810, 333-100114, 333-100115, 333-106487 and 333-111131.

Reoffer Prospectus

7,099,527 Shares

ACTIVISION, INC.

Common Stock

This reoffer prospectus relates to 7,099,527 shares of our common stock, par value $.000001 per share, being offered for the account of certain of our directors, executive officers and employees (each a Selling Stockholder and collectively the Selling Stockholders). We will issue all of the shares of common stock being offered by this reoffer prospectus upon the exercise by the Selling Stockholders of some of their stock options. Except for the aggregate exercise price of the options exercised by the Selling Stockholders, we will not receive any of the proceeds from the sale of the common stock being offered by this reoffer prospectus. All expenses of registration incurred in connection with the offering being made by this reoffer prospectus are being borne by us, but any brokerage commissions and other expenses incurred by a Selling Stockholder will be borne by such Selling Stockholder.

The Selling Stockholders have advised us that the resale of their shares may be effected from time to time through public or private transactions, directly or through brokers or otherwise, and at market prices prevailing at the time of sale or at prices otherwise negotiated. The Selling Stockholders may sell the shares of common stock covered by this reoffer prospectus in a number of different ways and at varying prices. For additional information on the methods of sale, you should refer to the section entitled Plan of Distribution beginning on page 19.

The common stock is traded in the NASDAQ National Market System under the symbol ATVI. On February 8, 2005, the last sale price for the common stock as reported on the NASDAQ National Market System was $24.68 per share.

See Risk Factors commencing on page 2 for certain information that should be considered by prospective investors.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS REOFFER PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this reoffer prospectus is February 9, 2005.

FORWARD LOOKING STATEMENTS

We make statements in this reoffer prospectus and in the documents incorporated by reference that are considered forward looking statements under the federal securities laws. Such forward looking statements are based on the beliefs of our management as well as assumptions made by and information currently available to them. The words anticipate, believe, may, estimate, expect, and similar expressions, and variations of such terms or the negative of such terms, are intended to identify such forward looking statements.

All forward looking statements are subject to certain risks, uncertainties and assumptions. If one or more of these risks or uncertainties materialize, or if underlying assumptions prove incorrect, our actual results, performance or achievements could differ materially from those expressed in, or implied by, any such forward looking statements. Important factors that could cause or contribute to such difference include those discussed under Risk Factors in this reoffer prospectus and under Factors Affecting Future Performance in our Annual Report on Form 10-K for the fiscal year ended March 31, 2004. You should not place undue reliance on such forward looking statements, which speak only as of their dates. We do not undertake any obligation to update or revise any forward looking statements, whether as a result of new information, future events or otherwise. You should carefully consider the information set forth under the heading Risk Factors.

RISK FACTORS

Before making an investment in our common stock, you should carefully consider the following risk factors, in addition to the other information included or incorporated by reference in this reoffer prospectus. The risks set out below are not the only risks we face. If any of the following risks occur, our business, financial condition or results of operations would likely suffer. In that case, the trading price of our common stock could decline, and you may lose all or part of the money you paid to buy our common stock.

We depend on a relatively small number of brands for a significant portion of our revenues and profits.

A significant portion of our revenues is derived from products based on a relatively small number of popular brands each year, and these products are responsible for a disproportionate amount of our profits. In addition, many of these products have substantial production or acquisition costs and marketing budgets. For the nine months ended December 31, 2004, 34% of our consolidated net revenues and 43% of our worldwide publishing net revenues were derived from three brands. In fiscal 2004, 31% of our consolidated net revenues and 44% of our worldwide publishing net revenues were derived from two brands. In fiscal 2003, 38% of our consolidated net revenues and 52% of our worldwide publishing net revenues were derived from two brands. We expect that a limited number of popular brands will continue to produce a disproportionately large amount of our revenues and profits. Due to this dependence on a limited number of brands, the failure to achieve anticipated results by one or more products based on these brands may significantly harm our business and financial results.

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Our future success depends on our ability to release popular products.

The life of any one game product is relatively short, in many cases less than one year. It is therefore important for us to be able to continue to develop many high quality new products that are popularly received. We focus our development and publishing activities principally on products that are, or have the potential to become, franchise brand properties. If we are unable to do this, our business and financial results may be negatively affected.

If we are unable to maintain or acquire licenses to intellectual property, we may publish fewer hit titles and our revenue may decline.

Many of our products are based on intellectual property and other character or story rights acquired or licensed from third parties. These license and distribution agreements are limited in scope and time, and we may not be able to renew key licenses when they expire or to include new products in existing licenses. The loss of a significant number of our intellectual property licenses or of our relationships with licensors, or inability to obtain additional licenses of significant commercial value could have a material adverse effect on our ability to develop new products and therefore on our business and financial results. Additionally, the failure of intellectual property acquired by us to be popularly received could impact the market acceptance of our products in which the intellectual property is included. Such lack of market acceptance could result in the write-off of the unrecovered portion of acquired intellectual property assets, which could cause material harm to our business and financial results. Competition for these licenses may also drive up the advances, guarantees and royalties that we must pay to the licensor, which could significantly increase our costs.

Transitions in console platforms could have a material impact on the market for interactive entertainment software.

When new console platforms are announced or introduced into the market, consumers typically reduce their purchases of game console entertainment software products for current console platforms in anticipation of new platforms becoming available. During these periods, sales

of our game console entertainment software products may be expected to slow or even decline until new platforms are introduced and achieve wide consumer acceptance. Each of the three current principal hardware producers launched a new platform in recent years. In calendar 2003, Sony announced that it would be entering the hand-held hardware market with the introduction of its hand-held gaming device, PSP. The PSP is currently expected to be released in the United States toward the end of the first quarter of calendar 2005. In November of 2004, Nintendo launched a new dual-screened, portable game system, NDS. Coinciding with the platform launch, we released our first title for the NDS and will have several more titles available in the future for this platform. We are currently developing titles for the PSP with the objective of having two titles at launch for the PSP and of having several more titles available in the near future for this platform. The introduction of PSP and NDS may have a negative effect on the sale of our Nintendo Game Boy Advance titles. We are also planning to develop titles for the next generation console systems expected to be developed by Sony, Microsoft and Nintendo for release in the next one to two years. We estimate that the next console hardware transition cycle will commence in late calendar 2005 or calendar 2006. Delays in the launch, shortages, technical problems or lack of consumer acceptance of the next generation platforms could adversely affect our sales of products for these platforms.

We must make significant expenditures to develop products for new platforms which may not be successful or released when anticipated.

The interactive entertainment software industry is subject to rapid technological change. New technologies could render our current products or products in development obsolete or unmarketable. We must continually anticipate and assess the emergence and market acceptance of new interactive entertainment hardware platforms well in advance of the time the platform is introduced to consumers. New platforms have historically required the development of new software and also have the effect of undermining demand for products based on older technologies. Because product development cycles are difficult to predict, we must make substantial product development and other investments in a particular platform well in advance of introduction of the platform and we may be required to realign our product portfolio and development efforts in response to market changes. If the platforms for which we develop new software products or modify existing products are not released on a timely basis or do not attain significant market penetration, or if we develop products for a delayed or unsuccessful platform, or if we cancel development of products in response to market changes, we may not be able to recover in revenues our development costs, which could be significant, and our business and financial results could be significantly harmed.

We are exposed to seasonality in the purchases of our products.

The interactive entertainment software industry is highly seasonal, with the highest levels of consumer demand occurring during the year-end holiday buying season. As a result, our net revenues, gross profits and operating income have historically been highest during the second half of the calendar year. Additionally, in a platform transition period, sales of game console software products can be significantly affected by the timeliness of introduction of game console platforms by the manufacturers of those platforms, such as Sony, Microsoft and Nintendo. The timing of hardware platform introduction is also often tied to holidays and is not within our control. If a hardware platform is released unexpectedly close to the holidays, this would result in a shortened holiday buying season and could negatively impact the sales of our products. Further, delays in development, licensor approvals or manufacturing can also affect the timing of the release of our products, causing us to miss key selling periods such as the year-end holiday buying season.

We depend on skilled personnel.

Our success depends to a significant extent on our ability to identify, hire and retain skilled personnel. The software industry is characterized by a high level of employee mobility and aggressive recruiting among competitors for personnel with technical, marketing, sales, product development and management skills. We may not be able to attract and retain skilled personnel or may incur significant costs in order to do so. If we are unable to attract additional qualified employees or retain the services of key personnel, our business and financial results could be negatively impacted.

Our platform licensors are our chief competitors and frequently control the manufacturing of and have broad approval rights over our video game products.

Generally, when we develop interactive entertainment software products for hardware platforms offered by Sony, Nintendo or Microsoft, the products are manufactured exclusively by that hardware manufacturer or their approved replicator.

Our agreements with these manufacturers include certain provisions, such as approval rights over all products and related promotional materials and the ability to change the fee they charge for the manufacturing of products, that allow them substantial influence over our costs and the release schedule of our products. In addition, since each of the manufacturers is also a publisher of games for its own hardware platforms and manufactures products for all of its other licensees, a manufacturer may give priority to its own products or those of our competitors in the event of insufficient manufacturing capacity. Accordingly, Sony, Nintendo or Microsoft could cause unanticipated delays in the release of our products as well as increases to our development, manufacturing, marketing or distribution costs, which could materially harm our business and financial results.

In addition, as online capabilities for video game platforms emerge, our platform licensors will control our ability to provide online game capabilities for our console platform products and will in large part establish the financial terms on which these services are offered to consumers. Currently, both Microsoft and Sony provide online capabilities for Xbox and PS2 products, respectively. In each case, compatibility code and the consent of the licensor are required for us to include online capabilities in our products. In addition, the business model for Microsoft s and Sony s online businesses for their video game products may compete with our online business. As these capabilities become more significant, the failure or refusal of our licensors to approve our products, or the successful deployment by these licensors of services competitive to ours, may harm our business.

Our platform licensors set the royalty rates and other fees that we must pay to publish games for their platforms, and therefore have significant influence on our costs.

We pay a licensing fee to the hardware manufacturer for each copy of a product manufactured for that manufacturer s game platform. In the next few years, we expect our platform licensors to introduce new hardware platforms into the market. In order to publish products for new hardware platforms, we must take a license from the platform licensor which gives the platform licensor the opportunity to set the fee structure that we must pay in order to publish games for that platform. Similarly, the platform licensors have retained the flexibility to change their fee structures for online gameplay and features for their consoles and the manufacturing of products. The control that platform licensors have over the fee structures for their future platforms and online access makes it difficult for us to predict our costs and profitability in the medium to long term. Because publishing products for console systems is the largest portion of our business, any increase in fee structures would have a significant negative impact on our business model and profitability.

If our products contain defects, our business could be harmed significantly.

Software products as complex as the ones we publish may contain undetected errors when first introduced or when new versions are released. Despite extensive testing prior to release, we cannot be certain that errors will not be found in new products or releases after shipment, that could result in loss of or delay in market acceptance. This loss or delay could significantly harm our business and financial results.

Inadequate intellectual property protections could prevent us from enforcing or defending our proprietary technology.

We regard our software as proprietary and rely on a combination of copyright, trademark and trade secret laws, employee and third-party nondisclosure agreements and other methods to protect our proprietary rights. We own or license various copyrights and trademarks. Although we provide shrinkwrap license agreements or limitations on use with our software, it is uncertain to what extent these agreements and limitations are enforceable. We are aware that some unauthorized copying occurs within the computer software industry, and if a significantly greater amount of unauthorized copying of our interactive entertainment software products were to occur, it could cause material harm to our business and financial results.

