

Guaranty Financial Group Inc.  
Form PRE 14A  
August 05, 2008

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
SCHEDULE 14A  
Proxy Statement Pursuant to Section 14(a) of the  
Securities Exchange Act of 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

**GUARANTY FINANCIAL GROUP INC.**

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
  - Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
    - (1) Title of each class of securities to which transaction applies:
    - (2) Aggregate number of securities to which transaction applies:
    - (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
    - (4) Proposed maximum aggregate value of transaction:
    - (5) Total fee paid:
  - Fee paid previously with preliminary materials.
  - Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
    - (1) Amount Previously Paid:
    - (2) Form, Schedule or Registration Statement No.:
    - (3) Filing Party:
    - (4) Date Filed:
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**1300 MoPac Expressway South  
Austin, Texas 78746  
[ ], 2008**

Dear Stockholder:

We entered into agreements to raise approximately \$600 million in the aggregate through the sale of equity and debt securities. We entered into (i) an investment agreement with an institutional investor to sell 7,423,333 shares of our common stock for aggregate consideration of \$38.4 million and additional shares of our Series B Mandatory Convertible Perpetual Cumulative Preferred Stock, assuming full conversion, the investor will hold approximately 19.9% of our common stock, (ii) investment agreements with several institutional investors to sell approximately 5.54 million shares of our Series B Mandatory Convertible Perpetual Cumulative Preferred Stock for aggregate consideration of \$286.6 million, and (iii) a purchase agreement with several institutional investors to sell units consisting of subordinated notes of our subsidiary, Guaranty Bank, and 638,000 shares of our Series B Mandatory Convertible Perpetual Cumulative Preferred Stock for aggregate consideration of \$275 million.

Upon approval by our stockholders of the proposal discussed in the attached proxy statement our issued Series B Preferred Stock and future issuances of Series B Preferred Stock under the investment agreements and the purchase agreement will automatically convert into shares of our common stock at \$5.17 per share. Our issued Series B Preferred Stock will convert into approximately 61.82 million shares of our common stock.

**A Special Meeting of Stockholders of Guaranty Financial Group Inc. will be held at our offices, 1300 MoPac Expressway South, Austin, Texas 78746, on [ ], [ ], 2008, at 9:30 a.m., local time, at which we will ask holders of shares of our common stock to consider and vote on a proposal to approve the mandatory conversion of the preferred stock into our common stock. Each of the institutional investors has agreed to vote all of their beneficially owned shares of common stock in favor of the proposal. OUR BOARD OF DIRECTORS HAS APPROVED THIS PROPOSAL AND RECOMMENDS THAT OUR STOCKHOLDERS VOTE FOR THIS PROPOSAL.** Please read the attached proxy statement carefully for information about the proposal we are asking you to consider and vote upon. Your vote is important. A quorum of a majority of the issued and outstanding common stock is required for the transaction of business by stockholders at the special meeting. The approval of the convertibility of the preferred stock into our common stock, as further described in the attached proxy statement, will require the affirmative vote of the holders of a majority of the stock having voting power present at the meeting in person or by proxy. Failure to vote or a broker non-vote will not affect whether this proposal is approved, but an abstention will have the same effect as a vote against this proposal.

We request all stockholders entitled to vote, even if planning to attend the special meeting, to submit a proxy by using the Internet, the telephone or by signing and dating the enclosed proxy card and returning it in the enclosed postage-paid envelope. Please vote your shares through any of these methods. You may revoke your proxy at any time before it is voted. If you attend the meeting and vote in person, your vote will supersede any proxy you may have previously authorized.

Sincerely,

Kenneth R. Dubuque  
President and Chief Executive Officer

Kenneth M. Jastrow, II  
Chairman of the Board of Directors

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**1300 MoPac Expressway South  
Austin, Texas 78746  
NOTICE OF SPECIAL MEETING OF STOCKHOLDERS  
To Be Held [ ], [ ], 2008**

**To Guaranty Financial Group Inc. Stockholders:**

**When and Where the Special Meeting of Stockholders Will be Held**      The special meeting of our stockholders will be held at our offices located at 1300 MoPac Expressway South, Austin, Texas 78746, on [ ], [ ], 2008, at 9:30 a.m. local time.

**Purpose of the Special Meeting**      The special meeting will be held to approve the mandatory conversion of our Series B Mandatory Convertible Perpetual Cumulative Preferred Stock into shares of our common stock. Stockholder approval at this special meeting will apply to Series B Mandatory Convertible Perpetual Cumulative Preferred Stock we issued to investors and will issue to investors through our recent private placement transactions.

**Who Can Attend and Vote**      Our board of directors has fixed the close of business on [ ], 2008 as the record date for determining who is a stockholder entitled to receive notices about the special meeting and to vote at the special meeting. Only stockholders who own stock on the record date are entitled to receive notices about the special meeting and to vote at the special meeting. A list of the stockholders will be available at the meeting and for the ten days preceding the meeting at our offices, located at 1300 MoPac Expressway South, Austin, Texas 78746.

This item of business is more fully described in the proxy statement accompanying this Notice. Submission of this proposal to our stockholders is required under the terms of the investment agreements and the purchase agreement, each dated as of June 7, 2008, between Guaranty Financial Group Inc., Guaranty Bank and the investors in our recent private placement transactions described in the attached proxy statement.

**Our board of directors recommends stockholders vote FOR Proposal 1.**

**Important Notice Regarding the Availability of Proxy Materials for the Special Meeting    this Proxy Statement is available at our website at [www.guarantygroup.com](http://www.guarantygroup.com).**

If you need assistance in voting your shares, please call D. F. King & Co., Inc., our proxy solicitation firm, at (800) 290-6426.

