

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE DYNEX CAPITAL, INC.  
SECURITIES LITIGATION

Civ. No.: 05-1897 (HB)

NOTICE OF PROPOSED SETTLEMENT, FINAL APPROVAL HEARING, AND MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

*A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

Para obtener una copia de esta Notificación en español, contacte al administrador al: *In re Dynex Capital, Inc. Securities Litigation*, c/o The Garden City Group, Inc., PO Box 9349, Dublin, OH 43017-4249 o T: 1-800-231-1815

**NOTICE OF SETTLEMENT:** Please be advised that the Court-appointed Lead Plaintiff, Pension Fund Local 445 ("Lead Plaintiff") on behalf of itself and all others who purchased or otherwise acquired Merit Securities Corporation ("Merit Securities") Collateralized Bond Series 12 Bonds ("Series 12 Bonds") and Series 13 Bonds ("Merit Series 13 Bonds") (collectively, the "Merit Bonds") between February 7, 2000 and May 13, 2004, inclusive, (the "Class" or "Certified Class") and who claim to have been damaged thereby, have reached a proposed settlement of the Action for a total of \$7.5 million in cash that will resolve all claims in this Action (the "Settlement").

**Securities and Time Period:** Merit Securities Corporation Collateralized Series 12 and Series 13 Bonds (CUSIPs listed below) purchased or acquired between February 7, 2000 and May 13, 2004, inclusive (the "Class Period").

<u>Series 12</u>		<u>Series 13</u>	
Class	CUSIP	Class	CUSIP
1-A1	589962CK3	A1	589962CR8
1-A2	589962CL1	A2	589962CS6
1-A3	589962CM9	A3	589962CT4
1-M1	589962CN7	A4	589962CU1
1-M2	589962CP2	M1	589962CV9
1-B1	589962CQ0	M2	589962CW7
		B1	589962CX5

**Settlement Fund:** \$7,500,000 in cash. Your recovery will depend on which Merit Bonds you purchased or acquired, the number of Merit Bonds you purchased or acquired, and the timing of your purchases or acquisitions, and any sales.

**The Lawsuit:** The Settlement resolves class action litigation involving claims that Dynex Capital, Inc. ("Dynex Capital"), Merit Securities, and certain of its current and former executive officers and directors (Thomas H. Potts and Stephen J. Benedetti) (collectively, "Defendants"), allegedly made false and misleading statements during the Class Period regarding the Merit Bonds. See "What Is This Case About? What Has Happened So Far?" below for more information.

**Average Amount of Damages:** The Settlement Fund consists of \$7.5 million plus interest. Based on the total initial face dollar value of the affected Certificates as stated in the prospectus supplements (without subtracting the principal paydowns (if any) received on the Certificates), and assuming all purchasers of the initially offered certificates who were damaged elect to participate, the estimated average distribution is \$56.90 per \$1,000 in initial certificate value of the Merit Bonds that were damaged. Class Members may recover more or less than this amount depending on, among other factors, when their Certificates were purchased or sold, which Certificates they purchased, the number of Class Members who timely file claims, and the Plan of Allocation, as more fully described in this Notice. In addition, the actual recovery of Class Members may be further reduced by the payment of fees and costs from the Settlement Fund. Defendants disagree and believe that Plaintiff and the Class do not have any recoverable damages.

**Attorneys' Fees and Expenses:** Lead Plaintiff's Counsel has litigated this Action on a contingent basis for more than five years. They have conducted this litigation and advanced the expenses of litigation with the expectation that if they were successful in recovering money for the Class, they would receive fees and be reimbursed for their expenses from the Settlement Fund. This is customary in this type of litigation. Lead Counsel will apply to the Court for attorneys' fees not to exceed one-third of the \$7.5 million Settlement Fund and reimbursement of out-of-pocket expenses not to exceed \$750,000 (exclusive of ongoing costs from the administration of the Settlement), plus interest, all to be paid from the Settlement Fund.

