P010000088637

Florida Department of State
Division of Corporations
Public Access System

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

(((H09000232453 3)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:
Division of Corporations
Fax Number : (850)617-6380

From:
Account Name : CORPORATION SERVICE COMPANY
Account Number : I20000000195
Phone : (850)521-1000
Fax Number : (850)558-1575

FILED
2009 NOV -2 PM 2:40
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

MERGER OR SHARE EXCHANGE

Bibby Financial Services (Midwest), Inc.

Certificate of Status	0
Certified Copy	0
Page Count	10
Estimated Charge	$140.00

RECEIVED
2009 NOV -2 AM 8:00
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Electronic Filing Menu   Corporate Filing Menu   Help

TB NOV - 2 2009

FILED
2009 NOV -2 PM 2:40
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER
(Profit Corporations)

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, Florida Statutes.

First: The name and jurisdiction of the **surviving** corporation:

Name	Jurisdiction	Document Number (If known/ applicable)
Bibby Financial Services (Midwest), Inc.	Illinois	

Second: The name and jurisdiction of each **merging** corporation:

Name	Jurisdiction	Document Number (If known/ applicable)
BFS Midwest, Inc.	Illinois	
Bibby Financial Services(Southwest), Inc.	Texas	
Bibby Financial Services(Southeast), Inc.	Florida	P01000088637

Third: The Plan of Merger is attached.

Fourth: The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State.

OR ___/___/___ (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days after merger file date.)

Fifth: Adoption of Merger by **surviving** corporation - **(COMPLETE ONLY ONE STATEMENT)**
The Plan of Merger was adopted by the shareholders of the surviving corporation on 10/30/2009.

The Plan of Merger was adopted by the board of directors of the surviving corporation on ________ and shareholder approval was not required.

Sixth: Adoption of Merger by **merging** corporation(s) **(COMPLETE ONLY ONE STATEMENT)**
The Plan of Merger was adopted by the shareholders of the merging corporation(s) on 10/30/2009.

The Plan of Merger was adopted by the board of directors of the merging corporation(s) on ________ and shareholder approval was not required.

(Attach additional sheets if necessary)

Seventh: SIGNATURES FOR EACH CORPORATION

Name of Corporation	Signature of an Officer or Director	Typed or Printed Name of Individual & Title
Bibby Financial Services (Midwest), Inc.		Laurie A. Martin Montplaisir, General Counsel & Exec. VP of Legal Services
BFS Midwest, Inc.		Laurie A. Martin Montplaisir, General Counsel & Exec. VP of Legal Services
Bibby Financial Services (Southwest), Inc.		Laurie A. Martin Montplaisir, General Counsel & Exec. VP of Legal Services
Bibby Financial Services (Southeast), Inc.		Laurie A. Martin Montplaisir, General Counsel & Exec. VP of Legal Services

AGREEMENT AND PLAN OF REORGANIZATION

THIS AGREEMENT AND PLAN OF REORGANIZATION (the "Agreement") is made as of this 30th day of October, 2009 by and among and BIBBY FINANCIAL SERVICES (HOLDINGS), INC. a Delaware corporation ("**Holdings**"), BFS MIDWEST, INC., an Illinois corporation ("**BFS**"), BIBBY FINANCIAL SERVICES (SOUTHWEST), INC. a Texas corporation ("**SW**"), BIBBY FINANCIAL SERVICES (SOUTHEAST), INC., ("**SE**") a Florida corporation, (BFS, SW and SE are hereinafter collectively referred to as the "**Merged Entities**") and BIBBY FINANCIAL SERVICES (MIDWEST), INC., an Illinois corporation ("**NEWCO**").

RECITALS

1. **WHEREAS,** Holdings directly owns 100% of the issued and outstanding capital stock of each of the Merged Entities.

2. **WHEREAS,** in order to provide for more efficient management of the U.S. business operations, and rationalization and simplification of the organizational structure in the U.S., Newco desires to purchase and acquire from the Merged Entities, and the Merged Entities desire to sell, transfer and assign to Newco, all of their assets, properties and rights in exchange for 3,000,000 shares of the common stock, no par value, of Newco (the "**Shares**") and the assumption by Newco of all of the Merged Entities liabilities, upon the terms and subject to the conditions contained herein, in a transaction that will qualify as a reorganization under Section 368(a)(1)(D) of the Internal Revenue Code of 1986, as amended (the "**Code**").