Scott A. Almy  
*Secretary*

[ ], 2008  
Austin, Texas

**Your vote is important. We invite you to attend the meeting in person. Whether or not you plan to attend, and no matter how many shares you own, please mark your vote on the enclosed proxy card, sign it, date it, and return it by mail or vote by telephone or on the Internet. If you attend the meeting, you may vote in person, even if you have previously submitted a proxy. You may revoke your proxy at any time before the vote is taken by delivering to the Corporate Secretary a written revocation or a proxy with a later date or by voting your shares in person at the meeting, in which case your prior proxy will be disregarded. Please see the instructions under *Questions and Answers About these Proxy Materials and the Special Meeting*.**

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**1300 MoPac Expressway South  
Austin, Texas 78746**

**PROXY STATEMENT  
FOR THE SPECIAL MEETING OF STOCKHOLDERS  
To Be Held On [ ], [ ], 2008**

**Our Board of Directors is soliciting proxies to be voted at the Special Meeting of Stockholders on [ ], 2008, at [ ], and at any adjournments or postponements thereof, for the purposes set forth in the attached Notice of Special Meeting of Stockholders. We are first sending the Notice, this proxy statement and the form of proxy enclosed to stockholders on or about [ ], 2008. As used in this proxy statement, the terms Guaranty, we, us and our refer to Guaranty Financial Group Inc.**

**QUESTIONS AND ANSWERS ABOUT THESE PROXY MATERIALS AND THE SPECIAL MEETING**

**Why am I receiving these materials?**

Our board of directors is providing these proxy materials to you in connection with a special meeting of stockholders of Guaranty, to be held on [ ], 2008. As a stockholder of record of our common stock, we invite you to attend the special meeting and to vote on the proposal described in this proxy statement.

**Are the proxy materials for our Special Meeting of Stockholders available on the Internet?**

This proxy statement is available on our website at [www.guarantygroup.com](http://www.guarantygroup.com).

**Who is entitled to vote and how many shares are eligible to be voted?**

Only stockholders of record of our common stock at the close of business on [ ], 2008 will be entitled to vote at the special meeting. As of the record date of [ ], 2008, we had [ ] shares of common stock outstanding. Each outstanding share of our common stock will entitle its holder to one vote on each matter to be voted on at the special meeting. The common stock is the only authorized voting security of Guaranty and each share of common stock is entitled to one vote on each matter properly brought before the special meeting.

**What am I voting on?**

You are voting on a proposal to approve the mandatory conversion of our Series B Mandatory Convertible Perpetual Cumulative Preferred Stock, which we issued in our recent private placement transactions, into shares of our common stock. In this proxy statement, we refer to approval of this proposal as the Stockholder Approval, and we refer to our Series B Mandatory Convertible Perpetual Cumulative Preferred Stock as the Series B Preferred Stock.

**What securities did Guaranty issue in the private placement transactions?**

On May 26, 2008, we entered into an investment agreement, which was amended on May 29, 2008, with TRT Financial Holdings, LLC and some of its affiliates, whom we refer to collectively as TRT, to sell 7,423,333 shares of our common stock at a per share price of \$5.17 for an aggregate purchase price of approximately \$38.4 million. We refer to this investment agreement as the initial TRT investment agreement. Under the initial TRT investment agreement, TRT agreed to purchase, and we agreed to sell, a number of shares of our Series B Preferred Stock, assuming full conversion and immediately following issuance, TRT will beneficially own 19.9% of our total

outstanding common stock, which we refer to as TRT's Top-Off Right. Also, under the initial TRT investment agreement, as long as TRT beneficially owns 5% of our issued and outstanding common stock, TRT has a preemptive right to purchase, pro rata, all or any part of our sale or issuance of specified securities until May 30, 2009. Subsequent to the initial TRT investment agreement, TRT purchased 1,103,242 shares of our Series B

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Preferred Stock under the Investment Agreement with the Company dated June 7, 2008 and 126,962 shares of our Series B Preferred Stock under the Purchase Agreement with the Company dated June 7, 2008, as described below. Under the terms of the initial TRT investment agreement and TRT's Top-Off Right, on or about September 29, 2008, TRT will purchase additional shares of Series B Preferred Stock and upon conversion of the Series B Preferred Stock, TRT will hold 19.9% of our common stock on a fully-diluted basis, which we refer to as TRT's Top-Off Shares. Based on the number of shares of common stock outstanding as of [ ], 2008, we estimate that TRT will purchase approximately [183,000] shares of Series B Preferred Stock convertible into approximately [1,830,000] shares of our common stock upon receiving Stockholder Approval.

We entered into Investment Agreements, dated as of June 7, 2008, with several institutional investors, which we refer to in this proxy statement as the Stock Investors, to sell shares of our Series B Preferred Stock to the Stock Investors, and a Purchase Agreement, dated as of June 7, 2008, with several institutional investors, which we refer to in this proxy statement as the Unit Investors, to sell units consisting of subordinated notes of our subsidiary, Guaranty Bank, which we refer to in this proxy statement as Guaranty Bank, and shares of our Series B Preferred Stock to the Unit Investors. The Stock Investors and Unit Investors include several of our largest institutional stockholders, including TRT, Icahn Partners LP and some of its affiliates, whom we refer to collectively as Icahn Partners, Greenlight Capital, LP and some of its affiliates, whom we refer to collectively as Greenlight and Ironbound Partners LP and some of its affiliates, whom we refer to collectively as Ironbound. The Stock Investors and Unit Investors also include Highside Capital Partners, L.P. and Highside Offshore Ltd, whom we refer to collectively as Highside. TRT Financial Holdings, LLC is an affiliate of Robert B. Rowling, a director of Guaranty, and Icahn Partners LP is an affiliate of Carl Icahn.

According to the Investment Agreements, the Stock Investors acquired approximately 5.54 million shares of our Series B Preferred Stock for aggregate cash consideration of \$286.6 million. Under the Purchase Agreement, the Unit Investors acquired for aggregate cash consideration of \$275 million, units consisting of (i) subordinated notes of Guaranty Bank with an aggregate principal amount of \$275 million, which we refer to in this proxy statement as the Subordinated Notes, and (ii) 638,000 shares of our Series B Preferred Stock. We refer to the Stock Investors and Unit Investors as the Investors, and we refer to the transactions contemplated by the initial TRT investment agreement, Investment Agreements and the Purchase Agreement as the Private Placement Transactions.

The shares of Series B Preferred Stock acquired by an Investor are mandatorily convertible into shares of our common stock on the second business day following: (i) the affirmative vote of our common stockholders approving the conversion of the Series B Preferred Stock into common stock for purposes of Section 312.03 of the New York Stock Exchange, or NYSE, Listed Company Manual (described below and under Proposal 1) and (ii) if applicable to a particular Investor, the receipt of approvals and authorizations of, filings and registrations with, and notifications to, governmental authorities, to the extent required to permit the Investor to own our common stock, including, without limitation, approvals of the United States Office of Thrift Supervision, which we refer to in this proxy statement as the OTS, and filings with the Texas Department of Insurance, which we collectively refer to in this proxy statement as the Regulatory Approvals.