**Deadlines:**

Submit Proof of Claim:

File Objection:

Request Exclusion From the Class:

Court Hearing on Fairness of Settlement:

June 4, 2012

February 29, 2012

February 21, 2012

March 13, 2012 at 10:00am

**For More Information:**

**Claims Administrator:**

In re Dynex Capital, Inc. Securities Litigation  
 c/o The Garden City Group, Inc.  
 PO Box 9349  
 Dublin, OH 43017-4249  
 Telephone: 1-800-231-1815

**Class Counsel:**

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<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<b>REMAIN A MEMBER OF THE CLASS</b>	This is the only way to receive a payment. If you wish to obtain a payment as a member of the Class, you will need to file a claim form (the "Claim Form"), which is included with this Notice, postmarked no later than June 4, 2012.
<b>YOU SUBMIT A WRITTEN REQUEST FOR EXCLUSION FROM THE CLASS RECEIVED NO LATER THAN FEBRUARY 21, 2012 OR YOU HAVE ALREADY VALIDLY EXCLUDED YOURSELF FROM THE CLASS PURSUANT TO THE NOTICE OF PENDENCY.</b>	Receive no payment pursuant to this Settlement. If you exclude yourself from the Class, you may be able to seek recovery against the Defendants through other litigation.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING WRITTEN OBJECTIONS SO THAT THEY ARE RECEIVED NO LATER THAN FEBRUARY 29, 2012.</b>	Write to the Court and explain why you do not like the Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of expenses. You cannot object to the Settlement unless you are a Member of the Class and do not or did not previously and validly exclude yourself.
<b>GO TO THE HEARING ON MARCH 13, 2012, AT 10:00 A.M. AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN FEBRUARY 29, 2012.</b>	Ask to speak in Court about the fairness of the Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of expenses.
<b>DO NOTHING</b>	Receive no payment, remain a Class Member, give up your rights and be bound by the Final Order and Judgment entered by the Court if it approves the Settlement, including the Release of the Released Claims.

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**WHY DID I GET THIS NOTICE?**

1. This Notice is being sent to you pursuant to an Order of the United States District Court for the Southern District of New York (the "Court") because you or someone in your family may have purchased certain Merit Series 12 and/or Series 13 Bonds. The Court has directed us to send you this Notice because, as a Class Member, you have a right to know about your options before the Court rules on the proposed settlement of this case. If the Court approves the Settlement, a claims administrator selected by Lead Plaintiff and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

2. In a class action lawsuit, the Court selects one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. In this Action, the Court appointed Pension Fund Local 445 *f/k/a* Teamsters Local 445 Freight Division Pension Fund as Lead Plaintiff, under a federal law governing lawsuits such as this one, and approved the law firm of Cohen Milstein Sellers & Toll PLLC (“Lead Counsel”) to serve as Lead Counsel in the Action. The Lead Plaintiff is also known as the Class Representative. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. Once the class is certified, as this Action already has been, the Court must resolve all issues on behalf of the class members, except for any person who has previously chosen to exclude themselves from the Class or chooses now to exclude themselves from the Class, such as by following the instructions in the Notice of Pendency that has already been distributed to you or by following the instructions stated herein. (see “How Can I Exclude Myself?” below).

3. The Court in charge of this case is the United States District Court for the Southern District of New York, and the case is known as *In re Dynex Capital, Inc. Securities Litigation*. The Judge presiding over this case is the Honorable Harold Baer, United States District Judge. The party suing is called a plaintiff, and those who are being sued are called defendants. In this case, the plaintiff, referred to as the Lead Plaintiff, is Pension Fund Local 445, suing on behalf of itself and the Class, and Defendants are Dynex Capital, Inc. (“Dynex Capital”), its subsidiary, Merit Securities Corporation (“Merit Securities”) and the Individual Defendants, Stephen J. Benedetti and Thomas H. Potts (collectively, “Defendants” or “Dynex”).

4. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to receive them. The purpose of this Notice is to supplement the Notice of Pendency you may have received in June, July or August, 2011 which informed you of this case, that it is a class action, how you might be affected, and how to exclude yourself from this class action. The purpose of this Notice is to inform you that the case has now settled, and about (i) the terms of the proposed settlement agreed to between the parties, (ii) how you might be affected by this settlement, and (iii) a hearing to be held by the Court to consider the fairness, reasonableness and adequacy of the proposed settlement, the fairness and reasonableness of the proposed Plan of Allocation, and the application by Lead Counsel for attorneys’ fees and reimbursement of expenses (the “Final Approval Hearing”).

5. The Final Approval Hearing will be held on March 13, 2012, before the Honorable Harold Baer at the United States District Court for the Southern District of New York, 500 Pearl Street, Courtroom 23B, New York, New York, 10017, to determine:

- whether the proposed Settlement is fair, reasonable, adequate and in the best interests of the Class and should be approved by the Court;
- whether the Released Claims against Defendants and the Dynex Released Parties should be dismissed with prejudice and fully and finally released by Lead Plaintiff and the Class as set forth in the Amended Stipulation of Settlement entered into by the Parties as of November 30, 2011 and filed with the Court on December 2, 2011 (the “Stipulation”);
- whether the proposed Plan of Allocation is fair and reasonable and should be approved by the Court; and
- whether Lead Counsel’s request for an award of attorneys’ fees and reimbursement of certain litigation expenses should be approved by the Court.

The Court may adjourn the hearing to another date without further Notice to the Class.

6. This Notice does not express any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, payments to Authorized Claimants (defined below) will be made after any appeals are resolved, and after the completion of all claims processing. Please be patient.

#### WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

7. On February 7, 2005, Lead Plaintiff filed a complaint against Defendants Dynex Capital, Inc, Merit Securities Corporation, Thomas H. Potts, Stephen J. Benedetti, Lehman Brothers Inc., and Greenwich Capital Markets, Inc. in the United States District Court for the Southern District of New York under the caption *Teamsters Local 445 Freight Division Pension Fund v. Dynex Capital, Inc. et al.*, Civ. No. 05-1897-HB (S.D.N.Y.) alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b) , 78t(a), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, on behalf of purchasers of Merit Securities’ Collateralized Bond Series 13 Bonds (Merit 13 Bonds”) between August 11, 1999 and May 11, 2004 (the “Initial Complaint Class Period”). On February 7, 2005, pursuant to the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), Lead Plaintiff published a notice of its action to investors, which provided a deadline of April 8, 2005, to seek lead plaintiff appointment.

8. A detailed description of the Action was set forth in the Notice of Pendency of Class Action Litigation (“Notice of Pendency”) sent to all Class Members on or about June 30, 2011.

9. The Notice of Pendency was sent to all Class Members pursuant to the Court’s June 21, 2011 Order approving the form and manner of distribution of the Notice of Pendency. The June 21 Order required Garden City Group to mail the Notice of Pendency to all record holders that had been found by Lead Plaintiff during discovery with the instruction of either providing the names and addresses to Garden City Group of all beneficial owners or forwarding the Notice of Pendency on themselves. The June 21 Order also required that Garden City Group publish a Summary Notice of Pendency in *Investor’s Business Daily*, *Business Wire* and on the *DTC Electronic Legal System* and required Defendants to post the Notice of Pendency on their website.

10. On June 30, 2011, the Notice of Pendency was published in *Investor’s Business Daily*, on Business Wire, on the DTC Electronic Legal System and on Dynex Capital’s website.

11. The Notice of Pendency informed the Class Members of the pending litigation and their right to request an exclusion from the Class provided that such request was postmarked no later than September 30, 2011.

12. On July 15, 2011 Defendants moved for Summary Judgment. The Court held oral arguments on that motion on September 14, 2011. The Court's decision remains pending.

13. On September 27, 2011, the Parties participated in a formal mediation in an effort to reach a settlement in this Action. Shortly after this mediation, and as a result thereof, the Parties reached an agreement for the resolution of this Action. On October 3, 2011, just five weeks before the Action was set to go to trial, the parties executed a Memorandum of Understanding setting forth the principal terms of an agreement-in-principle to settle this matter.