3. **WHEREAS,** Newco intends to continue the historic line of business of the Merged Entities.

4. **WHEREAS,** the Merged Entities desire, as an integral part of the transaction, to distribute the Shares to Holdings in exchange for its issued shares of common stock.

5. **WHEREAS,** the respective Boards of Directors of the Merged Entities, Newco and Holdings deem it advisable and in the best interests of the Merged Entities, Newco and Holdings and their respective shareholders that the Merged Entities merge with and into Newco (the "**Merger**") pursuant to the terms and conditions of this Agreement.

6. **WHEREAS,** the Boards of Directors of the Merged Entities, Newco and Holdings have approved and adopted this Agreement as a plan of reorganization within the provisions of Section 368(a)(1)(D) of the Code.

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

1. <u>**RECITALS**</u>. The above Recitals are hereby incorporated into this Agreement.

2. <u>**TRANSFER OF ASSETS**</u>. Upon the terms and subject to the conditions of this Agreement, as of the effective date (defined below), the Merged Entities will sell, assign, transfer, and deliver (the "**Transfer**") to Newco, and Newco will purchase and acquire from the Merged Entities, all of the assets, properties, rights and interests owned, used, occupied or held by or for the benefit of the Merged Entities, wherever situated, existing as of the Closing (all of such assets, properties, rights, and interests being hereinafter collectively referred to as the "**Assets**"), subject to all liens and encumbrances thereon, including, without limitation, the following:

   a. all cash, cash equivalents and marketable securities;
   b. all accounts receivable;
   c. all equipment, tools, supplies, furniture, furnishings, vehicles and other fixed assets;
   d. all inventories;
   e. all commitments, leases, purchase orders, contracts for services and supplies, contracts to supply or sell products and all other contracts and agreements (whether written or oral), including but not limited to all Master Purchase and Sale Agreements, guarantees of all Master Purchase and Sale Agreements and documents ancillary thereto;
   f. all trademarks, service marks, trade names, inventions, patents, trade secrets, copyrights, know-how, production formulae, procedures or processes and any other similar types of proprietary intellectual property rights;
   g. all licenses, authorizations, permits, consents, approvals and registrations;
   h. all books and records, including minute books, stock books, stock ledger and corporate seal, all customer and supplier files and lists, equipment maintenance and warranty information, all correspondence with any customers, suppliers, employees or governmental or regulatory authorities, all personnel records related to employees, and any other reports, marketing studies, plans and documents, including data stored electronically;
   i. goodwill;
   j. choses in action;
   k. all other assets, properties and rights of every kind and nature owned by the Merged Entities or in which the Merged Entities have an interest as of the Closing, known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise, and any and all claims, causes of action and chooses in action, whether or not specifically referred to in this Agreement

In confirmation of the foregoing Transfer, Newco will execute and deliver to the Merged Entities at Closing a Bill of Sale.

3. **<u>CONSIDERATION; ASSUMPTION OF LIABILITIES</u>.** In consideration for the Transfer of the Assets by the Merged Entities to Newco pursuant to this Agreement, at the Effective Date, Newco will assume all of the liabilities and obligations of the Merged Entities existing as of the Closing Date (the "**Assumed Liabilities**") and issue the Merged Entities the Shares. When issued, the Shares shall be duly authorized, validly issued, fully paid and non-assessable. In confirmation of the Transfer, Newco will execute and deliver to the Merged Entities at Closing an Assumption of the Assumed Liabilities.

4. **<u>CLOSING</u>.** The closing for the Transactions (the "**Closing**", the "**Closing Date**" or the "**Effective Date**") shall be held at the offices of Holdings on October 30, 2009.