Guaranty anticipates we will use the proceeds from the Private Placement Transactions to continue investing in our core businesses for general corporate purposes and to increase our capital ratios above existing levels.

Guaranty retained Keefe, Bruyette & Woods, Inc. ( KBW ) as the financial advisor and placement agent with respect to the sale of the Series B Preferred Stock and Units. We paid KBW a placement fee equal to \$20 million for these services.

## **Why are we seeking stockholder approval for the conversion of the Series B Preferred Stock?**

Because our common stock is listed on the NYSE, we are subject to NYSE rules and regulations. Section 312.03(c) of the NYSE Listed Company Manual requires stockholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of transactions if (i) the common stock to be issued has, or will have upon issuance, voting power equal to or in excess of 20% of the voting power outstanding before the issuance of such stock or of securities convertible into or exercisable for common stock, or (ii) if the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of

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the common stock or of securities convertible into or exercisable for common stock. The proposed conversion of the Series B Preferred Stock falls under this rule because the common stock issuable upon conversion of the Series B Preferred Stock, will exceed 20% of both the voting power and number of shares of our common stock outstanding before the issuance, and none of the exceptions to this NYSE rule are applicable to these transactions.

In addition, Section 312.03(b) of the NYSE Listed Company Manual requires stockholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions, to a substantial security holder of Guaranty, if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either 5% of the number of shares of common stock or 5% of the voting power outstanding before the issuance. The proposed issuance of our common stock to each of the following existing stockholders, TRT, Icahn Partners, Greenlight and Ironbound, will exceed 5% of both the voting power and number of shares of our common stock outstanding before the issuance, and none of the exceptions to this NYSE rule are applicable to these transactions.

### **What are the Regulatory Approvals that may be required to complete the Private Placement Transactions?**

The Regulatory Approvals include approvals of the OTS and the Texas Department of Insurance, which we refer to as TDI. The OTS approvals include, among other things, the filing of a rebuttal of control or concerted action under 12 C.F.R. Section 574.4(e) to permit a passive investor that does not control or influence management and operations of a savings institution, to invest in that institution without becoming a thrift holding company. The filing with the TDI is the Biographical Form and Certification of License Qualification Following a Change in Control, which is required if an individual or entity intends to directly or indirectly acquire more than 10% of an insurance agency licensed in Texas. All Regulatory Approvals have been received.

### **How will the conversion of the Series B Preferred Stock occur?**

Upon receipt of Stockholder Approval, each share of Series B Preferred Stock will be automatically converted into shares of common stock on the second business day following the date on which such approvals are obtained. Each outstanding share of Series B Preferred Stock will automatically be converted into such number of shares of common stock determined by dividing (i) \$51.70 (the purchase price per share of the Series B Preferred Stock) by (ii) the conversion price of the Series B Preferred Stock then in effect, subject to adjustment. The initial conversion price of the Series B Preferred Stock is \$5.17 per share, which results in an initial conversion rate of ten shares of common stock for each share of Series B Preferred Stock.

### **What is the difference between holding shares as a stockholder of record and as a beneficial owner?**

If your shares are registered directly in your name with our transfer agent, Computershare Trust Company, N.A. (Computershare), you are the stockholder of record with respect to those shares. This proxy statement and the enclosed proxy card have been sent directly to you.

If you hold your shares in a stock brokerage account or by a bank or other nominee, you hold those shares in street name and you are the beneficial owner of the shares. Your broker, bank or other nominee, who is the stockholder of record, will forward to you the proxy statement and other materials. You will receive separate instructions from your broker, bank or other holder of record describing how to vote your shares.

### **How can I vote my shares before the special meeting?**

If you hold shares in your own name as a stockholder of record, you can cast your vote before the special meeting by authorizing the individuals named on the enclosed proxy card to serve as your proxy to vote your shares at the special meeting in the manner you indicate. You may do so by completing, signing and dating the enclosed proxy card and returning it in the enclosed postage-paid envelope. The telephone and Internet voting instructions serve the same purpose as the proxy card. When your proxy card or telephone or Internet vote specifies a choice with respect to a voting matter, the named individuals on the proxy card will vote your shares as you have specified.

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Submitting a proxy or voting through the telephone or the Internet will not affect your right to attend the special meeting and vote in person.

If you are a beneficial owner of shares held in street name, your broker, bank or other nominee will provide you with materials and instructions for voting your shares. The availability of telephonic or Internet voting will depend on the bank's or broker's voting process. Please check with your bank or broker and follow the voting procedures your bank or broker provides to vote your shares.

### **How can I vote my shares over the Internet or by phone?**

If you are a stockholder of record, you may use the Internet to transmit your vote up until 6:00 A.M., Central Daylight Time, on [ ], 2008. Visit [www.investorvote.com/gfg](http://www.investorvote.com/gfg) and have your proxy card in hand when you access the website and follow the instructions to obtain your records and to create an electronic voting instruction form.

If you are a stockholder of record, you may call [ ] and use any touch-tone telephone to transmit your vote up until 6:00 A.M. Central Daylight Time on [ ], 2008. Have your proxy card in hand when you call and then follow the instructions.

Please note that although there is no charge to you for voting by telephone or electronically through the Internet, there may be costs associated with electronic access such as usage charges for Internet service providers and telephone companies. Guaranty does not cover these costs; they are solely your responsibility.

### **How will my shares be voted if I give my proxy but do not specify how my shares should be voted?**

If you return your signed proxy card but do not specify a voting choice on your proxy card, your proxy will be voted FOR the proposal.

### **Can I vote in person at the special meeting?**

If you hold shares in your own name as a stockholder of record, we invite you to attend the special meeting and cast your vote at the meeting by properly completing and submitting a ballot at the meeting. If you are the beneficial owner of shares held in the name of your broker, bank or other nominee, we invite you to attend the meeting in person, but in order to vote at the meeting you must first obtain a legal proxy from your broker, bank or other nominee giving you the right to vote those shares and submit that proxy along with a properly completed ballot at the special meeting.

### **How can I change or revoke my vote?**

If you hold shares in your own name as a stockholder of record, you may change your vote or revoke your proxy at any time before voting begins by:

giving written notice of revocation to our Corporate Secretary at any time before the voting is closed; or

signing and delivering a proxy that is dated after the proxy you wish to revoke; or

attending the special meeting and voting in person by properly completing and submitting a ballot. (Attendance at the meeting, in and of itself, will not cause your previously granted proxy to be revoked unless you vote at the meeting.)