Policing unauthorized use of our products is difficult, and software piracy is a persistent problem, especially in some international markets. Further, the laws of some countries where our products are or may be distributed either do not protect our products and intellectual property rights to the same extent as the laws of the United States, or are poorly enforced. Legal protection of our rights may be ineffective in such countries. Moreover, as we leverage our software products using emerging technologies such as the Internet and online services, our ability to protect our intellectual property rights and to avoid infringing intellectual property rights of others may diminish. We cannot be certain that existing intellectual property laws will provide adequate protection for our products in connection with these emerging technologies.

We may be subject to intellectual property claims.

As the number of interactive entertainment software products increases and the features and content of these products continue to overlap, software developers increasingly may become subject to infringement claims. Many of our products are highly realistic and feature materials that are based on real world examples, which may inadvertently infringe upon the intellectual property rights of others. Our products often utilize complex, cutting edge technology that may become subject to the intellectual property rights of others. Although we believe that we make

reasonable efforts to ensure that our products do not violate the intellectual property rights of others, it is possible that third parties still may claim infringement. From time to time, we receive communications from third parties regarding such claims. Existing or future infringement claims against us, whether valid or not, may be time consuming and expensive to defend.

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Intellectual property litigation or claims could force us to do one or more of the following:

Cease selling, incorporating or using products or services that incorporate the challenged intellectual property;

Obtain a license from the holder of the infringed intellectual property, which if available at all, may not be available on commercially favorable terms; or

Redesign the effected interactive entertainment software products, which could cause us to incur additional costs, delay introduction and possibly reduce commercial appeal of our products.

Any of these actions may cause material harm to our business and financial results.

We rely on independent third parties to develop some of our software products.

We rely on independent third-party interactive entertainment software developers to develop some of our software products. Since we depend on these developers in the aggregate, we remain subject to the following risks:

Continuing strong demand for developers' resources, combined with the recognition they receive in connection with their work, may cause developers who worked for us in the past either to work for our competitors in the future or to renegotiate our agreements with them on terms less favorable for us.

Limited financial resources and business expertise and inability to retain skilled personnel may force developers out of business prior to completing our products or require us to fund additional costs.

Our competitors may acquire the businesses of key developers or sign them to exclusive development arrangements. In either case, we would not be able to continue to engage such developers' services for our products, except for those that they are contractually obligated to complete for us.

Increased competition for skilled third-party software developers also has compelled us to agree to make significant advance payments on royalties to game developers. If the products subject to these arrangements do not generate sufficient revenues to recover these royalty advances, we would have to write-off unrecovered portions of these payments, which could cause material harm to our business and financial results. Typically, we pay developers a royalty based on a percentage of net revenue, less agreed upon deductions, but in a few cases, we have agreed to pay developers fixed per unit product royalties after royalty advances are fully recouped. To the extent that sales prices of products on which we have agreed to pay a fixed per unit royalty are marked down, our profitability could be adversely affected.

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We operate in a highly competitive industry.

The interactive entertainment software industry is intensely competitive and new interactive entertainment software products and platforms are regularly introduced. Our competitors vary in size from small companies with limited resources to very large corporations with significantly greater financial, marketing and product development resources than we have. Due to these greater resources, certain of our competitors can spend more money and time on developing and testing products, undertake more extensive marketing campaigns, adopt more aggressive pricing policies, pay higher fees to licensors for desirable motion picture, television, sports and character properties and pay more to third-party software developers than we can. We believe that the main competitive factors in the interactive entertainment software industry include: product features and playability; brand name recognition; compatibility of products with popular platforms; access to distribution channels; quality of products; ease of use; price; marketing support; and quality of customer service.

We compete primarily with other publishers of personal computer and video game console interactive entertainment software. Significant third-party software competitors currently include, among others: Atari, Inc.; Capcom Co. Ltd.; Eidos PLC; Electronic Arts Inc.; Konami Company Ltd.; Namco Ltd.; Sega Enterprises, Ltd.; Take-Two Interactive Software, Inc.; THQ Inc.; Ubi Soft Entertainment and Vivendi

Universal Publishing. In addition, integrated video game console hardware and software companies such as Sony Computer Entertainment, Nintendo Co. Ltd. and Microsoft Corporation compete directly with us in the development of software titles for their respective platforms.

We also compete with other forms of entertainment and leisure activities. For example, we believe that the overall growth in the use of the Internet and online services by consumers may pose a competitive threat if customers and potential customers spend less of their available time using interactive entertainment software and more using the Internet and online services.

We may face difficulty obtaining access to retail shelf space necessary to market and sell our products effectively.

Retailers of our products typically have a limited amount of shelf space and promotional resources, and there is intense competition among consumer interactive entertainment software products for high quality retail shelf space and promotional support from retailers. To the extent that the number of products and platforms increases, competition for shelf space may intensify and may require us to increase our marketing expenditures. Retailers with limited shelf space typically devote the most and highest quality shelf space to those products expected to be best sellers. We cannot be certain that our new products will consistently achieve such best seller status. Due to increased competition for limited shelf space, retailers and distributors are in an increasingly better position to negotiate favorable terms of sale, including price discounts, price protection, marketing and display fees and product return policies. Our products constitute a relatively small percentage of any retailer s sales volume, although a retail customer, such as Wal-Mart, may account for a significant percentage of our revenues. We cannot be certain that retailers will continue to purchase our products or to provide our products with adequate levels of shelf space and promotional support on acceptable terms. A prolonged failure in this regard may significantly harm our business and financial results.

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Our sales may decline substantially without warning and in a brief period of time because we do not have long-term contracts for the sale of our products.

In the United States and Canada, we primarily sell our products on a direct basis to mass-market retailers, consumer electronics stores, discount warehouses and game specialty stores. Our products are sold internationally on a direct-to-retail basis, through third-party distribution and licensing arrangements and through our wholly-owned European distribution subsidiaries. Our sales are made primarily on a purchase order basis without long-term agreements or other forms of commitments. Our largest customer, Wal-Mart, accounted for approximately 22% of our consolidated revenues for the nine months ended December 31, 2004 and 20% of our consolidated net revenues for fiscal 2004. The loss of, or significant reduction in sales to, any of our principal retail customers or distributors could significantly harm our business and financial results.

We may permit our customers to return our products and to receive pricing concessions which could reduce our net revenues and results of operations.

We are exposed to the risk of product returns and price protection with respect to our distributors and retailers. Return policies allow distributors and retailers to return defective, shelf-worn and damaged products in accordance with terms granted. Price protection, when granted and applicable, allows customers a credit against amounts they owe us with respect to merchandise unsold by them. We may permit product returns from, or grant price protection to, our customers under certain conditions. The conditions our customers must meet to be granted the right to return products or price protection are, among other things, compliance with applicable payment terms, delivery to us of weekly inventory and sell-through reports, and consistent participation in the launches of our premium title releases. We may also consider other factors, including the facilitation of slow-moving inventory and other market factors. When we offer price protection, we offer it with respect to a particular product to all of our retail customers; however, only those customers who meet the conditions detailed above can avail themselves of such price protection. We also offer a 90-day limited warranty to our end users that our products will be free from manufacturing defects. Although we maintain a reserve for returns and price protection, and although we may place limits on product returns and price protection, we could be forced to accept substantial product returns and provide substantial price protection to maintain our relationships with retailers and our access to distribution channels. Product returns and price protection that exceed our reserves could significantly harm our business and financial results.

We may be burdened with payment defaults and uncollectible accounts if our distributors or retailers cannot honor their credit arrangement with us.

Distributors and retailers in the interactive entertainment software industry have from time to time experienced significant fluctuations in their businesses, and a number of them have failed. The insolvency or business failure of any significant retailer or distributor of our products could materially harm our business and financial results. We typically make sales to most of our retailers and some distributors on unsecured credit, with terms that vary depending upon the customer s credit history, solvency, credit limits and sales history, as well as whether we can obtain sufficient credit insurance. Although, as in the case with most of our customers, we have

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insolvency risk insurance to protect against our customers bankruptcy, insolvency or liquidation, this insurance contains a significant deductible and a co-payment obligation, and the policy does not cover all instances of non-payment. In addition, although we maintain a reserve for uncollectible receivables, the reserve may not be sufficient in every circumstance. As a result, a payment default by a significant customer could significantly harm our business and financial results.

We may not be able to maintain our distribution relationships with key vendors.

Our CD Contact, NBG and Centresoft subsidiaries distribute interactive entertainment software and hardware products and provide related services in the Benelux countries, Germany and the United Kingdom, respectively, and via export in other European countries for a variety of entertainment software publishers, many of which are our competitors, and hardware manufacturers. These services are generally performed under limited term contracts. Although we expect to use reasonable efforts to retain these vendors, we may not be successful in this regard. The cancellation or non-renewal of one or more of these contracts could significantly harm our business and financial results. Sony, Nintendo and Microsoft products accounted for approximately 63%, 9% and 12%, respectively, of our worldwide distribution net revenues for the nine months ended December 31, 2004, and 23%, 5% and 4%, respectively, of our worldwide distribution net revenues for fiscal 2004.

Our international revenues may be subject to regulatory requirements as well as currency fluctuations.

Our international revenues have accounted for a significant portion of our total revenues. International sales and licensing accounted for 48% of our consolidated net revenues for the nine months ended December 31, 2004, and 53% and 50% of our consolidated net revenues in fiscal 2004 and 2003, respectively. We expect that international revenues will continue to account for a significant portion of our total revenues in the future. International sales may be subject to unexpected regulatory requirements, tariffs and other barriers. Additionally, foreign sales that are made in local currencies may fluctuate. We have and may continue to engage in limited currency hedging activities. Currency exchange rates fluctuations may in the future have a material negative impact on revenues from international sales and licensing and thus our business and financial results.

Our business, our products and our distribution are subject to increasing regulation in key territories of content, consumer piracy and online delivery. If we do not successfully respond to these regulations, our business may suffer.

Legislation is continually being introduced that may affect both the content of our products and their distribution. For example, privacy laws in the United States and Europe impose various restrictions on our web sites. Those rules vary by territory although the Internet recognizes no geographical boundaries. In addition, many foreign countries have laws that permit governmental entities to censor the content and advertising of interactive entertainment software. Other countries, such as Germany, have adopted laws regulating content both in packaged goods and those transmitted over the Internet that are stricter than current United States laws. In the United States, federal and several state governments are considering content

restrictions on products such as ours, as well as restrictions on distribution of such products. We may be required to modify our products or alter our marketing strategies to comply with new regulations, which could delay the release of our products in those countries. Due to the uncertainties regarding such regulations, confusion in the marketplace may occur, and we are unable to predict what effect, if any, such regulations would have on our business.

In addition to such regulations, certain retailers have in the past declined to stock some of our products because they believed that the content of the packaging artwork or the products would be offensive to the retailer s customer base. Although to date these actions have not caused material harm to our business, we cannot assure you that similar actions by our distributors or retailers in the future would not cause material harm to our business.

Our products may be subject to legal claims.

In prior fiscal years, two lawsuits, Linda Sanders, et al. v. Meow Media, Inc., et al., United States District Court for the District of Colorado, and Joe James, et al. v. Meow Media, Inc., et al., United States District Court for the Western District of Kentucky, Paducah Division, have been filed against numerous video game companies, including us, by the families of victims who were shot and killed by teenage gunmen in attacks perpetrated at schools. These lawsuits alleged that the video game companies manufactured and/or supplied these teenagers with violent video games, teaching them how to use a gun and causing them to act out in a violent manner. These lawsuits have been dismissed. Similar additional lawsuits may be filed in the future. Although our general liability insurance carrier agreed to defend us in such lawsuits in the past, it is uncertain whether the insurance carrier would do so in the future, or if it would cover all or any amounts which we might be liable for if such future lawsuits are not decided in our favor. If such future lawsuits are filed and ultimately decided against us and our insurance carrier does not cover the amounts we are liable for, it could have a material adverse effect on our business and financial results. Payment of significant

claims by insurance carriers may make such insurance coverage materially more expensive or unavailable in the future, thereby exposing our business to additional risk.