5. **<u>THE MERGER</u>.** On the Effective Date, and immediately after Transfer the Assets and assumption of the Assumed Liabilities occurs, the Merged Entities shall be merged with and into Newco (the "**Merger**"). Following the Merger, Newco shall continue as the surviving corporation and shall continue its existence under the laws of the State of Illinois, and the separate corporate existence of the Merged Entities shall cease. The Merged Entities and Newco shall file with the Secretary of State of Florida, Texas and Illinois, as required by law, articles of merger (collectively, the "**Articles of Merger**") in such form as required by the each state's corporation laws. The parties shall take all such other and further actions as may be required by the respective state corporation law and any other applicable law to make the Merger effective upon the terms and subject to the conditions hereof. From and after the Closing, the Merged Entities will not engage in any business and shall as soon as practicable after the Effective Date, distribute their Shares to Holdings.

6. **<u>DIRECTORS AND OFFICERS</u>.** The directors and officers of Newco shall duly elected, appointed and qualified in accordance with the charter and by-laws of Newco. The Board of Directors and officers of the Merged Entities shall be considered removed upon such election and appointment.

7. **<u>REPRESENTATIONS AND WARRANTIES</u>.**

7.1 *Representations and Warranties of Merged Entities*. Each Merged Entities hereby represents and warrants to Holdings and Newco that:

(a) *Organization, Good Standing and Qualification.* Each of the Merged Entities is a legal entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of organization and has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business and is in good standing as a foreign corporation or other legal entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification.

(b) *Corporate Authority.* Each of the Merged Entities has all requisite corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement and to consummate the Merger. This Agreement has been duly executed and delivered by each of the Merged Entities and, assuming the due authorization, execution and delivery of this Agreement by each of the Merged Entities, constitutes a valid and binding agreement of each of the Merged Entities enforceable against such Merged Entity in accordance with its terms.

(c) *No Violations.* The execution and delivery of, and the performance of its obligations under, this Agreement by the Merged Entities do not, and the consummation of the Merger and the other transactions contemplated hereby will not, constitute or result in (i) a breach or violation of, or a default under, the certificate of incorporation or by-laws of the Merged Entities; or (ii) with or without notice, lapse of time or both, a breach or violation of, a termination (or right of termination) or a default under, a change in the rights or obligations of any party under, the creation or acceleration of any obligations or the creation of a lien on any of the assets of any of the Merged Entities pursuant to any agreement, lease, license, contract, note, mortgage, indenture, arrangement or other obligation (each, a "*Contract*") binding upon such Merged Entity or any of its subsidiaries or under any law or governmental or non-governmental permit, license, registration, authorization or approval to which such Merged Entity or any of its subsidiaries is subject.

7.2. *Representations and Warranties of Holdings and Newco.* Holdings and Newco each hereby represent and warrant to the Merged Entities that:

(a) *Organization, Good Standing and Qualification.* Each of Holdings and Newco is a legal entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of organization and has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business and is in good standing as a foreign corporation or other legal entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification.

(b) *Corporate Authority.* Each of Holdings and Newco has all requisite corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement, and to consummate the Merger. This Agreement has been duly executed and delivered by each of Holdings and Newco and, assuming the due authorization, execution and delivery of this Agreement by Holdings and Newco, constitutes a valid and binding agreement of Holdings and Newco enforceable against each of Holdings and Newco in accordance with its terms.

(c) *No Violations.* The execution and delivery of, and the performance of its obligations under, this Agreement by Holdings and Newco do not, and the consummation by Holdings and Newco of the Merger and the other transactions contemplated hereby will not, constitute or result in (i) a breach or violation of, or a default under, the certificate of incorporation or by-laws of Holdings or Newco; or (ii) with or without notice, lapse of time or both, a breach or violation of, a termination (or right of termination) or a default under, a change in the rights or obligations of any party under, the creation or acceleration of any obligations or the creation of a lien on any of the assets of Holdings or Newco, any Contracts binding upon Holdings or Newco or any of its subsidiaries or under any law or governmental or non-governmental permit, license, registration, authorization or approval to which Holdings or Newco is subject.