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We must receive your notice of revocation or later dated proxy at or prior to voting at the special meeting for it to be effective. It should be delivered to:

Guaranty Financial Group Inc.  
8333 Douglas Avenue  
Dallas, Texas 75225  
Attention: Scott A. Almy, Corporate Secretary

Alternatively, you may hand deliver a written revocation notice, or a later dated proxy, to the Corporate Secretary at the special meeting before the voting begins.

If you are the beneficial owner of your shares held in street name, please check with your bank or broker and follow the procedures your bank or broker provides if you wish to change your vote.

### **What is a quorum for the special meeting and what happens if a quorum is not present?**

The presence at the special meeting, in person or by proxy, of the holders of a majority of [ ] shares (a majority of the number of shares of common stock issued and outstanding and entitled to vote as of the record date) is required to constitute a quorum to transact business at the special meeting. Proxies marked abstain and broker non-votes (each of which is explained below) will be counted in determining the presence of a quorum.

If the shares present in person or represented by proxy at the special meeting are not sufficient to constitute a quorum, the stockholders by a vote of the holders of a majority of the votes entitled to be cast by the stockholders, present in person or by proxy (which may be voted by the proxy holders at the meeting), may, without further notice to any stockholder (unless a new record date is set or the adjournment is for more than 30 days), adjourn the meeting to a different time and place to permit further solicitations of proxies sufficient to constitute a quorum. At any such adjourned meeting at which a quorum may be present, any business may be transacted that might have been transacted at the meeting as originally called.

### **What is an abstention and how would it affect the vote?**

An abstention occurs when a stockholder sends in a proxy with explicit instructions to decline to vote regarding a particular proposal. An abstention with respect to the proposal will be counted as a vote present but not cast for or against the proposal. Consequently, an abstention with respect to the proposal scheduled for a vote at the special meeting will have the same effect as a vote against the proposal.

### **If my shares are held in street name by my broker, will my broker vote my shares for me?**

If you provide instructions to your broker on how to vote, your broker will vote your shares for you. You should follow the directions provided by your broker regarding how to instruct your broker to vote your shares. Without those instructions, your shares will not be voted. Brokers do not have the discretion to vote on the proposal and will only vote at the direction of the underlying beneficial owners of the shares of common stock. Accordingly, if you do not instruct your broker to vote your shares, your broker will not have the discretion to vote your shares.

### **What is a broker non-vote and how would it affect the vote?**

Broker non-votes are shares held by brokers or nominees for which beneficial owners or the persons entitled to vote those shares have not given voting instructions. The broker or nominee does not have discretionary voting power

under rules applicable to broker-dealers, so the broker is unable to vote those uninstructed shares. Brokers and nominees have no discretionary voting power to vote shares with respect to the proposal to be voted on at the special meeting. A broker non-vote with respect to a proposal will not be counted as a vote cast for or against the proposal.

**What are the voting requirements to approve the proposal described in the proxy statement?**

The affirmative vote of the holders of a majority of our common stock having voting power present at the meeting in person or by proxy is required for the approval of the proposal to authorize the conversion of Series B Preferred Stock into

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our common stock. Accordingly, failure to vote or a broker non-vote will not affect whether this proposal is approved, but an abstention will have the same effect as a vote against this proposal. Each Investor has agreed that at any meeting of the stockholders of Guaranty held to vote on the proposal, including the special meeting to which this proxy statement relates, such Investor will vote, or cause to be voted, all of the shares of common stock beneficially owned by such Investor and its affiliates in favor of the proposal, to the extent permitted under NYSE rules. Prior to the conversion, the Investors collectively owned 16,179,415 shares of our common stock, representing approximately [36.2]% of the [44,684,585] shares of common stock outstanding and entitled to vote on the record date. Therefore, in order to obtain the affirmative vote of the holders of a majority of our common stock, an additional [13.9]% of our common stock having voting power present at the meeting in person or by proxy is required for the approval of the proposal to authorize the conversion of Series B Preferred Stock into our common stock.

### **Who will conduct and pay for the proxy solicitation?**

We have retained D.F. King & Co., Inc. (D.F. King), a professional proxy solicitation firm, to assist in the solicitation of proxies. D.F. King's employees and our directors, officers and employees, who have not yet been chosen, may solicit the return of proxies by personal interview, mail, electronic mail, facsimile, telecopy, telegram, telephone, and Internet. We may also issue press releases asking for your vote or post letters or notices to you on our website, [www.guarantgroup.com](http://www.guarantgroup.com). Our officers and employees will not receive additional compensation, but will be reimbursed for out-of-pocket expenses. We will reimburse D.F. King for its expenses in soliciting proxies and, in addition, will pay a proxy solicitation fee not to exceed \$7,500. We will request brokerage houses and other custodians, nominees and fiduciaries to forward solicitation material to the beneficial owners of stock. We will pay for all costs of solicitation.

### **Who will count the votes?**

Representatives of our transfer agent, Computershare, will tabulate the votes and act as the inspector of election to certify the results.

### **What is our confidential voting policy?**

We have adopted a confidential voting policy which provides that stockholder proxies, ballots, and voting tabulations that identify your vote will not be disclosed to us, our directors, officers, or employees. There are a few exceptions to this policy, such as when you make a comment on your proxy vote or when we must determine the legality of a vote.

### **How does our board of directors recommend that I vote?**

Our board of directors recommends you vote **FOR** approval of the conversion of the Series B Preferred Stock into common stock.

### **What happens if Stockholder Approval is received?**

If the conversion of the Series B Preferred Stock into common stock is approved at the special meeting, we will issue to the Stock Investors a total of 55,439,340 shares of common stock upon conversion of the Series B Preferred Stock, plus the number of shares of common stock upon conversion of the Series B Preferred Stock to be issued to TRT under TRT's Top-off Right, and to the Unit Investors a total of 6,380,000 shares of common stock upon conversion of the Series B Preferred Stock. This total of 61,819,340 shares of common stock, plus TRT's Top-off Shares, will represent approximately [58.0]% of the estimated [106,503,925] shares of common stock, plus TRT's Top-off Shares, that will be outstanding immediately after giving effect to such conversion. Upon completion of the conversion, all rights with respect to the Series B Preferred Stock will terminate, all shares of Series B Preferred Stock will be

cancelled and no further dividends will accrue thereon.