14. On or about December 5, 2011, the Court preliminarily approved the Settlement, authorized the Notice of Settlement to be sent to Class Members, and scheduled the Final Approval Hearing to consider whether to grant final approval to the Settlement.

**HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?**

15. If you are a Member of the Class, you are subject to the Settlement unless you timely requested to be excluded from the Class pursuant to the Notice of Pendency or you timely request to be excluded from the Class pursuant to this Notice. As the Court's Class Certification Order stated, the Class consists of "[a]ll purchasers of Merit Securities Corporation's Collateralized Bonds Series 12 and Series 13 Bonds during the period between February 7, 2000 and May 13, 2004 who were damaged thereby." Excluded from the Class are Defendants and their respective officers, affiliates and directors at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which any Defendant has or had a controlling interest. Also excluded from the Class are those persons or entities who excluded themselves by submitting a valid request for exclusion in accordance with the requirements set forth in the Notice of Pendency that has already been distributed or who exclude themselves by submitting a valid request for exclusion in accordance with the requirements set forth in this Notice. (see "How Can I Exclude Myself?" below).

**RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE ELIGIBLE TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT, YOU MUST SUBMIT THE ENCLOSED CLAIM FORM SO THAT IT IS RECEIVED NO LATER THAN JUNE 4, 2012.**

**WHAT ARE THE PARTIES' REASONS FOR THE SETTLEMENT?**

16. Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants have merit. Lead Plaintiff and Lead Counsel recognize, however, the expense and length of continued proceedings necessary to pursue their claims against Defendants through trial and appeals, as well as the difficulties in establishing liability and damages. Lead Plaintiff and Lead Counsel have considered the uncertain outcome of Defendants' pending Summary Judgment motion and the risks trial and appeals in complex lawsuits like this one.

17. In light of the amount of the Settlement and the immediacy of recovery to the Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Class. Lead Plaintiff and Lead Counsel believe that the Settlement provides a substantial benefit now, namely \$7.5 million (less the various deductions described in this Notice), as compared to the risk that the claims would produce a similar, smaller, or no recovery after the pending Summary Judgment motion is decided, an expensive trial and appeals, possibly years in the future.

18. Defendants have denied and continue to deny each and all of the claims alleged by Lead Plaintiff in the Action. Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Defendants also have denied and continue to deny, among other things, the allegations that Lead Plaintiff or the Class have suffered any damage, or that Lead Plaintiff or the Class were harmed by the conduct alleged in the Action. Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in a complex case such as this. Nonetheless, Defendants have concluded that further conduct of the already six and one-half year litigation would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation. The Settlement shall in no event be construed or deemed to be evidence of, or constitute an admission or concession on the part of Defendants with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants have or could have asserted. Defendants expressly deny that Lead Plaintiffs have asserted a valid claim and deny any and all allegations of fault, liability, wrongdoing or damages whatsoever.

**WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

19. If there were no Settlement and Lead Plaintiff failed to establish any essential legal or factual element of their claims, neither Lead Plaintiff nor the Class would recover anything from Defendants. Also, if Defendants were successful in their Summary Judgment motion or proving any of their defenses, the Class likely would recover substantially less than the amount provided in the Settlement, or nothing at all.

**HOW MUCH WILL MY PAYMENT BE?**

**I. THE PROPOSED PLAN OF ALLOCATION: GENERAL PROVISIONS**

20. For each individual tranche or CUSIP, Class Members who held Merit Bonds on February 7, 2000 (i.e., at the beginning of the Class Period) or made multiple purchases or other acquisitions or sales, exchanges or other dispositions during the Class Period, the first-in-first-out (FIFO) method will be applied to such holdings, purchases or other acquisitions and sales, exchanges or other dispositions for purposes of calculating a Class Member's Recognized Loss. Under the FIFO method, sales, exchanges or other dispositions of each individual tranche of Merit Bonds during the Class Period will be matched, in chronological order, first against

that same tranche of Merit Bonds held at the beginning of the Class Period and such holdings and corresponding sales or dispositions will not be considered in calculating the Recognized Loss as described below. The remaining sales, exchanges or other dispositions of each individual tranche of Merit Bonds during the Class Period will then be matched, in chronological order, against the same tranche of Merit Bonds purchased or otherwise acquired during the Class Period to determine the Recognized Loss. Purchases of Merit Bonds based on negotiated repurchase or reverse repurchase agreements will not be eligible for purposes of calculating a claim.