We are party to pending shareholder litigation.

We are a defendant in a securities class action lawsuit pending in the Central District of California. The lawsuit asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 based on allegations that our revenues and assets were overstated during the period between February 1, 2001 and December 17, 2002. We have filed a motion to dismiss this lawsuit, which is pending before the court. Also, a shareholder derivative lawsuit was filed in Los Angeles Superior Court, purportedly on behalf of the Company, which asserts claims based upon the same facts set forth in the federal class action lawsuit. We have filed a motion to stay this proceeding, which is pending before the court. If either of these proceedings is decided against us, we could be subject to substantial damages or other penalties. If our insurance carrier does not cover the amounts we are liable for, including the legal fees and expenses we are incurring and will continue to incur, such liability could have a material adverse effect on our financial condition and results of operations. Payment of significant claims by insurance carriers may make such insurance coverage materially more expensive or unavailable in the further, thereby exposing our business to additional risk.

We may face limitations on our ability to find suitable acquisition opportunities or to integrate additional acquired businesses.

We intend to pursue additional acquisitions of companies, properties and other assets that can be purchased or licensed on acceptable terms and which we believe can be operated or exploited profitably. Some of these transactions could be material in size and scope. Although we continue to search for additional acquisition opportunities, we may not be successful in identifying suitable acquisitions. As the interactive entertainment software industry continues to consolidate, we face significant competition in seeking and consummating acquisition opportunities. We may not be able to consummate potential acquisitions or an acquisition may not enhance our business or may decrease rather than increase our earnings. In the future, we may issue additional shares of our common stock in connection with one or more acquisitions, which may dilute our existing shareholders. Future acquisitions could also divert substantial management time and result in short-term reductions in earnings or special transaction or other charges. In addition, we cannot guarantee that we will be able to successfully integrate the businesses that we may acquire into our existing business. Our shareholders may not have the opportunity to review, vote on or evaluate future acquisitions.

Our shareholder rights plan, charter documents and other agreements may make it more difficult to acquire us without the approval of our Board of Directors.

We have adopted a shareholder rights plan under which one right entitling the holder to purchase one one-hundredths (1/100) of a share of our Series A Junior Preferred Stock price at an exercise price of $40 per share (subject to adjustment) is attached to each outstanding share of common stock. Such shareholder rights plan makes an acquisition of control in a transaction not approved by our Board of Directors more difficult. Our Amended and Restated By-laws have advance notice provisions for nominations for election of nominees to the Board of Directors which may make it more difficult to acquire control of us. Our long-term incentive plans provide, in the discretion of a committee, for acceleration of stock options following a change in control under certain circumstances, which has the effect of making an acquisition of control more expensive. In addition, some of our officers have severance compensation agreements that provide for substantial cash payments and accelerations of other benefits in the event of a change in control. These agreements and arrangements may also inhibit a change in control.

Our reported financial results could be affected if significant changes in current accounting principles are adopted.

Recent actions and public comments from the Securities and Exchange Commission have focused on the integrity of financial reporting generally. Similarly, Congress has considered a variety of bills that could affect certain accounting principles. On December 15, 2004, the Financial Accounting Standards Board issued FASB Statement 123R, Share-Based Payment, which represent a significant change from current practices relating to expensing of stock options and other share-based payments. Changes in our accounting for stock options and other share-based payment will result in an increase in our reported expenses.

Our stock price is highly volatile.

The trading price of our common stock has been and could continue to be subject to wide fluctuations in response to many factors, including:

Quarter to quarter variations in results of operations

Our announcements of new products

Our competitors' announcements of new products

Our product development or release schedule

General conditions in the computer, software, entertainment, media or electronics industries and in the economy

Timing of the introduction of new platforms and delays in the actual release of new platforms

Hardware manufacturers' announcements of price reductions in hardware platforms

Supply shortages of hardware platforms

Changes in earnings estimates or buy/sell recommendations by analysts

Investor perceptions and expectations regarding our products, plans and strategic position and those of our competitors and customers

In addition, the public stock markets experience extreme price and trading volume volatility, particularly in high technology sectors of the market. This volatility has significantly affected the market prices of securities of many technology companies for reasons often unrelated to the operating performance of the specific companies. These broad market fluctuations may adversely affect the market price of our common stock.

A substantial number of shares of our common stock are being resold pursuant to this prospectus, and additional shares may be sold in the future by our officers, directors and the selling stockholders.

The resale of our common stock by the selling stockholders pursuant to this prospectus could cause the market price of our stock to decline. Moreover, the mere prospect of resales by the selling stockholders as contemplated by this prospectus could depress the market price for our common stock. In addition, the selling stockholders and our officers, directors and employees hold significant numbers of additional shares of our common stock and options currently exercisable for shares of our common stock. Many of these shares are freely tradable without restriction under the federal securities laws, and those that are not may be sold in the future pursuant to an effective registration statement, in compliance with the requirements of Rule 144 or, in some cases, pursuant to a reoffer prospectus such as this prospectus. Sales in the

public market of substantial amounts of our common stock, whether by the selling stockholders or others, or the perception that such sales could occur, could materially adversely affect prevailing market prices for our common stock and the our ability to raise additional capital through the sale of equity securities.

We seek to manage our business with a view to achieving long-term results, and this could have a negative effect on short-term trading.

We focus on creation of shareholder value over time, and we intend to make decisions that will be consistent with this long-term view. As a result, some of our decisions, such as whether to make or discontinue operating investments, manage our balance sheet and capital structure, or pursue or discontinue strategic initiatives, may be in conflict with the objectives of short-term traders. Further, this could adversely affect our quarterly or other short-term results of operations.

We do not pay cash dividends on our common stock.

We have not paid any cash dividends on our common stock nor do we anticipate paying cash dividends in the near future.

THE COMPANY

We are a leading international publisher of interactive entertainment software products. We have built a company with a diverse portfolio of products that spans a wide range of categories and target markets and that is used on a variety of game hardware platforms and operating systems. We have created, licensed and acquired a group of highly recognizable brands, which we market to a variety of consumer demographics.

Our products cover game categories such as action/adventure, action and outdoor sports, racing and driving, role-playing, simulation, first-person action and strategy. Our target customer base ranges from game enthusiasts and children to mass-market consumers and value buyers. We currently offer our products primarily in versions that operate on the Sony PlayStation 2 (PS2), Nintendo GameCube (GameCube) and Microsoft Xbox (Xbox) console systems, Nintendo Game Boy Advance (GBA) and Nintendo Dual Screen (NDS) hand-held devices, and the personal computer (PC). The installed base for this current-generation of hardware platforms is significant and growing. We believe the price cuts in calendar 2004 on the Xbox, PS2, GameCube, and GBA hardware, the redesign of the PS2, and the recent launch of the NDS should continue to drive the growth of the installed base of the current-generation platforms. In addition, Sony has announced that it would be entering the hand-held hardware market with the introduction of its hand-held gaming device, PlayStation Portable (PSP), which is expected to be released in the United States toward the end of the first quarter of calendar 2005. We are currently developing titles based on the Spider-Man and Tony Hawk franchises for the PSP with the objective of having both ready for release at the launch of the PSP. We are also developing titles for the next-generation console systems being developed by Sony, Microsoft and Nintendo for release within the next one to two years. Though there are still many unknowns relating to these new platforms, our aim is to have a meaningful launch presence for all new hardware systems with a goal of gaining market share on each platform while continuing to exploit our products on the current-generation platforms given their large and growing installed base.

Our publishing business involves the development, marketing and sale of products directly by us, by license or through our affiliate label program with certain third-party publishers. In the United States, we primarily sell our products on a direct basis to mass-market retailers, consumer electronics stores, discount warehouses and game specialty stores. We conduct our international publishing activities through offices in the United Kingdom (UK), Germany, France, Italy, Spain, Australia, Sweden, Canada and Japan. Our products are sold internationally on a direct-to-retail basis, through third-party distribution and licensing arrangements and through our wholly-owned European distribution subsidiaries. Our distribution business consists of operations located in the UK, the Netherlands and Germany that provide logistical and sales services to third-party publishers of interactive entertainment software, our own publishing operations and manufacturers of interactive entertainment hardware.

Our profitability is directly affected by the mix of revenues from our publishing and distribution businesses. Operating margins realized from our publishing business are substantially higher than margins realized from our distribution business. Operating margins in our publishing business are affected by our ability to release highly successful or hit titles. Though many of these titles have substantial production or acquisition costs and marketing budgets, once a title recoups these costs, incremental net revenues directly and positively impact our operating margin. Operating margins in our distribution business are affected by the mix of hardware and software sales, with software producing higher margins than hardware.

Our Focus

With respect to future game development, we will continue to focus on our big proposition titles that are backed by strong brands and high quality development, for which we will provide significant marketing support.

A number of our fiscal 2005 big proposition titles include well-established brands, which are backed by high profile intellectual property and/or highly anticipated motion picture releases. Examples of these brands are our superheroes and skateboarding brands. We have a long-term relationship with Marvel Enterprises through an exclusive licensing agreement that expires in 2009. This agreement grants us the exclusive rights to develop and publish video games based on Marvel s comic book franchises Spider-Man, X-Men, Fantastic Four and Iron Man. Through our long-term relationship with Spider-Man Merchandising, LLP, in the first quarter of fiscal 2005 we released the video game Spider-Man 2, the sequel to the highly successful Spider-Man: The Movie. The video game release of Spider-Man 2 coincided with the Spider-Man 2 theatrical release in June 2004. Also, under our licensing agreement with Spider-Man Merchandising, LLP, we will be developing and publishing video games based on Columbia Pictures/Marvel Enterprises, Inc. s upcoming feature film Spider-Man 3, which is expected to be released in May

2007. We also have an exclusive licensing agreement with professional skateboarder Tony Hawk that continues until 2015. The agreement grants us exclusive rights to develop and publish video games using Tony Hawk s name and his likeness. Through fiscal 2005, we released six successful titles in the Tony Hawk franchise with cumulative net revenues of $947.5 million, including the most recent, *Tony Hawk s Underground 2* (THUG 2), which was released in the third quarter of fiscal 2005.

We also continue to develop a number of original intellectual properties. In the third quarter of the current fiscal year, we released the highly successful *Call of Duty: Finest Hour*, on multiple console platforms. This title was ranked by NPD TRST as one of the top-five best selling games for December 2004 and was the third game based upon this original property following the *Call of Duty* and *Call of Duty: United Offensive* titles for the PC. *True Crime: Streets of L.A.* is another title based upon original intellectual property and was released in the third quarter of fiscal 2004. This highly successful title was ranked by third-party sales tracking agencies, such as NPD, as among the top-five selling games for the 2003 holiday season. We expect to develop a variety of games on multiple platforms based on these two original properties and hope to establish them as a source of recurring revenues.

We will also continue to evaluate and exploit emerging brands that we believe have potential to become successful game franchises. For example, we have a multi-year, multi-property, publishing agreement with DreamWorks SKG that granted us the exclusive rights to publish video games based on DreamWorks SKG s theatrical release Shrek 2, which was released in the first quarter of fiscal 2005, Shark Tale , which was released in the second quarter of fiscal 2005, as well as upcoming computer-animated films, Madagascar and Over the Hedge, and their sequels. We also have an exclusive licensing agreement to develop and publish video games for the best-selling children s book series, Lemony Snicket s A Series of Unfortunate Events . In the third quarter of the current fiscal year, we released a video game of the same title to coincide with the release of the feature film by Paramount Pictures, Nickelodeon Movies and DreamWorks SKG.