**What happens if Stockholder Approval is not received?**

Unless Stockholder Approval is received at the special meeting or unless our stockholders approve a similar proposal at a subsequent meeting, the Series B Preferred Stock will remain outstanding in accordance with its terms. If Stockholder Approval is not obtained at the special meeting, we agreed, under the Investment Agreements and the Purchase Agreement, to seek to obtain Stockholder Approval no less than once in each six-month period beginning

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on January 1, 2009 until May 31, 2012. If Stockholder Approval is not obtained by May 31, 2012, then we are obligated to list the Series B Preferred Stock on the NYSE or another securities exchange. Dividends on the Series B Preferred Stock are cumulative and initially accrue at the rate of 14% per year. The dividend rate on the Series B Preferred Stock will increase 2% at the expiration of each six month period following November 18, 2008 (subject to a maximum rate of 18% per year) if and until Stockholder Approval is obtained. The Series B Preferred Stock is not redeemable by the holders or by us at any time. The conversion price will decrease by \$.50 per share at the expiration of each six month period following November 18, 2008, until Stockholder Approval is obtained (subject to a minimum conversion price per share of \$3.00). During the 180-day period following the issuance of the Series B Preferred Stock, if the Series B Preferred Stock is outstanding, and if we issue or sell additional shares of our common stock at less than \$5.17, the conversion price will be reduced to the lowest per share price that our common stock was issued or sold. After the expiration of such 180-day period, if the Series B Preferred Stock is outstanding, and if we issue or sell additional shares of our common stock at less than the current market price, the conversion price would be decreased by a pro rata calculation. Any decrease in the conversion price will allow the holders of Series B Preferred Stock to acquire more shares of our common stock at no additional cost to them and result in dilution to the holders of our common stock.

**REFERENCES TO ADDITIONAL INFORMATION**

This proxy statement incorporates important business and financial information about Guaranty from documents that are not included in or delivered with this proxy statement. This information is available to you without charge upon your written or oral request. You can obtain documents related to Guaranty that are incorporated by reference in this proxy statement, other than specific exhibits to the documents, without charge, by requesting them in writing or by telephone from Guaranty.

Guaranty Financial Group Inc.  
1300 MoPac Expressway South  
Austin, Texas 78746  
Attn.: Investor Relations  
(214) 360-1967

In addition, if you have questions about the special meeting, need additional copies of this document or need to obtain proxy cards or other information related to the proxy solicitation, you may contact D.F. King at (800) 290-6426 or (212) 269-5550.

In order to receive timely delivery of requested documents in advance of the special meeting, you should make your request no later than [ ], 2008.

See [Where You Can Find More Information](#) below.

**CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This proxy statement contains forward-looking statements. Forward-looking statements provide current expectations or forecasts of future events and are not guarantees of future performance, nor should they be relied upon as representing management's views as of any subsequent date. The forward-looking statements are based on management's expectations and are subject to a number of risks and uncertainties. Although management believes that the expectations reflected in such forward-looking statements are reasonable, actual results may differ materially from those expressed or implied in such statements. Risks and uncertainties that could cause actual results to differ materially include, without limitation, management's ability to effectively execute its business plans; changes in general economic and financial market conditions, including the stock market and residential and commercial real

estate markets; changes in interest rates; Visa indemnification obligations; changes in the competitive environment; continuing consolidation in the financial services industry; new litigation or changes in existing litigation; losses, customer bankruptcy, claims and assessments; changes in banking regulations or other regulatory or legislative requirements affecting our business; and changes in accounting policies or procedures as may be required by the Financial Accounting Standards Board or other regulatory agencies. Management may elect

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to update forward-looking statements at some future point; however, it specifically disclaims any obligation to do so.

**BACKGROUND TO THE PROPOSAL**

In February 2008, at a regularly scheduled meeting, our board of directors met to review the status of our business operations and to consider updated forecasts for the remainder of the year. Subsequently, we engaged KBW to help us evaluate the possible need to raise additional capital for general corporate purposes. In March and April, the board of directors concluded, in light of a variety of factors, including capital markets volatility, rating agency actions and general economic uncertainties, it was important to raise additional capital.

In early May 2008, we announced our plan to commence a rights offering of common stock to our stockholders. On May 1, 2008, we filed a registration statement with the Securities and Exchange Commission covering an offering of non-transferable rights to subscribe for shares of our common stock. In that filing, we noted that we had not yet determined the number of shares of common stock that would be offered in the rights offering, the expiration date for the offering, or the price at which the common stock would be offered. We noted our anticipation that the shares would be offered at a discount to the market price of Guaranty common stock. We further explained that we anticipated entering into standby purchase agreements with investors pursuant to which the investors ( standby purchasers ) would agree to purchase, at the same subscription price as common stockholders, shares of Guaranty common stock not otherwise purchased by stockholders in the offering. Following our announcement, we promptly commenced negotiations with prospective standby purchasers. Concurrent with our standby purchaser negotiations, our board of directors continued to evaluate the prospects of raising additional capital through alternative means, including potential private placement transactions.

We were unable to secure standby purchasers on terms that were acceptable to us, and on May 21, 2008, we revised the rights offering so that any shares of common stock unsubscribed for would be sold in a public offering to be underwritten by KBW. At the same time, we continued our evaluation of private placement as a means to raise capital and continued negotiations with prospective investors. On May 27, 2008, we announced entry into an investment agreement with TRT Financial Holdings, LLC, discussed further below, and referred to as the initial private placement with TRT.

We continued our negotiations with other prospective investors to help ensure that we succeeded in raising the full amount of the targeted capital. As a result of these discussions, on June 7, 2008, we announced that we succeeded in receiving commitments representing \$600 million from various private placement investors, discussed further below, and referred to as the subsequent private placement with institutional investors. Because of the requirements of the NYSE rule described above, it was necessary to structure the subsequent private placement with institutional investors predominantly in the form of convertible Series B Preferred Stock until we could obtain the necessary Stockholder Approval to issue common stock in exchange for the Series B Preferred Stock.

Because we successfully arranged to raise approximately \$600 million in new capital, our board of directors determined to reduce the planned rights offering to \$150 million. On June 19, 2008, we announced this decision, the effective date of the rights offering, and that the offering would provide for up to 29,013,539 shares of common stock to be issued upon the exercise of subscription rights at \$5.17 per share.