21. Class Members will be eligible to participate in the distribution of the Settlement only to the extent they have a net Recognized Loss on all transactions in the Merit Bonds during the Class Period – after all profits from transactions in Merit Bonds during the Class Period are subtracted from all losses during the Class Period. However, the proceeds from the sales, exchanges or other dispositions of the Merit Bonds which have been matched against Merit Bonds held at the beginning of the Class Period will not be used in the calculation of such net loss (see “Calculation of ‘Recognized Loss or Gain Amounts’” below). No distributions will be made from the Net Settlement Funds to Authorized Claimants who would otherwise receive a distribution of less than \$10.00.

22. To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant’s allowable Recognized Loss, as defined below. If, however, the Net Settlement Fund is not sufficient to permit payment of the total of all recognized losses, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant’s recognized losses bear to the total of the losses of all Authorized Claimants with respect to that Net Settlement Fund (“pro rata share”).

## II. CALCULATION OF “RECOGNIZED LOSS OR GAIN AMOUNTS”

23. A “Recognized Loss or Gain Amount” will be calculated for each of the Merit Bonds purchased or acquired for which adequate documentation is provided with the Proof of Claim Form. The calculation of the Recognized Loss or Gain Amount will depend on several factors, including: (i) when the Bonds were purchased; (ii) whether it was sold, and if so, when it was sold and for how much; and (iii) the value attributable to the Bonds if not sold as of the date of this Notice.

24. Based on the analysis above, the proposed Plan of Allocation is as follows:

- a. For all purchases of the Merit Bonds prior to the commencement of the Class Period on February 7, 2000, or after the end of the class period on May 13, 2004, the amount recoverable from the Settlement is zero dollars.
- b. For all purchasers of the Merit Series 12 Class 1-A1, Class 1-A2, Class 1-A3 and Class 1-M1 at any time, the amount recoverable from the Settlement is zero dollars.
- c. Plan of Allocation For the Merit Series 12 Class 1-M2 (the “12-M2”)
  - i. For purchases of the 12-M2 between February 7, 2000 and March 31, 2004, inclusive:
    1. Sold prior to March 31, 2004, the recognized loss per \$1,000 face value of the 12-M2 is zero dollars.
    2. Sold between March 31, 2004 and May 13, 2004, inclusive, the recognized loss per \$1,000 face value of the 12-M2 is the difference between the purchase price per \$1,000 face value of the 12-M2 and the sales price per \$1,000 face value of the 12-M2, with the recognized loss not to exceed \$231.30 per \$1,000 face value of the 12-M2.
    3. Sold after May 13, 2004 but before the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 12-M2 is the difference between the purchase price per \$1,000 face value of the 12-M2 and the sales price per \$1,000 face value of the 12-M2, with the recognized loss not to exceed \$612.80 per \$1,000 face value of the 12-M2.
    4. Remaining unsold as of the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 12-M2 is the difference between the purchase price per \$1,000 face value of the 12-M2 and \$412.90, with the recognized loss not to exceed \$612.80 per \$1,000 face value of the 12-M2.
  - ii. For purchases of the 12-M2 between April 1, 2004 and May 13, 2004, inclusive:
    1. Sold prior to May 13, 2004, the recognized loss per \$1,000 face value of the 12-M2 is zero dollars.
    2. Sold on or after May 13, 2004 but before the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 12-M2 is the difference between the purchase price per \$1,000 face value of the 12-M2 and the sales price per \$1,000 face value of the 12-M2, with the recognized loss not to exceed \$381.60 per \$1,000 face value of the 12-M2.
    3. Remaining unsold as of the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 12-M2 is the difference between the purchase price per \$1,000 face value of the 12-M2 and \$791.64, with the recognized loss not to exceed \$381.60 per \$1,000 face value of the 12-M2.
- d. Plan of Allocation For the Merit Series 12 Class 1-B1 (the “12-B1”)
  - i. For purchases of the 12-B1 between February 7, 2000 and March 10, 2004, inclusive:
    1. Sold prior to March 10, 2004, the recognized loss per \$1,000 face value of the 12-B1 is zero dollars.
    2. Sold on or after March 10, 2004 but before the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 12-B1 is the difference between the purchase price per \$1,000 face