In addition to acquiring or creating high profile intellectual property, we have also continued our focus on establishing and maintaining relationships with talented and experienced software development teams. We believe we have strengthened our internal development capabilities through the acquisition of a number of development companies with talented and experienced teams including, most recently, the acquisition of Vicarious Visions, a leading game development studio, in January 2005. We have development agreements with other top-level, third-party developers such as id Software, Lionhead Studios and The Creative Assembly.

We are utilizing these developer relationships, new intellectual property acquisitions, new original intellectual property creations and our existing library of intellectual property to further focus our game development on product lines that will deliver significant, lasting and recurring revenues and operating profits.

The Company s principal executive offices are located at 3100 Ocean Park Boulevard, Santa Monica, California 90405, and its telephone number is (310) 255-2000. The Company also maintains offices in the United Kingdom, France, Germany, Japan, Australia, Belgium, The Netherlands, Italy, Spain, Sweden, New York, New York, Madison, Wisconsin, Eden Prarie and St. Paul, Minnesota, Dallas, Texas, and Encino, Hayward, San Francisco and Woodland Hills, California.

USE OF PROCEEDS

Except for the aggregate exercise price of the options exercised by the Selling Stockholders in connection with the sale of the shares offered by this reoffer prospectus, we will not receive any of the proceeds from such sales of common stock. All such proceeds will be received by the Selling Stockholders. See Selling Stockholders.

SELLING STOCKHOLDERS

The Company will issue the common stock being offered by this reoffer prospectus upon the exercise of (i) options to purchase common stock issued to the Selling Stockholders pursuant to the Company s 1991 Stock Option and Stock Award Plan, the Company s 1998 Incentive Plan, the Company s 1999 Incentive Plan, the Company s 2001 Incentive Plan, the Company s 2002 Executive Incentive Plan, the Company s 2002 Incentive Plan, and/or the Company s 2003 Incentive Plan (collectively, the Stock Plans), (ii) options to purchase common stock issued to certain Selling Stockholders outside of any plan and (iii) warrants to purchase common stock issued to certain Selling Stockholders pursuant to the Company s 1991 Director Warrant Plan or outside of any plan.

The following table sets forth certain information regarding the beneficial ownership of common stock by the Selling Stockholders as of February 1, 2005, and the number of shares of common stock being offered by this reoffer prospectus.

Name and Address of Selling Stockholder (1)	Position(s) with the Company (2)	Beneficial Ownership of Common Stock Before the Offering (3)	Number of Shares of Common Stock Being Offered	Beneficial Ownership of Common Stock After the Offering	
				Number of Shares (4)	Percentage of Class (5)
Robert A. Kotick (6)	Chairman; Chief Executive Officer; Director	9,802,984	2,548,562(7)	7,254,422	5.1
Brian G. Kelly (8)	Co-Chairman; Director	7,334,082	2,500,000(9)	4,834,082	3.4
Ronald Doornink	President; Director; Chief Executive Officer, Activision Publishing	2,635,971	1,066,250	1,569,721	1.1
William Chardavoyne	Chief Financial Officer; Executive Vice President	447,971	168,755	279,216	*
Kathy Vrabeck (10)	President, Activision Publishing	540,745	303,754	236,991	*
Richard Andrew Steele	President, Activision Distribution	580,658	121,880	458,778	*
Michael Rowe	Executive Vice President, Human Resources	274,619	142,619	132,000	*
George Rose	Senior Vice President, General Counsel; Secretary	132,810	73,378	59,432	*
Linda Kumagai	Vice President Finance	15,225	11,250	3,975	*
Gregory Deutsch	Director of Business and Lebal Affairs	18,704	6,329	12,375	*
Barbara S. Isgur	Director	159,313	56,750	102,563	*
Robert Morgado	Director	366,316	100,000	266,316	*
All Selling Stockholders as a group		22,309,398	7,099,527	15,209,871	10.7%

* Percent of class less than 1%.

(1) The address for each Selling Stockholder is c/o Activision, Inc., 3100 Ocean Park Boulevard, Santa Monica, California 90405.

(2) All positions listed are with the Company, unless otherwise stated.

(3) Includes shares of common stock that an individual or group has a right to acquire within 60 days after February 1, 2005, pursuant to the exercise of options, warrants or other rights. Includes 6,880,049, 6,417,776, 2,539,532, 412,103, 533,252, 365,547, 267,869, 132,810, 14,550, 18,704, 157,063, and 332,191 shares issuable to Messrs. Kotick, Kelly, Doornink, Chardavoyne, Ms. Vrabeck, Messrs. Steele, Rowe, Rose, Ms. Kumagai, Mr. Deutsch, Ms. Isgur, and Mr. Morgado, respectively, upon exercise of options exercisable within 60 days held by each such individual pursuant to the Stock Plans.

(4) Includes 4,331,487, 3,917,776, 1,473,282, 243,348, 229,498, 243,667, 125,250, 59,432, 3,300, 12,375, 100,313, and 232,191 shares issuable to Messrs. Kotick, Kelly, Doornink, Chardavoyne, Ms. Vrabeck, Messrs. Steele, Rowe, Rose, Ms. Kumagai, Mr. Deutsch, Ms. Isgur, and Mr. Morgado, respectively, upon exercise of options exercisable within 60 days held by each such individual pursuant to the Stock Plans.

(5) Percent of class was computed based on 142,517,967 shares of common stock outstanding as of February 1, 2005 and, in each such Selling Stockholder s case, the number of shares of common stock issuable upon the exercise of the options or warrants exercisable within 60 days held by such Selling Stockholder or, in the case of all Selling Stockholders as a group, the number of shares of common stock issuable upon the exercise of options or warrants exercisable within 60 days held by all such individuals, but does not include the number of shares of common stock issuable upon the exercise of any other outstanding options or warrants.

(6) Includes 63,249 shares owned directly by Delmonte Investments, L.L.C., of which Mr. Kotick is a controlling person. Does not include options to purchase 137,326 shares of common stock transferred by Mr. Kotick to an irrevocable trust for the benefit of his minor children with respect to which Mr. Kotick disclaims beneficial ownership. Includes options to purchase 2,467,983 shares of common stock held by 1011 Partners, LLC of which Mr. Kotick and his spouse are the sole members.

(7) Mr. Kotick will sell all of such shares of common stock through two entities over which he either controls or shares control: KAG Holdings LLC and The 45121G Trust, which immediately prior to this offering owned 1,707,755 and 840,807 shares of common stock, respectively.

(8) Includes 63,249 shares owned directly by Delmonte Investments, L.L.C., of which Mr. Kelly is a controlling person.

(9) Mr. Kelly will sell all of such shares of common stock through Ocean Front LLC, which he controls.

(10) Does not include 6,000 shares owned by Ms. Vrabeck s spouse, with respect to which Ms. Vrabeck disclaims beneficial ownership.

PLAN OF DISTRIBUTION

Our shares of common stock offered by the Selling Stockholders or their transferees are to be sold from time to time, in one or more transactions, in whole or in part, pursuant to any of the methods listed in this reoffer prospectus. The Selling Stockholders may sell our shares of common stock through dealers, through agents or directly to one or more purchasers. The distribution of such common stock may be effected from time to time in one or more transactions, including the following:

- cross trades or block trades in which the broker or dealer so engaged will attempt to sell the common stock as agent, but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker or dealer as principal and resale by such broker or dealer for its own account pursuant to this reoffer prospectus;
- at the market to or through market makers or into an existing market for the common stock;
- ordinary brokerage transactions and transactions in which the broker solicits purchasers, which may include long sales or short sales in compliance with Section 16(c) under the Exchange Act, effected after the effective date of the registration statement of which this reoffer prospectus is a part;
- in other ways not involving market makers or established trading markets, including direct sales to purchasers or sales effected through agents;
- through transactions in options, swaps or other derivatives, whether exchange-listed or otherwise;
- any combination of the foregoing methods; or
- by any other legally available means.

The Selling Stockholders may enter into hedging transactions with broker-dealers in connection with distributions of the shares of common stock or otherwise. In such transactions, broker-dealers may engage in short sales of the shares of common stock in the course of hedging the positions they assume with certain Selling Stockholders. The Selling Stockholders may also sell the common stock short and redeliver the stock to close out such short positions. Such Selling Stockholders may enter into option or other transactions with broker-dealers which require the delivery of the common stock to the broker-dealer. The broker-dealer may then resell

or otherwise transfer such common stock pursuant to this reoffer prospectus. The Selling Stockholders also may loan or pledge the common stock to a broker-dealer. The broker-dealer may sell the common stock so loaned, or upon a default the broker-dealer may sell the pledged common stock, pursuant to this reoffer prospectus.

Any transaction may be effected at market prices prevailing at the time of sale, at prices related to such prevailing market prices, at negotiated prices or at fixed prices. The Selling Stockholders may effect such transactions by selling common stock to or through broker-dealers, and such broker-dealers may receive compensation in the form of discounts, concessions or commissions from the Selling Stockholders and/or commissions from purchasers of the common stock for whom they may act as agent. The Selling Stockholders and any broker-dealers or agents that participate in the distribution of common stock by them might be deemed to be underwriters, and any discounts, commissions or concessions received by any such broker-dealers or agents might be deemed to be underwriting discounts and commissions, under the Securities Act.

The common stock will be sold through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states the common stock may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

We have informed the Selling Stockholders that the anti-manipulative rules contained in Regulation M under the Exchange Act may apply to their sales in the market and have informed them of the requirement for delivery of this reoffer prospectus in connection with any sale of our common stock offered by this reoffer prospectus. All expenses of registration incurred in connection with the sale of the shares of common stock offered by this reoffer prospectus are being borne by us, but any brokerage commissions and other expenses incurred by a Selling Stockholder will be borne by such Selling Stockholder.

Any of our common stock covered by this reoffer prospectus which qualify for sale pursuant to Rule 144 under the Securities Act may be sold under that rule rather than pursuant to this reoffer prospectus. Upon notification to us by a Selling Stockholder that any material arrangement has been entered into with a broker-dealer for the sale or purchase of our common stock, we will file a supplement to this reoffer prospectus, if required, disclosing:

- the name of the participating broker-dealer(s);
- the amount of common stock involved;
- the price at which such common stock was sold;
- the commissions paid or discounts or concessions allowed to such broker-dealer(s), where applicable;
- that such broker-dealer(s) did not conduct any investigation to verify the information set out or incorporated by reference in this reoffer prospectus; and
- other facts material to the transaction.

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EXPERTS

The consolidated financial statements incorporated in this reoffer prospectus by reference to the Annual Report on Form 10-K for the year ended March 31, 2004, have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

AVAILABLE INFORMATION

We are a reporting company and file annual, quarterly and special reports, proxy statements and other information with the Securities and Exchange Commission, or the SEC. You may inspect and copy such material at the public reference facilities maintained by the SEC at 450 Fifth Street, N.W., Washington, D.C. 20549. You may also obtain copies of such material from the SEC at prescribed rates for the cost of copying by writing to the Public Reference Section of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for more information on the public reference rooms. You can also find our SEC filings at the SEC s web site at http://www.sec.gov.

The Company has filed with the SEC a registration statement on Form S-8 under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, with respect to the common stock being offered by this reoffer prospectus. This reoffer prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement and the exhibits and schedules to the registration statement, as permitted by the rules and regulations of the SEC. For further information with respect to the our company and the common stock being offered, we refer you to the registration statement on Form S-8, including the exhibits attached and the

financial statements, notes and schedules incorporated as a part of such registration statement, which may be inspected and copied at the public reference facilities of the SEC referred to above. Statements contained in this reoffer prospectus as to the contents of any contract or other document are not necessarily complete, and in each instance reference is made to the full text of such contract or document filed as an exhibit to the registration statement, each such statement being qualified in all respects by such reference.