On July 17, 2008, we announced that the United States Office of Thrift Supervision provided all remaining regulatory approvals necessary for us to close the subsequent private placement with institutional investors. On July 22, 2008, we announced the completion of the subsequent private placement with institutional investors and the issuance of the Series B Preferred Stock to the institutional investors that occurred on July 21, 2008. Following that announcement, our board of directors reviewed information provided by KBW, management and other outside advisors relating to the previously announced rights offering. Based on this review, our board of directors met on July 30, 2008, and made the

decision to terminate the rights offering. We announced this decision on July 31, 2008.

Our board of directors recommends stockholders vote FOR the proposal so the Series B Preferred Stock will convert automatically into shares of common stock, thereby strengthening our common equity base. In addition, as described below, if the Stockholder Approval is not received by November 18, 2008, the dividend rate on the Series B Preferred Stock will increase substantially and the price at which the Series B Preferred Stock is

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convertible into common stock will decrease. These adjustments would be unfavorable to us and our existing stockholders.

**Initial Private Placement with TRT**

On May 26, 2008, we entered into an investment agreement, which was amended on May 29, 2008, with TRT to sell 7,423,333 shares of our common stock at a per share price of \$5.17 for an aggregate purchase price of approximately \$38.4 million. TRT is an affiliate of Robert B. Rowling, who was elected by our board as a director of Guaranty upon the closing of the initial TRT investment agreement. Following the closing and issuance of the shares of our common stock to TRT on May 30, 2008, we had 44,630,665 shares of common stock outstanding, and TRT owned approximately 16.6% of our common stock. The percentage ownership of our existing stockholders was reduced proportionately as a result of the issuance to TRT. According to the initial TRT investment agreement, TRT also agreed to purchase, and we agreed to sell, a number of shares of our Series B Preferred Stock, such that TRT will beneficially own 19.9% of our total outstanding common stock, assuming full conversion, immediately following such issuance. Subsequently, TRT purchased 1,103,242 shares of our Series B Preferred Stock under the Investment Agreement with Guaranty dated June 7, 2008 and 126,962 shares of our Series B Preferred Stock under the Purchase Agreement with the Company dated June 7, 2008, as described below.

Under the terms of the initial TRT investment agreement and TRT's Top-Off Right, on or about September 29, 2008, Guaranty will issue additional shares of Series B Preferred Stock to TRT, for no additional consideration, and upon conversion of the Series B preferred Stock, TRT will hold 19.9% of the common stock on a full-diluted basis. Under the terms of the initial TRT investment agreement and TRT's Top-Off Right, the additional shares of Series B Preferred Stock are deemed fully paid and no additional consideration is due. Based on the number of shares of common stock outstanding as of [ ], 2008, we estimate that, under TRT's Top-off Right, we will issue to TRT approximately [ ] shares of Series B Preferred Stock convertible into approximately [ ] shares of our common stock upon receiving Stockholder Approval. The per share value of the Series B Preferred Stock acquired by TRT under TRT's Top-Off Right will be the lower of \$51.70 per share and the as-converted per share price at which any class or series of convertible preferred stock is issued by us to any third party on or prior to September 29, 2008, subject to any stock split, reverse split, stock dividend or other combination or division affecting our common stock.

Under the terms of the initial TRT investment agreement and TRT's Top-Off Right, on or about September 29, 2008, TRT will purchase additional shares of Series B Preferred Stock such that, upon conversion of the Series B preferred Stock, TRT will hold 19.9% of the common stock on a full-diluted basis. The per share purchase price of the Series B Preferred Stock to be purchased by TRT under TRT's Top-Off Right will be the lower of \$51.70 per share and the as-converted per share price at which any class or series of convertible preferred stock is issued by us to any third party on or prior to September 29, 2008, subject to any stock split, reverse split, stock dividend or other combination or division affecting our common stock. Based on the number of shares of common stock outstanding as of [ ], 2008, we estimate that, under TRT's Top-off Right, TRT will purchase approximately [ ] shares of Series B Preferred Stock convertible into approximately [ ] shares of our common stock upon receiving Stockholder Approval.

Each share of our Series B Preferred Stock initially will be convertible into ten shares of our common stock at a conversion price per share of \$5.17. The conversion price will decrease by \$.50 per share at the expiration of each six month period following November 18, 2008, until Stockholder Approval is obtained (subject to a minimum conversion price per share of \$3.00). Dividends on the Series B Preferred Stock are cumulative and initially accrue at the rate of 14% per year. The dividend rate on the Series B Preferred Stock will increase 2% at the expiration of each six month period following November 18, 2008 (subject to a maximum rate of 18% per year) until Stockholder Approval is obtained. During the 180-day period following the issuance of the Series B Preferred Stock, if the Series B Preferred Stock is outstanding, and if we issue or sell additional shares of our common stock at less than

\$5.17, the conversion price will be reduced to the lowest per share price that our common stock was issued or sold. After the expiration of such 180-day period, if the Series B Preferred Stock is outstanding, and if we issue or sell additional shares of our common stock at less than the current market price, the conversion price would be decreased by a pro rata calculation. Any decrease in the conversion price will allow the holders of Series B Preferred Stock to acquire more shares of our common stock at no additional cost to them and result in dilution to the holders of our common stock.

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As part of the initial TRT investment agreement, TRT has the right to have one person nominated by TRT to be elected to our board of directors as long as TRT beneficially owns 10% or more of our issued and outstanding common stock. According to this right, Robert B. Rowling was appointed to our board of directors on May 30, 2008. Also, under the initial TRT investment agreement, as long as TRT beneficially owns 5% of our issued and outstanding common stock, TRT has a preemptive right to purchase, pro rata, all or any part of our sale or issuance of specified securities until May 30, 2009. We cannot issue or sell any of the specified securities without complying with the preemptive right section of the initial TRT investment agreement.

## **Subsequent Private Placement with Institutional Investors**

On June 7, 2008, we entered into Investment Agreements with the Stock Investors, including TRT. According to the Investment Agreements, we sold approximately 5.54 million shares of our Series B Preferred Stock to the Stock Investors for aggregate cash consideration of approximately \$286.6 million. On June 7, 2008, we and Guaranty Bank entered into a Purchase Agreement with the Unit Investors, including an affiliate of TRT. Under the Purchase Agreement, we and Guaranty Bank sold to the Unit Investors, for aggregate cash consideration of \$275 million, units, which we refer to as the Units, consisting of (i) Subordinated Notes of Guaranty Bank with an aggregate principal amount of \$275 million, and (ii) 638,000 shares of our Series B Preferred Stock. The Stock Investors and Unit Investors include several of our largest institutional stockholders, including TRT, Icahn Partners, Greenlight, and Ironbound.