8. <u>**Deliveries**</u>. At the Closing, subject to the terms and conditions contained herein:

   a. The Merged Entities will execute and deliver to Newco a duly executed assignment of lease for each lease of which the Merged Entities are a party.

   b. The Merged Entities will execute and deliver to Newco a Bill of Sale for the Assets.

   c. Newco will execute and deliver to the Merged Entities an Assumption of the Assumed Liabilities.

   d. Newco will deliver to each of the Merged Entities, a stock certificate for 1,000,000 shares of common stock of Newco, each registered in the name of BFS, SW and SE, respectively, representing the Shares.

   e. Each of the Merged Entities will execute Articles of Merger to be filed concurrently with the proper filing authority in each entity's state of incorporation.

   f. Each of the Merged Entities will deliver a duly executed stock power assigning and transferring 100% of their interests in Newco to Holdings.

   g. Newco will deliver to Holdings a stock certificate for 3,000,000 shares (100%) of its common stock in the name of Holdings.

   h. The parties agree and hereby waive compliance with the provisions of any bulk sales laws applicable to the Transfer of the Assets hereunder.

   i. The parties shall also deliver to each other the respective agreements, legal opinions and other documents and instruments as deemed necessary or advisable under this Agreement.

9. <u>**Conditions to Obligations**</u>. The obligations of the Merged Entities and Newco to consummate the Closing are subject to the approval (i) by their respective shareholders and boards of directors; (ii) by Bank of America, N.A. a national banking association, as Agent for the financial institutions party to that certain Loan and Security Agreement dated as of October 31, 2007 as the same may be amended, restated, supplemented or otherwise modified.

10. <u>**Notices**</u>. All notices, requests and other communications to any party hereunder will be in writing and, unless otherwise provided in this Agreement, will be deemed to have been duly

given upon receipt when delivered in person or when dispatched by electronic facsimile transmission or dispatched by a nationally recognized overnight courier service to the appropriate party at its address set forth below:

Laurie A. Martin Montplaisir, Esq.
General Counsel and Executive Vice President of Legal Services
Bibby Financial Services (Holdings), Inc.
Two Prudential Plaza
180 North Stetson
Suite 3000
Chicago, IL 60601
Facsimile: 866-958-0394

with a copy to:

Douglas A. Hanson, Esq.
Schuyler Roche & Crisham, P.C.
130 East Randolph Street
Suite 3800
Chicago, IL 60601
Facsimile: 312-565-8300

11. **<u>Expenses</u>**. Except as otherwise expressly provided for herein, the parties will pay or cause to be paid all of their own fees and expenses incident to this Agreement and in preparing to consummate the consummating the transactions contemplated hereby.

12. **<u>Further Assurances</u>**. From time to time, as and when requested by a party hereto, the other party will execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions, as the requesting party may reasonably deem necessary or desirable to consummate the transactions contemplated by this Agreement.

13. **<u>Contents of Agreement</u>**. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings, representations and warranties, both oral and written, between the parties with respect to the subject matter hereof.

14. **<u>Termination; Amendment and Waivers</u>**. This Agreement may be amended, modified, supplemented, or terminated at any time prior to the Closing by a written instrument duly executed by all of the parties hereto. If any provision of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective heirs, legal representatives, successors and permitted assigns of the parties. No failure or delay by any party in exercising any right, power or privilege hereunder will

operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

15. NO ASSIGNMENT. Neither this Agreement nor any of the rights or obligations of the parties hereunder may be assigned to or assumed by any other person or entity.

16. NO THIRD PARTY BENEFICIARIES. This Agreement is for the sole benefit of the parties hereto and nothing herein expressed or implied will give or be construed to give to any other person or entity, other than the parties hereto, any legal or equitable rights hereunder.

17. INTERPRETATION. Unless the context of this Agreement clearly requires otherwise, (a) references to the plural include the singular, the singular the plural, the part the whole, (b) references to any gender include all genders, (c) "or" has the inclusive meaning frequently identified with the phrase "and/or," (d) "including" has the inclusive meaning frequently identified with the phrase "but not limited to" and (e) references to "hereunder" or "herein" relate to this Agreement. The section and other headings contained in this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect.

18. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be binding as of the date first written above, and all of which shall constitute one and the same instrument. Each such copy shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

19. GOVERNING LAW. This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois without regard to its provisions concerning conflict of laws.

REMAINDER OF THIS PAGE BLANK – SIGNATURE PAGE FOLLOWS