The Company furnishes stockholders with annual reports containing audited financial statements and with proxy material for its annual meetings complying with the proxy requirements of the Exchange Act.

DOCUMENTS INCORPORATED BY REFERENCE

The SEC allows us to incorporate by reference information that we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this reoffer prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and, until the termination of this offering, any future filings we will make with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934:

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- Our Annual Report on Form 10-K for the fiscal year ended March 31, 2004;
- Our Quarterly Report on Form 10-Q for the quarterly periods ended June 30, 2004, September 30, 2004, and December 31, 2004; and
- The description of our common stock and the rights associated with our common stock contained in our Registration Statement on Form S-3, Registration No. 333-46425, and our Registration Statement on Form 8-A, File No. 001-15839, filed on April 19, 2000.

You may request a copy of these filings at no cost, by writing or telephoning us at the following address:

Activision, Inc.
3100 Ocean Park Boulevard
Santa Monica, California 90405
(310) 255-2000
Attn: Investor Relations

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No dealer, salesman or other person has been authorized to give any information or to make representations other than

those contained in this reoffer prospectus, and if given or made, such information or representations must not be relied upon as having been authorized by the Company or the Selling Stockholders. Neither the delivery of this reoffer prospectus nor any sale made hereunder shall, under any circumstances, create an implication that the information herein is correct as of any time subsequent to its date. This reoffer prospectus does not constitute an offer of solicitation by anyone in any jurisdiction in which such offer or solicitation is not authorized or in which the person making such offer of solicitation is not qualified to do so or to anyone to whom it is unlawful to make such offer or solicitation.

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7,099,527 Shares

ACTIVISION, INC.

Common Stock

PROSPECTUS

February 9, 2005

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 8. Exhibits

23.1. Consent of PricewaterhouseCoopers LLP, an independent registered public accounting firm.

24.1. Power of Attorney authorizing certain persons to sign this Post-Effective Amendment No. 3 on behalf of certain directors and officers of the Registrant.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing a post-effective amendment to Form S-8 and has duly caused this amendment to its registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Santa Monica, State of California, on February 9, 2005.

ACTIVISION, INC.

By: /s/ Brian G. Kelly

Brian G. Kelly

Pursuant to the requirements of the Securities Act of 1933, as amended, this amendment to the registration statement has been signed by the following persons in the capacities and on the dates indicated.

Name	Title	Date
*	Chairman, Chief Executive Officer and Director	

Securities gains/(losses)				4	(132)
Insurance commissions		1,176		1,242	
Bank owned life insurance		624		607	
Other income		2,351		2,281	
Total other operating income		10,330		9,450	
Other operating expenses					
Salaries and employee benefits		14,725		13,767	
Occupancy, equipment and data processing		4,816		4,659	
Other expense		7,451		7,349	
Total other operating expenses		26,992		25,775	
Income before income taxes		13,390		12,374	
Applicable income taxes		4,276		4,440	
Net income	$	9,114	$	7,934	
Earnings per share	$	1.49	$	1.30	
Dividends per share	$	.57	$	.555	
Weighted average number of shares outstanding		6,127		6,103	

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FIRST UNITED CORPORATION
Consolidated Statements of Income
(in thousands, except per share data)

	Three Months Ended September 30,			
		2006		2005
	(Unaudited)			
Interest income				
Loans, including fees	$	17,675	$	16,069
Investment securities:				
Taxable		1,989		1,567
Exempt from federal income tax		732		355
Total investment income		2,721		1,922
Dividends on FHLB stock		141		69
Federal funds sold and interest bearing deposits		23		39
Total interest income		20,560		18,099
Interest expense				
Deposits		7,197		5,097
Short-term borrowings		1,243		765
Long-term borrowings		1,940		1,848
Total interest expense		10,380		7,710
Net interest income		10,180		10,389
Provision for loan losses		499		356
Net interest income after provision for loan losses		9,681		10,033
Other operating income				
Service charges		1,375		1,118
Trust department		910		820
Securities gains		-		59
Insurance commissions		410		445
Bank owned life insurance		212		251
Other income		603		796
Total other operating income		3,510		3,489
Other operating expenses				
Salaries and employee benefits		4,592		4,718
Occupancy, equipment and data processing		1,607		1,562
Other expense		2,339		2,507
Total other operating expenses		8,538		8,787
Income before income taxes		4,653		4,735
Applicable income taxes		1,388		1,691
Net income		3,265	$	3,044
Earnings per share		.53	$	.50
Dividends per share		.19	$	.185

Weighted average number of shares outstanding	6,133	6,109

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FIRST UNITED CORPORATION
Consolidated Statements of Cash Flows
(in thousands)

	Nine Months Ended September 30, 2006	2005
	(Unaudited)	
Operating activities		
Net income	$ 9,114	$ 7,934
Adjustments to reconcile net income to net cash provided by operating activities:		
Provision for loan losses	579	1,272
Depreciation	1,877	1,701
Amortization of intangible assets	483	418
Net accretion and amortization of investment securities discounts and premiums	130	392
(Gain)/loss on sale of investment securities	(4)	132
Increase in accrued interest receivable and other assets	(2,843)	(469)
Increase in accrued interest payable and other liabilities	44	1,539
Increase in bank owned life insurance value	(624)	(607)
Net cash provided by operating activities	8,756	12,312
Investing activities		
Net decrease/(increase) in interest-bearing deposits in banks	3,381	(708)
Proceeds from maturities of investment securities available-for-sale	38,328	74,189
Proceeds from sales of investment securities available for sale	548	26,918
Purchases of investment securities available-for-sale	(53,015)	(94,400)
Net decrease/(increase) in loans	2,852	(74,767)
Net (increase)/decrease in FHLB stock	(1,469)	226
Purchases of premises and equipment	(2,155)	(1,808)
Net cash used in investing activities	(11,530)	(70,350)
Financing activities		
Net (decrease)/increase in short-term borrowings	(13,703)	5,400
Repayments of long-term borrowings	(30,282)	(20,282)
New issues of long-term borrowings	55,000	-
Net (decrease)/increase in deposits	(7,311)	77,105
Cash dividends paid	(3,491)	(3,382)
Proceeds from issuance of common stock	378	374
Net cash provided by financing activities	591	59,215

Cash at beginning of the year		24,610		24,159
(Decrease)/increase in cash		(2,183)		1,177
Cash at end of period	$	22,427	$	25,336

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FIRST UNITED CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

September 30, 2006

Note A -- Basis of Presentation

The accompanying unaudited consolidated financial statements of First United Corporation (the "Corporation") and its consolidated subsidiaries have been prepared in accordance with U.S. generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all the information and footnotes required for complete financial statements. In the opinion of management, all adjustments considered necessary for a fair presentation, consisting of normal recurring items, have been included. Operating results for the nine-month period ended September 30, 2006 are not necessarily indicative of the results that may be expected for the full year or for any other interim period. These consolidated financial statements should be read in conjunction with the audited consolidated financial statements and footnotes thereto included in the Corporation's Annual Report on Form 10-K for the year ended December 31, 2005. For purposes of comparability, certain prior period amounts have been reclassified to conform with the 2006 presentation.

Note B - Earnings per Share

Earnings per share is computed by dividing net income by the weighted average number of shares of common stock outstanding. The Corporation does not have any common stock equivalents.

Note C - Comprehensive Income

Unrealized gains and losses on investment securities available-for-sale are the only items included in accumulated other comprehensive income/(loss). Total comprehensive income (which consists of net income plus the change in unrealized gains (losses) on investment securities available-for-sale, net of taxes and reclassification adjustments) was $9.8 million and $7.1 million for the nine months ended September 30, 2006 and 2005, respectively, and $5.8 million and $2.8 million for the three months ended September 30, 2006 and 2005, respectively.

Note D - Junior Subordinated Debentures

In March 2004, the Corporation formed two Connecticut statutory business trusts, First United Statutory Trust I ("FUST I") and First United Statutory Trust II (collectively with FUST I, the "Trusts"), for the purpose of selling $30.9 million of mandatorily redeemable preferred securities to third party investors. The Trusts used the proceeds of their sales of preferred securities to purchase an equal amount of junior subordinated debentures from the Corporation, as follows:

<u>$20.6 million</u>--6.02% fixed rate for five years payable quarterly, converting to floating rate based on three-month LIBOR plus 275 basis points, maturing in 2034, redeemable five years after issuance at the Corporation's option.

<u>$10.3 million</u>--floating rate payable quarterly based on three-month LIBOR plus 275 basis points (8.14% at September 30, 2006) maturing in 2034, redeemable five years after issuance at the Corporation's option.

The debentures represent the sole assets of the Trusts, and the Corporation's payments under the debentures are the only sources of cash flow for the Trusts. The preferred securities qualify as Tier 1 capital of the Corporation.

The Corporation issued an additional $5.0 million of junior subordinated debentures in a private placement in December 2004. These debentures have a fixed rate of 5.88% for the first five years and then convert to a floating rate based on the three month LIBOR plus 185 basis points. Interest is payable on a quarterly basis. Although these debentures mature in 2014, they are redeemable five years after issuance at the Corporation's option. The entire $5.0 million qualifies as Tier II capital.

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Note E - Borrowed Funds

The following is a summary of short-term borrowings with original maturities of less than one year (dollars in thousands):

	September 30, 2006	December 31, 2005
Short-term FHLB advances, Daily borrowings, interest rate of 5.53% and 4.49%, respectively	$ 15,500	$ 31,000
One year advance, interest rate of 5.44%	20,000	-
Securities sold under agreements to repurchase, with weighted average interest rate at end of period of 3.77% and 2.56%, respectively	72,736	90,939
	$ 108,236	$ 121,939

The following is a summary of long-term borrowings with original maturities exceeding one year (dollars in thousands):

FHLB advances, bearing interest at rates ranging from 3.15% to 5.40% at September 30, 2006	$ 117,162	$ 92,444
Junior subordinated debentures, bearing interest at rates ranging from 5.88% to 8.14% at September 30, 2006	35,929	35,929
	$ 153,091	$ 128,373

Note F - Pension Plan

The following table presents the net periodic pension plan cost for the Corporation's Defined Benefit Pension Plan and the related components:

	For the nine months ended September 30		For the three months ended September 30	
(In thousands)	**2006**	**2005**	**2006**	**2005**
Service cost	$ 606	$ 600	$ 202	$ 200
Interest cost	806	777	270	259
Expected return on assets	(1,206)	(1,056)	(402)	(352)
Amortization of transition asset	(30)	(30)	(10)	(10)
Recognized loss	129	141	43	47
Prior service cost	6	9	2	3
Net pension expense included in employee benefits	$ 311	$ 441	$ 105	$ 147

The Corporation intends to contribute $1.0 million to its pension plan in 2006. As of September 30, 2006, the Corporation has contributed $.7 million to the plan.

Note G - New Accounting Pronouncements

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157, “Fair Value Measurements” (“SFAS No. 157”). SFAS No. 157 was issued to define fair value, establish a framework for measuring fair value in generally accepted accounting principles (GAAP), and expands fair value disclosure requirements. Prior to issuance of SFAS No. 157, different definitions of fair value existed within GAAP and there was limited guidance available on applying existing fair value definitions. SFAS No. 157 does not require any new fair value measurements. SFAS No. 157 is effective for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. Management does not expect the adoption of SFAS No. 157 to have a material impact on the Corporation’s consolidated financial statements.