We are obligated to call a stockholder meeting to approve the mandatory conversion of the Series B Preferred Stock as promptly as practicable following closing and the issuance of the Series B Preferred Stock under the terms of the Investment Agreements and the Purchase Agreement. Each Investor executing an Investment Agreement agreed to vote any shares of common stock it owns in favor of the conversion of the Series B Preferred Stock, to the extent it is permitted to under the applicable rules of the NYSE.

The Subordinated Notes bear interest at an annual rate of 12% and mature on the tenth anniversary of the date of issuance and are callable after the fifth anniversary of the date of issuance. Interest payments on the Subordinated Notes are due semi-annually in arrears on the last business day of each June and December commencing on December 31, 2008. The Subordinated Notes are subordinated as to principal, interest and premium, if any, to all claims against Guaranty Bank that have the same priority as savings accounts or higher, and interest is subordinate to Guaranty Bank's obligations to its depositors, its obligations under bankers' acceptances and letters of credit, and its obligations to its other creditors, including its obligations to the Federal Home Loan Bank of Dallas, the Federal Reserve Bank and the Federal Deposit Insurance Corporation.

In connection with the sale of the Series B Preferred Stock to the Stock Investors and the Units to the Unit Investors, we entered into letter agreements with Icahn Partners and TRT. Under the letter agreement with Icahn Partners, Icahn Partners and our Governance Committee are to cooperate and work jointly to identify a qualified candidate that is acceptable to both the Icahn Partners and our Governance Committee to serve on our board of directors. We are currently working with Icahn Partners to identify such qualified candidate. Our letter agreement with Icahn Partners also provides that as long as Icahn Partners beneficially owns 5% of our issued and outstanding common stock, Icahn Partners has a preemptive right to purchase, pro rata, all or any part of our sale or issuance of specified securities for one year following the issuance of the Series B Preferred Stock to Icahn Partners. We cannot issue or sell any of the specified securities without complying with the preemptive right section of the letter agreement with Icahn Partners.

Assuming the conversion of the shares of Series B Preferred Stock issued under the Investment Agreements and the Purchase Agreement, at the initial conversion price of \$5.17 per share, we will issue 61,819,340 shares of common stock, representing [58]% of the [106,503,925] shares of common stock we would have outstanding following such conversion. After the conversion, TRT, including the 7,423,333 shares of common stock issued to TRT under the

initial TRT investment agreement, will own 19,725,373 shares of common stock representing [18.5]% of the shares of common stock we would have outstanding following such conversion. After the conversion, Icahn Partners, including the 3,455,493 shares of common stock owned prior to the Private Placement Transactions, will own 18,153,793 shares of common stock representing [17.1]% of the shares of common stock we would have outstanding following such conversion. After the conversion, Greenlight, including the 2,888,345 shares

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of common stock owned prior to the Private Placement Transactions, will own 10,186,925 shares of common stock representing [9.6]% of the shares of common stock we would have outstanding following such conversion. After the conversion, Ironbound, including the 2,400,744 shares of common stock owned prior to the Private Placement Transactions, will own 7,236,334 shares of common stock representing [6.8]% of the shares of common stock we would have outstanding following such conversion. After the conversion, Highside will own 9,671,180 shares of common stock representing [9.1]% of the shares of common stock we would have outstanding following such conversion. Collectively, after the conversion of the Series B Preferred Shares, TRT, Icahn Partners, Greenlight, Ironbound and Highside will own [61]% of the shares of common stock we would have outstanding following such conversion. On or about September 29, 2008, TRT will purchase a certain number of shares of Series B Preferred Stock under TRT's Top-off Right.

We have raised approximately \$600 million in total gross proceeds from the \$286.6 million investment by the Stock Investors under the Investment Agreements dated as of June 7, 2008, \$275 million investment by the Unit Investors under the Purchase Agreement and the \$38.4 million investment by TRT under the initial TRT investment agreement dated as of May 26, 2008.

## **Tax Matters**

Our spin-off from our former parent corporation, Temple-Inland Inc., was completed on December 28, 2007. At the time of the spin-off, we entered into a tax matters agreement with Temple-Inland and Forestar Real Estate Group Inc. that prohibits us, for a period up to two years from the date of the spin-off, from issuing any shares of our common stock unless Temple-Inland consents or we obtain a tax opinion that is reasonably acceptable in form and substance to Temple-Inland. Under that agreement, the tax opinion is required to state that the issuance of our common stock will not result in the spin-off being taxed. We provided Temple-Inland with such a tax opinion in connection with the Private Placement Transactions. Temple-Inland advised us that they find the opinion to be acceptable in both form and substance.

## **PROPOSAL 1**

### **APPROVAL OF THE MANDATORY CONVERSION OF THE SERIES B PREFERRED STOCK INTO COMMON STOCK**

Our board of directors adopted a resolution approving the conversion of all shares of the Series B Preferred Stock into common stock.

The board of directors further directed that the proposed action be submitted for consideration by our stockholders at a special meeting to be called for that purpose.

Because our common stock is listed on the NYSE, we are subject to the NYSE's rules and regulations. Section 312.03(c) of the NYSE Listed Company Manual requires stockholder approval prior to the issuance of common stock, or securities convertible into or exercisable for common stock, in any transaction or series of transactions if (i) the common stock to be issued has, or will have upon issuance, voting power equal to or in excess of 20% of the voting power outstanding before the issuance of such stock or of securities convertible into or exercisable for common stock, or (ii) the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the common stock or of securities convertible into or exercisable for common stock. Our proposed issuance of common stock to the Investors upon conversion of the Series B Preferred Stock falls under this rule because the common stock issuable upon conversion of the Series B Preferred Stock will exceed 20% of the voting power and number of shares of common stock outstanding before the Private Placement Transactions.

In addition, Section 312.03(b) of the NYSE Listed Company Manual requires stockholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions, to a substantial security holder of Guaranty, if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either 5% of the number of shares of common stock or 5% of the voting power outstanding before the issuance. The proposed issuance of our common stock to each of the following existing stockholders of Guaranty,

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TRT, Icahn Partners, Greenlight and Ironbound, will exceed 5% of both the voting power and number of shares of our common stock outstanding before the issuance, and none of the exceptions to this NYSE rule are applicable to these transactions.

The purpose of this proposal is to satisfy, in connection with our sale and issuance of the Series B Preferred Stock, its obligations under the Investment Agreements and the Purchase Agreement and to effect the conversion of Series B Preferred Stock in accordance with the NYSE rules described above.

In the event our stockholders do not approve this proposal, we will not be able to complete the mandatory conversion of the Series B Preferred Stock into common stock.

**THE BOARD OF DIRECTORS RECOMMENDS STOCKHOLDERS VOTE FOR  
THE PROPOSED CONVERSION OF SERIES B PREFERRED STOCK INTO COMMON STOCK.**

**CONSEQUENCES IF THE CONVERSION OF SERIES B PREFERRED STOCK IS APPROVED**

*Rights of Investors.* If Stockholder Approval is received, the rights and privileges, including voting rights, associated with the common stock issued upon conversion of the Series B Preferred Stock will be identical to the rights and privileges associated with the common stock held by our existing common stockholders.

*Dilution.* If Stockholder Approval is received, we will issue, through the conversion of the Series B Preferred Stock, a total of 61,819,340 shares of common stock. As a result, our existing stockholders will incur substantial dilution to their voting interests and will own a smaller percentage of our outstanding common stock.

*Concentration of Ownership.* If the Stockholder Approval is received, TRT will own approximately **18.5%**, Icahn Partners will own approximately **[17.1]%**, Greenlight will own approximately **[9.6]%**, Ironbound will own approximately **[6.8]%** and Highside will own approximately **[9.1]%** of the total number of shares of common stock outstanding immediately after giving effect to such conversion, not taking into account TRT's Top-off Shares. TRT will become our single largest stockholder and Icahn Partners will become our second largest stockholder. As a result, TRT and Icahn may be able to exercise some influence over any future actions requiring stockholder approval; provided, however, that in connection with their investment, TRT and Icahn Partners separately made customary commitments to the OTS in connection with filing a rebuttal of control or concerted action limiting their influence on the policies and management of Guaranty. Also, in the aggregate, the Stock Investors and Unit Investors will own approximately **[73.2]%** of the total number of shares of common stock outstanding immediately after giving effect to such conversion, and the Investors may be able to exercise influence over any future actions requiring stockholder approval. However, in connection with the purchase of Series B Preferred Stock under the Investment Agreements, the Stock Investors entered into standstill agreements expiring December 31, 2008 under which they have agreed they and their affiliates will not, for as long as they own at least 9.9% or more of our total outstanding common stock, (i) acquire Guaranty, any of our assets or businesses or any of our securities (other than the securities acquired in the Private Placement Transactions), (ii) publicly or privately seek to influence, control or alter the management of Guaranty, (iii) offer or propose any tender offer, exchange offer, merger, consolidation or other business combination with respect to us, or (iv) pursue any other related activities the purpose or effect of which may be to change or influence the management, control, governance or policies of Guaranty, without the written request by the chairman of our board of directors. For all of the Stock Investors, the standstill will automatically become inoperative and of no force or effect if any person or group acquires or agrees to acquire more than 20% of our equity securities or assets, a third party makes a tender offer for more than 20% of our equity securities, we issue securities representing 15% or more of our pro-forma outstanding equity, any person or group commences a solicitation of proxies to elect a contested nominee to our board of directors, or termination of our Rights Agreement or an increase in the triggering

threshold. For TRT, the standstill under the initial TRT investment agreement will not apply to purchases of our common stock to the extent such purchases result in TRT having beneficial ownership of less than 19.9% of the issued and outstanding shares of our common stock. For Icahn Partners, the standstill under its Investment Agreement will not apply to purchases of our common stock or any other securities or instruments convertible into or exchangeable for our common stock to the extent such purchases result in Icahn Partners having beneficial ownership of less than 19.9% of the issued and outstanding shares of our common stock.

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*Elimination of Dividend and Liquidation Rights of Holders of Series B Preferred Stock.* If Stockholder Approval is received, all shares of Series B Preferred Stock will be cancelled. As a result, approval of the conversion of Series B Preferred Stock will result in the elimination of the dividend rights and liquidation preference existing in favor of the Series B Preferred Stock. For more information regarding such dividend rights and liquidation preference, see Description of the Convertible Series B Preferred Stock below.

*Elimination of Restriction on Share Repurchases.* If the Stockholder Approval is received, all shares of the Series B Preferred Stock will be cancelled and the restriction on our ability to redeem or repurchase any shares of our common stock or other junior securities under the terms of the Series B Preferred Stock will be eliminated. For more information regarding such redemption and repurchase restrictions, see Description of the Convertible Series B Preferred Stock below.

**CONSEQUENCES IF THE CONVERSION OF SERIES B PREFERRED STOCK IS NOT APPROVED**

*Stockholders Meeting.* If Stockholder Approval is not received, the Series B Preferred Stock will remain outstanding in accordance with its terms and we have agreed, in accordance with the terms of the Investment Agreements and the Purchase Agreement, to seek to obtain Stockholder Approval no less than once in each six-month period beginning on January 1, 2009 until May 31, 2012, and if Stockholder Approval is not obtained by May 31, 2012, then we are obligated to list the Series B Preferred Stock on the NYSE or another securities exchange.

*Dividends.* Dividends on the Series B Preferred Stock are cumulative and initially accrue at the rate of 14% per year. If the Series B Preferred Stock remains outstanding after November 18, 2008, the dividend rate on the Series B Preferred Stock will increase 2% at the expiration of each six month period thereafter (subject to a maximum rate of 18% per year) until Stockholder Approval is obtained.

*Decrease in the Conversion Price.* The terms of the Series B Preferred Stock provide that if the Series B Preferred Stock remains outstanding after November 18, 2008, the conversion price of \$5.17 per share of common stock will decrease by \$0.50 per share at the expiration of each six month period thereafter until Stockholder Approval is obtained (subject to a minimum conversion price per share of \$3.00). This decrease in the conversion price will allow the holders of Series B Preferred Stock to acquire more shares of common stock than they would have acquired if Stockholder Approval had been obtained.