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In September 2006, FASB also issued Statement of Financial Accounting Standards No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans" ("SFAS No. 158"). SFAS No. 158 requires employers to recognize the over or under funded status of their single-employer pension and postretirement benefit plans as either an asset or liability in its statement of financial position and to recognize changes in that funded status in the year in which the changes occur through comprehensive income. The funded status of a benefit plan shall be measured as the difference between plan assets at fair value and the benefit obligation, which shall be measured as follows: for a pension plan, the benefit obligation is the projected benefit obligation (PBO); for any other postretirement benefit plan, the benefit obligation is the accumulated postretirement benefit obligation. Additionally, SFAS No. 158 also requires the measurement of the benefit plan's assets and obligations to be measured as of the date of the employer's year-end statement of financial position.

The effective date of SFAS No. 158's funded status reporting requirement is for fiscal years ending on or after December 15, 2006 (for publicly traded companies or companies in the process of becoming publicly traded) with retrospective application prohibited. However, the measurement date provision is effective for fiscal years ending after December 15, 2008 and retrospective application is also prohibited, but early adoption is permitted and encouraged. Management has not yet completed all of the analysis necessary to determine the impact of this new standard. However, management anticipates that SFAS No. 158 will impact the Corporation's consolidated financial statements, by recording a pension liability on the Corporation's consolidated statement of financial condition and an adjustment to accumulated comprehensive income, net of tax.

In June 2006, the FASB issued Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" ("FIN No. 48") to clarify the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes." FIN No. 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return, and provides guidance on derecognition, classification, interest and penalties, interim period accounting, and disclosures. FIN No. 48 requires companies to determine whether it is *more likely than not* that a tax position will be sustained upon examination (including appeals and litigation) based upon its technical merits. If a tax position meets the more likely than not recognition threshold, it is measured to determine the benefit amount to recognize in the financial statements. The tax position is measured at the largest amount of benefit that is greater than fifty percent likely of being realized upon ultimate settlement. FIN No. 48 is effective for fiscal years beginning after December 15, 2006, with earlier application encouraged. Management does not anticipate that the adoption of FIN No. 48 will have a material impact on the Corporation's consolidated financial statements.

In June 2006, the Emerging Issues Task Force (EITF) released Issue No. 06-4, "Accounting for Deferred Compensation and Postretirement Benefit Aspects of Endorsement Split-Dollar Life Insurance Arrangements" ("EITF 06-4"). This EITF consensus opinion was ratified by the FASB on September 20, 2006. EITF 06-4 requires employers who have entered into a split-dollar life insurance arrangement with an employee that extends to post-retirement periods, to recognize a liability and related compensation costs in accordance with SFAS No. 106, "Accounting for Post Retirement Benefit Obligations" or Accounting Principles Board Opinion No. 12, "Omnibus Opinion." The effective date of EITF No. 06-4 is for fiscal years beginning after December 15, 2006, and the opinion may be adopted through either a cumulative effect adjustment to retained earnings at the beginning of the year of adoption, or through retrospective application to prior periods. Management has not yet completed all of the analysis required to determine the impact of this new accounting standard on the Corporation's consolidated financial statements. This analysis is currently in process and will be completed during the fourth quarter of 2006.

In March 2006, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 156, "Accounting for Servicing of Financial Assets" ("SFAS No. 156"). SFAS No. 156 amends Statement of Financial Accounting Standards No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities," with respect to the accounting for separately recognized servicing assets and servicing

liabilities. SFAS No. 156 requires an entity to recognize a servicing asset or servicing liability each time it undertakes an obligation to service a financial asset by entering into a servicing contract in each of several specific situations. SFAS No. 156 also requires all separately recognized servicing assets and servicing liabilities to be initially measured at fair value, if practicable, and permits an entity to choose either of two accepted measurement methods for each class of separately recognized servicing assets and servicing liabilities. Further, SFAS No. 156 permits, at its initial adoption, a one-time reclassification of available-for-sale securities to trading securities by entities with recognized servicing rights. Lastly, the Statement requires separate presentation of servicing assets and servicing liabilities subsequently measured at fair value and additional disclosures for all separately recognized servicing assets and servicing liabilities. SFAS No. 156 is effective for fiscal years beginning after September 15, 2006. Management does not expect the adoption of SFAS No. 156 to have a material impact on the Corporation's consolidated financial statements.

On September 13, 2006, the Securities and Exchange Commission "(the “SEC") issued Staff Accounting Bulletin No. 108 ("SAB 108"). SAB 108 provides interpretive guidance on how the effects of the carryover or reversal of prior year misstatements should be considered in quantifying a potential current year misstatement. Prior to SAB 108, companies might evaluate the materiality of financial-statement misstatements using either the income statement approach or the balance sheet approach, with the income statement approach focusing on new misstatements added in the current year, and the balance sheet approach focusing on the cumulative amount of misstatement present in a company's balance sheet. Misstatements that would be material under one approach could be viewed as immaterial under another approach, and not be corrected. SAB 108 now requires that companies view financial statement misstatements as material if they are material according to either the income statement approach or balance sheet approach. Management does not anticipate that the adoption of SAB 108 will have a material impact on the Corporation’s consolidated financial statements.

Note H - Letters of Credit

First United Bank & Trust, the Corporation’s wholly-owned trust company subsidiary (the “Bank”). does not issue any guarantees that would require liability recognition or disclosure other than its standby letters of credit. Standby letters of credit are conditional commitments issued by the Bank to guarantee the performance of a customer to a third party. Generally, all of our letters of credit are issued with expiration dates within one year. The credit risk involved in issuing letters of credit is essentially the same as that involved in extending loan facilities to customers. The Bank generally holds collateral and/or personal guarantees supporting these commitments. The Bank had $7.5 million of outstanding standby letters of credit at September 30, 2006, compared to $5.1 million at December 31, 2005. Management believes that the proceeds obtained through a liquidation of collateral and the enforcement of guarantees would be sufficient to cover the potential amount of future payment required by the letters of credit. Management does not believe that the amount of the liability associated with guarantees under standby letters of credit issued at September 30, 2006 and December 31, 2005 is material.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

INTRODUCTION

The following discussion and analysis is intended as a review of material changes in and significant factors affecting the financial condition and results of operations of the Corporation and its consolidated subsidiaries for the periods indicated. This discussion and analysis should be read in conjunction with the unaudited consolidated financial statements and the notes thereto contained in Item 1 of Part I of this report. Unless the context clearly suggests otherwise, references in this report to “us”, “we”, “our”, and “the Corporation” are to First United Corporation and its consolidated subsidiaries.

FORWARD-LOOKING STATEMENTS

This report may contain forward-looking statements within the meaning of The Private Securities Litigation Reform Act of 1995. Readers of this report should be aware of the speculative nature of “forward-looking statements.” Statements that are not historical in nature, including those that include the words “anticipate,” “estimate,” “should,” “expect,” “believe,” “intend,” and similar expressions, are based on current expectations, estimates and projections about, among other things, the industry and the markets in which we operate, and they are not guarantees of future performance. Whether actual results will conform to expectations and predictions is subject to known and unknown risks and uncertainties, including risks and uncertainties discussed in this report; general economic, market, or business conditions; changes in interest rates, deposit flow, the cost of funds, and demand for loan products and financial services; changes in our competitive position or competitive actions by other companies; changes in the quality or composition of our loan and investment portfolios; our ability to manage growth; changes in laws or regulations or policies of federal and state regulators and agencies; and other circumstances beyond our control. Consequently, all of

the forward-looking statements made in this report are qualified by these cautionary statements, and there can be no assurance that the actual results anticipated will be realized, or if substantially realized, will have the expected consequences on our business or operations. These and other risk factors are discussed in detail the Corporation's periodic reports that it files with the Securities and Exchange Commission (the "SEC") (see Item 1A of Part II of this report for further information). Except as required by applicable laws, we do not intend to publish updates or revisions of any forward-looking statements we make to reflect new information, future events or otherwise.

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THE COMPANY

First United Corporation is a Maryland corporation that was incorporated in 1985 and is a registered financial holding company under the federal Bank Holding Company Act of 1956, as amended. The Corporation’s primary business activity is acting as the parent company of First United Bank & Trust, a Maryland trust company (the “Bank”), OakFirst Loan Center, Inc., a West Virginia finance company, OakFirst Loan Center, LLC, a Maryland finance company, the Trusts, and First United Insurance Group, LLC, a full service insurance producer organized under Maryland law (the “Insurance Group”). OakFirst Loan Center, Inc. has one subsidiary, First United Insurance Agency, Inc., which is a Maryland insurance agency. The Bank provides a complete range of retail and commercial banking services to a customer base serviced by a network of 24 offices and 34 automated teller machines.

We maintain an Internet site at www.mybankfirstunited.com on which we make available, free of charge, our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and all amendments to the foregoing as soon as reasonably practicable after these reports are electronically filed with, or furnished to, the SEC.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

This discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent liabilities. (See Note 1 of the Notes to Consolidated Financial Statements included in Item 8 of Part II of Form 10-K for the year ended December 31, 2005). On an on-going basis, management evaluates its estimates, including those related to loan losses and intangible assets. Management bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. Management described its critical accounting policies, which pertain to the allowance for loan losses and intangible assets, in the Form 10-K for December 31, 2005. Management believes that there have been no significant changes in our critical accounting policies since December 31, 2005.

SELECTED FINANCIAL DATA

The following table sets forth certain selected financial data for the nine months ended September 30, 2006 and 2005 and is qualified in its entirety by the detailed information and unaudited financial statements including the notes thereto, included elsewhere in this quarterly report.

	At or For the Nine Months Ended September 30	
	2006	2005
Per Share Data		
Net Income	$ 1.49	$ 1.30
Dividends Declared	.57	.555
Book Value	16.10	14.83
Significant Ratios		
Return on Average Assets (a)	.93%	.84%
Return on Average Equity (a)	12.79	11.97
Dividend Payout Ratio	38.88	42.70
Average Equity to Average Assets	7.28	7.00

Note: (a) Annualized

RESULTS OF OPERATIONS

Overview

Consolidated net income for the first nine months of 2006 totaled $9.11 million or $1.49 per share, compared to $7.93 million or $1.30 per share for the same period of 2005. The increases in net income and net interest margin resulted primarily from increased earnings on interest-earning assets, which were a direct result of the increases in the general level of interest rates that occurred during 2005 and continued into 2006 as well as increased average balances on our interest-earning assets. The increase in interest income was offset by increased interest expense paid on our interest-bearing liabilities due to rising interest rates and an increase in our average balances. Net interest income before provision for loan losses for the first nine months of 2006 improved by $.7 million or 2.2% over the same period of 2005. The provision for loan losses is $ .6 million for the nine months ended September 30, 2006, compared to $1.3 million for the same period of 2005. This is attributable to a decline in net loan charge offs during the first nine months of 2006, slower loan growth during the period, and a decline in non-performing loans. Other operating income increased by $.9 million in the first nine months of 2006 when compared to the first nine months of 2005, due primarily to an increase in service charge income. Operating expenses increased $1.2 million in the first nine months of 2006 when compared to the first nine months of 2005 due primarily to increased personnel costs.

Consolidated net income for the third quarter of 2006 totaled $3.3 million or $.53 per share, compared to $3.0 million or $.50 per share for the same period of 2005. The net interest margin for the third quarter of 2006 reflects increased interest income due to an increase of $23.4 million in average balances of our earning assets and the higher rate environment when compared to the third quarter of 2005. This was offset by increased interest expense due to full percentage point increase in the average rate paid on our interest-bearing liabilities. The provision for loan losses also increased as compared to the same time period in 2005. Other operating income for the third quarter of 2006 remained consistent when compared to the third quarter of 2005. Third quarter 2006 operating expenses decreased by 3% when compared to operating expenses for the third quarter of 2005 due to lower personnel costs reflecting lower employee incentives because of slower loan and deposit growth.

Comparing the first nine months of 2006 and 2005, our performance ratios improved. Annualized Returns on Average Assets (“ROAA”) were .93% and .84%, respectively. Annualized Returns on Average Equity (“ROAE”) were 12.79% and 11.97% for the nine-month periods ending September 30, 2006 and 2005, respectively.

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Net Interest Income

Net interest income is the largest source of operating revenue and is the difference between the interest earned on interest-earning assets and the interest expense incurred on interest-bearing liabilities. For analytical and discussion purposes, net interest income is adjusted to a fully taxable equivalent basis to facilitate performance comparisons between taxable and tax-exempt assets by increasing tax-exempt income by an amount equal to the federal income taxes that would have been paid if this income were taxable at the statutorily applicable rate. The following table sets forth the average balances, net interest income and expense, and average yields and rates of our interest-earning assets and interest-bearing liabilities for the nine months ended September 30, 2006 and 2005.

	For the Nine Months Ended September 30,					
	2006			2005		
(Dollars in thousands)	Average Balance	Interest	Average Rate	Average Balance	Interest	Average Rate
Interest-Earning Assets:						
Loans	$ 944,689	$ 51,088	7.21%	$ 938,690	$ 45,080	6.40%
Investment securities	231,126	8,672	5.00	208,677	6,094	3.89
Other interest earning assets	11,556	482	5.56	15,615	424	3.62
Total earning assets	$ 1,187,371	60,242	6.76%	$ 1,162,982	51,598	5.91%
Interest-bearing liabilities						
Interest-bearing deposits	$ 838,998	19,600	3.12%	$ 809,639	13,524	2.23%
Short-term borrowings	105,773	3,214	4.05	98,758	1,823	2.46
Long-term borrowings	152,734	5,631	4.92	162,454	5,757	4.72
Total interest-bearing liabilities	$ 1,097,505	28,445	3.46%	$ 1,070,851	21,104	2.63%
Net interest income and spread		$ 31,797	3.30%		$ 30,494	3.28%
Net interest margin			3.57%			3.50%

Note: Interest income and yields are presented on a fully taxable equivalent basis using a 35% tax rate.

Net interest income increased $1.3 million during the first nine months of 2006 over the same period in 2005, due to an $8.6 million (17%) increase in interest income offset by a $7.3 million (35%) increase in interest expense. The increase in interest income resulted from an increase in average interest-earning assets of $24.4 million (2.1%) during the first nine months of 2006 when compared to the first nine months of 2005. This increase is attributable to the growth that we experienced in both our loan and investment portfolios late in 2005 and during the first half of 2006. Emphasis on adjustable rate loan products and the rising interest rate environment contributed to the increase in the average rate on our average earning assets of 85 basis points, from 5.91% for the first nine months of 2005 to 6.76% for the first nine months of 2006 (on a fully tax equivalent basis). Interest expense increased during the first nine

months of 2006 when compared to the same period of 2005 due to the higher interest rate environment, and an overall increase in average interest-bearing liabilities of $26.7 million. Deposits have increased in 2006 by approximately $29 million due to an increase in brokered certificates of deposit and a successful retail promotion of a nine month certificate of deposit. The combined effect of the increasing rate environment and the volume increases in our average interest-bearing liabilities resulted in an 83 basis point increase in the average rate paid on our average interest-bearing liabilities from 2.63% for the nine months ended September 30, 2005 to 3.46% for the same period of 2006. The net result of the aforementioned factors was a 7 basis point increase in the net interest margin during the first nine months of 2006 to 3.57% from 3.50% when compared to the same time period of 2005.

The following table sets forth the average balances, net interest income and expense, and average yields and rates of our interest-earning assets and interest-bearing liabilities for the three months ended September 30, 2006 and 2005.

	For the Three Months Ended September 30,					
	2006			2005		
(Dollars in thousands)	Average Balance	Interest	Average Rate	Average Balance	Interest	Average Rate
Interest-Earning Assets:						
Loans	$ 942,707	$ 17,684	7.50%	$ 955,879	$ 16,076	6.72%
Investment securities	238,679	3,115	5.22	200,848	2,113	4.21
Other interest earning assets	10,728	165	6.15	12,011	109	3.63
Total earning assets	$ 1,192,114	20,964	7.03%	$ 1,168,738	18,298	6.26%
Interest-bearing liabilities						
Interest-bearing deposits	$ 825,545	7,197	3.49%	$ 828,855	5,097	2.46%
Short-term borrowings	113,757	1,243	4.37	105,365	765	2.90
Long-term borrowings	154,155	1,940	5.03	151,936	1,848	4.86
Total interest-bearing liabilities	$ 1,093,457	10,380	3.80%	$ 1,086,156	7,710	2.84%
Net interest income and spread		$ 10,584	3.23%		$ 10,588	3.42%
Net interest margin			3.55%			3.62%

Note: Interest income and yields are presented on a fully taxable equivalent basis using a 35% tax rate.

On a fully tax-equivalent basis, net interest income for the third quarter of 2006 remained consistent when compared to the third quarter of 2005. Both interest income and interest expense increased $2.7 million during the quarter. The increase in interest income resulted from an increase in average interest-earning assets of $23.4 million (2%), coupled with a 77 basis point increase in the average yield on earning assets. The average balance in the investment portfolio increased by $37.8 million. The 101 basis point increase in the yield on the investment portfolio resulted from the continuing restructuring of the portfolio to increase the holdings of tax-exempt securities with an effective yield greater than the securities that they replaced. Average interest-bearing liabilities increased $7.3 million during the third quarter of 2006 when compared to the third quarter of 2005. The effective rate on these liabilities increased by 96 basis points. We initiated a leverage strategy late in the second quarter of 2006 by purchasing $22 million in

corporate bonds with brokered certificates of deposit. This strategy netted a spread of approximately 110 basis points and helped to offset the slow loan growth experience during the quarter. This strategy had an impact on the decrease in the net interest margin of 7 basis points from 3.62% to 3.55% when compared quarter to quarter.

Other Operating Income

Other operating income increased during the first nine months of 2006 when compared to the same periods of 2005. This increase was primarily attributable to continued improvements in service charge income and trust department earnings in 2006. There were no losses from sales in the investment portfolio in the first nine months of 2006 compared to a $.1 million loss during the first nine months of 2005. Service charge income improved due to increased overdraft fees and increased account analysis fees from new merchant accounts. Other operating income in the third quarter of 2006 was consistent with the amount reported for the same period of 2005.

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Other Operating Expense

Other operating expenses increased by 5% for the first nine months of 2006 and declined 3% for the third quarter of 2006 when compared to the same time periods of 2005. The increases were due to increased personnel costs (reflecting increased employee incentives, annual merit increases and staffing increases that took place in the latter months of 2005). However, the composition of operating expenses has remained consistent as illustrated below.

	Expense as % of Total Other Operating Expenses			
	Nine Months ended		Quarter ended	
	September 30, 2006	September 30, 2005	September 30, 2006	September 30, 2005
Salaries and employee benefits	55%	53%	54%	54%
Occupancy, equipment and data processing	17%	18%	19%	18%
Other	28%	29%	27%	28%
	100%	100%	100%	100%

Applicable Income Taxes

The effective tax rate for the first nine months of 2006 and for the third quarter of 2006 decreased to 32% and 30%, respectively from 36% for the first nine months and third quarter of 2005. This decrease reflects the effects of management's strategy during late 2005 to restructure the composition of the investment portfolio to include more tax exempt municipal securities.

FINANCIAL CONDITION

Balance Sheet Overview

Total assets were $1.32 billion at September 30, 2006, an increase of $10 million (.8%) since December 31, 2005. During this time period, gross loans decreased $4 million and cash and interest-bearing deposits in banks declined $6 million. These decreases were offset by increases of approximately $15 million in our investment portfolio, $.6 million in our bank owned life insurance, and $2.3 million in accrued interest and other assets. Total liabilities increased by approximately $4 million during the first nine months of 2006, reflecting declines in total deposits of $7 million and short-term borrowings of $14 million and an increase in long-term borrowings of $25 million. The increase in long-term borrowings reflects management's decision to extend the maturities of its borrowed funds and reduce its reliance on short-term borrowings.

Loan Portfolio

The following table presents the composition of our loan portfolio at the dates indicated:

(Dollars in millions)	September 30, 2006			December 31, 2005		
Commercial	$	400.7	42%	$	404.7	42%
Residential - Mortgage		358.3	37		337.6	35
Installment		183.5	19		193.3	20
Residential - Construction		14.9	2		25.4	3
Total Loans	$	957.4	100%	$	961.0	100%

Comparing loans at September 30, 2006 to loans at December 31, 2005, our loan portfolio has decreased by $3.6 million (.4%). Continued growth in residential mortgage and construction loans ($10.2 million) was offset by a decline in the installment portfolio ($9.8 million) and a decline in our commercial portfolio ($4 million). The decrease in installment loans resulted from our intention to de-emphasize this type of very rate-competitive lending in our major markets. Although commercial loan production has remained consistent with prior years, our commercial loan portfolio decreased due to repayments of development loans. This payback negated the growth in the commercial portfolio experienced thus far in 2006. At September 30, 2006, approximately 82% of the commercial loan portfolio was collateralized by real estate.

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Risk Elements of Loan Portfolio

The following table presents the risk elements of our loan portfolio at the dates indicated. Management is not aware of any potential problem loans other than those listed in this table.

(Dollars in millions)	September 30, 2006	December 31, 2005
Non-accrual loans	$ 1,714	$ 2,393
Accruing loans past due 90 days or more	2,421	989
Total	$ 4,135	$ 3,382
Total as a percentage of total loans	.43%	.35%

Allowance and Provision for Loan Losses

An allowance for loan losses is maintained to absorb losses from the loan portfolio. The allowance for loan losses is based on management's continuing evaluation of the quality of the loan portfolio, assessment of current economic conditions, diversification and size of the portfolio, adequacy of collateral, past and anticipated loss experience, and the amount of non-performing loans.

We use the methodology outlined in the FDIC Statement of Policy on Allowance for Loan and Lease Losses. The starting point for this methodology is to segregate the loan portfolio into two pools, non-homogeneous (i.e., commercial) and homogeneous (i.e., consumer and residential mortgage) loans. Each loan pool is analyzed with general allowances and specific allocations being made as appropriate. For general allowances, the previous eight quarters of loss activity are used in the estimation of losses in the current portfolio. These historical loss amounts are modified by the following qualitative factors: levels of and trends in delinquency and non-accrual loans; trends in volumes and terms of loans; effects of changes in lending policies; experience, ability, and depth of management; national and local economic trends and conditions; and concentrations of credit in the determination of the general allowance. The qualitative factors are updated each quarter by information obtained from internal, regulatory, and governmental sources. Specific allocations of the allowance for loan losses are made for those loans on the "Watchlist" in which the collateral value is less than the outstanding loan balance with the allocation being the dollar difference between the two. The Watchlist represents loans, identified and closely monitored by management, which possess certain qualities or characteristics that may lead to collection and loss issues. Allocations are not made for loans that are cash secured, for the Small Business Administration and Farm Service Agency guaranteed portion of loans, or for loans that are sufficiently collateralized.

The allowance for loan losses is based on estimates, and actual losses will likely vary from current estimates. These estimates are reviewed quarterly, and as adjustments, either positive or negative, become necessary a corresponding increase or decrease is made in the provision for loan losses. The methodology used to determine the adequacy of the allowance for loan losses is consistent with prior years.

The following table presents a summary of the activity in the allowance for loan losses for the nine months ended September 30 (dollars in thousands):

	2006	2005
Balance, January 1	$ 6,416	$ 6,814
Gross charge offs	(1,129)	(1,114)
Recoveries	411	320
Net credit losses	(718)	(794)
Provision for loan losses	579	1,272
Balance at end of period	$ 6,277	$ 7,292
Allowance for Loan Losses to loans outstanding (as %)	.66%	.74%
Net charge-offs to average loans outstanding during the period, annualized (as %)	.10%	.11%

The allowance for loan losses decreased to $6.3 million at September 30, 2006, compared to $6.4 million at December 31, 2005. This decrease is the result of a decrease in the loan portfolio of $3.6 million during the first nine months of 2006 and a decrease in our net charge-off percentage to .10% for the first nine months of 2006 from .11% for the first nine months of 2005, reflecting increased recoveries. In addition, non-accrual loans have decreased $.6 million from the end of 2005.

Net charge offs relating to the installment loan portfolio represent 62% of our total net charge-offs for the first nine months of 2006. Generally, installment loans are charged off after they are 120 days contractually past due. The quality of the installment loan portfolio has improved, as loans past due 30 days or more were $2.7 million or 1.5 % of the installment portfolio at September 30, 2006, compared to $3.1 million or 1.6% at December 31, 2005.

The provision for loan losses was $.6 million for the first nine months of 2006, compared to $1.3 million for the same period of 2005. The lower provision in 2006 is due primarily to reductions in special allocations, a decline in net loan charge offs and slower loan growth during the period. As a result of the evaluation of the loan portfolio using the factors and methodology discussed previously, the allowance for loan losses decreased slightly to $6.3 million at September 30, 2006, compared to $6.4 million at December 31, 2005. Management believes that the allowance at September 30, 2006 is adequate to provide for probable losses inherent in our loan portfolio.

Amounts that will be recorded for the provision for loan losses in future periods will depend upon trends in the loan balances, including the composition of the loan portfolio, changes in loan quality and loss experience trends, potential recoveries on previously charged-off loans and changes in other qualitative factors.

Investment Securities

Our entire investment securities portfolio is categorized as available-for-sale and is carried at fair value. At September 30, 2006, the total cost basis of the investment portfolio was $247.4 million compared to a fair value of $245.3 million.

The following table presents the composition of our securities portfolio (fair values) at the dates indicated:

(Dollars in millions)	September 30, 2006		December 31, 2005	
U.S. government and agencies	$ 98.9	40%	$ 107.0	47%
Mortgage-backed securities	53.6	22	63.9	28
Obligations of states and political subdivisions	68.2	28	57.7	25
Corporate and other debt securities	24.6	10	1.1	--

Other securities		--	--		.4	--
Total Investment Securities	$	245.3	100%	$	230.1	100%

The increase in our investment portfolio since year-end 2005 is due to the purchase of $17 million in corporate bonds during the second quarter of 2006 and $5 million during the third quarter of 2006 as part of our previously disclosed leverage strategy. As previously discussed, we utilized brokered certificates of deposit to fund the purchase of higher yielding corporate bonds. The growth in corporate bonds was offset by scheduled maturities in other segments of the portfolio.

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At September 30, 2006, the securities available for sale balance included a net unrealized loss of $2.1 million, which represents the difference between the fair value and amortized cost of securities in the portfolio. The comparable amount at December 31, 2005 was an unrealized loss of $3.2 million. The fair value of securities available for sale generally decreases whenever interest rates increase and the fair value will typically increase in a declining rate environment.

Management does not believe that an unrealized loss on any individual security as of September 30, 2006 represents an other than temporary impairment. We have both the intent and ability to hold the securities presented in the preceding table for the period of time necessary to recover their amortized cost or until maturity.

Deposits

The following table presents the composition of our deposits as of the dates indicated:

(Dollars in millions)		September 30, 2006			December 31, 2005	
Noninterest-bearing demand deposits	$	113.7	12%	$	114.5	12%
Interest-bearing demand deposits		257.7	27		313.4	33
Savings deposits		45.4	5		51.6	5
Time deposits less than $.1		231.8	24		209.1	22
Time deposits $.1 or more		299.9	32		267.3	28
Total Deposits	$	948.5	100%	$	955.9	100%

Deposits declined $7.4 million during the first nine months of 2006 in comparison to deposits at December 31, 2005. The composition of deposits has changed, showing a reduction in demand deposit and savings balances offset by an increase in retail and brokered certificates of deposit. As mentioned previously, we purchased $22 million of brokered deposits in the second and third quarters of 2006 to acquire corporate bonds.

Borrowed Funds

The following table presents the composition of our borrowings at the dates indicated:

(Dollars in millions)		September 30, 2006		December 31, 2005
FHLB short-term borrowings	$	35.5	$	31.0
Securities sold under agreements to repurchase		72.7		90.9
Total short-term borrowings	$	108.2	$	121.9
FHLB advances	$	117.1	$	92.4
Junior subordinated debt		35.9		35.9
Total long-term borrowings	$	153.0	$	128.3

Total short-term borrowings decreased by approximately $14 million during the first nine months of 2006, primarily as a result of a decline in municipal funds invested in our cash management product. Long-term borrowings increased by $25 million during the same period.

Liquidity and Capital

We derive liquidity through increased customer deposits, maturities in the investment portfolio, loan repayments and income from earning assets. When deposits are not adequate to fund customer loan demand, liquidity needs can be

met in the short-term funds markets through arrangements with our correspondent banks or through the purchase of brokered certificates of deposit. The Bank is also a member of the Federal Home Loan Bank of Atlanta, which provides another source of liquidity. As discussed in Note D to the consolidated financial statements, we may from time to time access capital markets and/or borrow funds from private investors to meet some of our liquidity needs. We actively manage our liquidity position through the Asset and Liability Management Committee of the Board of Directors. Monthly reviews by management and quarterly reviews by the committee under prescribed policies and procedures are designed to ensure that we will maintain adequate levels of available funds.

We are moving forward with our planned branch expansion projects. Construction has begun on branch offices in Monongalia County, West Virginia and Washington County, Maryland. Remodeling is also underway for an operations center located in Oakland, Maryland. The total projected costs for these projects is estimated at approximately $3 million and will be funded from cash flow from operations.

Management believes that we have adequate liquidity available to respond to current and anticipated liquidity demands and is unaware of any trends or demands, commitments, events or uncertainties that will materially affect our ability to maintain liquidity at satisfactory levels.

The following table presents our capital ratios at September 30, 2006:

	Actual	Required For Capital Adequacy Purposes	Required To Be Well Capitalized
Total Capital (to risk-weighted assets)	13.07%	8.00%	10.00%
Tier 1 Capital (to risk-weighted assets)	11.92	4.00	6.00
Tier 1 Capital (to average assets)	8.93	3.00	5.00

At September 30, 2006, the Corporation was categorized as “well capitalized” under federal banking regulatory capital requirements.

The Corporation paid a cash dividend of $.19 per share on August 1, 2006. On September 20, 2006, the Board of Directors declared another dividend of an equal amount, to be paid on November 1, 2006 to shareholders of record as of October 17, 2006.

Contractual Obligations, Commitments and Off-Balance Sheet Arrangements

Loan commitments are made to accommodate the financial needs of our customers. Letters of credit commit us to make payments on behalf of customers when certain specified future events occur. The credit risks inherent in loan commitments and letters of credit are essentially the same as those involved in extending loans to customers, and these arrangements are subject to our normal credit policies. Loan commitments and letters of credit totaled $194.8 million and $7.5 million, respectively, at September 30, 2006, compared to $161.1 million and $5.1 million, respectively, at December 31, 2005. We are not party to any other off-balance sheet arrangements. There have been no significant changes in contractual obligations since December 31, 2005.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Our primary market risk is interest rate fluctuation and we have procedures in place to evaluate and mitigate this risk. This market risk and our procedures are described in our Annual Report on Form 10-K for the year ended December 31, 2005 under the caption “Management’s Discussion and Analysis of Financial Condition and Results of Operation - Interest Rate Sensitivity”. Management believes that no material changes in our market risks or in the procedures used to evaluate and mitigate these risks have occurred since December 31, 2005.

Item 4. Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports filed under the Securities Exchange Act of 1934 with the SEC, such as this Quarterly Report, is recorded, processed, summarized and reported within the periods specified in those rules and forms, and that such

information is accumulated and communicated to our management, including the Chief Executive Officer (“CEO”) and the Chief Financial Officer (“CFO”), as appropriate, to allow for timely decisions regarding required disclosure. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate.

An evaluation of the effectiveness of these disclosure controls as of September 30, 2006 was carried out under the supervision and with the participation of Management, including the CEO and the CFO. Based on that evaluation, Management, including the CEO and the CFO, has concluded that our disclosure controls and procedures are effective.

During the third quarter of 2006, there was no change in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Part II. OTHER INFORMATION

Item 1. Legal Proceedings

None.

Item 1A. Risk Factors

The risks and uncertainties to which our financial condition and operations are subject are discussed in detail in Item 1A of Part I of the Corporation's Annual Report on Form 10-K for the year ended December 31, 2005 as updated in Item 1A of Part II of the Corporation's Quarterly Report on Form 10-Q for the quarter ended June 30, 2006. Management does not believe that any material changes in our risk factors have occurred since they were last updated.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults upon Senior Securities

None.

Item 4. Submission of Matters to a Vote of Security Holders

None.

Item 5. Other Information

None.

Item 6. Exhibits

The exhibits filed or furnished with this quarterly report are listed in the Exhibit Index that follows the signatures, which index is incorporated herein by reference.

SIGNATURES

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

	FIRST UNITED CORPORATION
Date: November 6, 2006	/s/ William B. Grant William B. Grant, Chairman of the Board and Chief Executive Officer
Date November 6, 2006	/s/ Carissa L. Rodeheaver Carissa L. Rodeheaver, Senior Vice-President and Chief Financial Officer

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EXHIBIT INDEX

Exhibit	Description
3.1	Amended and Restated Articles of Incorporation (incorporated by reference to Exhibit 3.1 of the Corporation's Quarterly Report on Form 10-Q for the period ended September 30, 1998)
3.2	Amended and Restated By-Laws (incorporated by reference to Exhibit 3(ii) of the Corporation's Annual Report on Form 10-K for the year ended December 31, 1997)
10.1	First United Bank & Trust Supplemental Executive Retirement Plan ("SERP") (incorporated by reference to Exhibit 10.1 of the Corporation's Quarterly Report on Form 10-Q for the period ended September 30, 2003)
10.2	Form of SERP Participation Agreement between the Bank and each of William B. Grant, Robert W. Kurtz, Jeannette R. Fitzwater, Phillip D. Frantz, Eugene D. Helbig, Jr., Steven M. Lantz, Robin M. Murray, and Frederick A. Thayer, IV (incorporated by reference to Exhibit 10.2 of the Corporation's Quarterly Report on Form 10-Q for the period ended September 30, 2003)
10.3	Form of Endorsement Split Dollar Agreement between the Bank and each of William B. Grant, Robert W. Kurtz, Jeannette R. Fitzwater, Phillip D. Frantz, Eugene D. Helbig, Jr., Steven M. Lantz, Robin M. Murray, Carissa L. Rodeheaver, and Frederick A. Thayer, IV (incorporated by reference to Exhibit 10.3 of the Corporation's Quarterly Report on Form 10-Q for the period ended September 30, 2003)
10.4	First United Corporation Executive and Director Deferred Compensation Plan (incorporated by reference to Exhibit 10.10 of the Corporation's Quarterly Report on Form 10-Q for the period ended September 30, 2003)
31.1	Certifications of the CEO pursuant to Section 302 of the Sarbanes-Oxley Act (filed herewith)
31.2	Certifications of the CFO pursuant to Section 302 of the Sarbanes-Oxley Act (filed herewith)
32.1	Certification of the CEO pursuant to Section 906 of the Sarbanes-Oxley Act (furnished herewith)
32.2	Certification of the CFO pursuant to Section 906 of the Sarbanes-Oxley Act (furnished herewith)