- value of the 12-B1 and the sales price per \$1,000 face value of the 12-B1, with the recognized loss not to exceed \$440.30 per \$1,000 face value of the 12-B1.
3. Remaining unsold as of the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 12-B1 is the difference between the purchase price per \$1,000 face value of the 12-B1 and \$399.74, with the recognized loss not to exceed \$440.30 per \$1,000 face value of the 12-B1.
- ii. For purchases of the 12-B1 between March 11, 2004 and May 13, 2004, inclusive:
    1. The recognized loss per \$1,000 face value of the 12-B1 is zero dollars.
- e. For all purchasers of the Merit Series 13 Class A1, Class A2, Class A3 and Class A4 at any time, the amount recoverable from the Settlement is zero dollars.
- f. Plan of Allocation For the Merit Series 13 Class M1 (the "13-M1")
- i. For purchases of the 13-M1 between February 7, 2000 and February 24, 2004, inclusive:
    1. Sold prior to February 24, 2004, the recognized loss per \$1,000 face value of the 13-M1 is zero dollars.
    2. Sold on or after February 24, 2004 but before the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-M1 is the difference between the purchase price per \$1,000 face value of the 13-M1 and the sales price per \$1,000 face value of the 13-M1, with the recognized loss not to exceed \$151.30 per \$1,000 face value of the 13-M1.
    3. Remaining unsold as of the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-M1 is the difference between the purchase price per \$1,000 face value of the 13-M1 and \$848.65, with the recognized loss not to exceed \$151.30 per \$1,000 face value of the 13-M1.
  - ii. For purchases of the 13-M1 between February 25, 2004 and May 13, 2004, inclusive:
    1. The recognized loss per \$1,000 face value of the 13-M1 is zero dollars.
- g. Plan of Allocation For the Merit Series 13 Class M2 (the "13-M2")
- i. For purchases of the 13-M2 between February 7, 2000 and October 2, 2003, inclusive:
    1. Sold prior to October, 2, 2003, the recognized loss per \$1,000 face value of the 13-M2 is zero dollars.
    2. Sold between October 2, 2003 and February 24, 2004, inclusive the recognized loss per \$1,000 face value of the 13-M2 is the difference between the purchase price per \$1,000 face value of the 13-M2 and the sales price per \$1,000 face value of the 13-M2, with the recognized loss not to exceed \$256.70 per \$1,000 face value of the 13-M2.
    3. Sold after February 24, 2004 but before the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-M2 is the difference between the purchase price per \$1,000 face value of the 13-M2 and the sales price per \$1,000 face value of the 13-M2, with the recognized loss not to exceed \$459.50 per \$1,000 face value of the 13-M2.
    4. Remaining unsold as of the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-M2 is the difference between the purchase price per \$1,000 face value of the 13-M2 and \$557.20, with the recognized loss not to exceed \$459.50 per \$1,000 face value of the 13-M2.
  - ii. For purchases of the 13-M2 between October 3, 2003 and February 24, 2004, inclusive:
    1. Sold prior to February 24, 2004, the recognized loss per \$1,000 face value of the 13-M2 is zero dollars.
    2. Sold on or after February 24, 2004 but before the Date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-M2 is the difference between the purchase price per \$1,000 face value of the 13-M2 and the sales price per \$1,000 face value of the 13-M2, with the recognized loss not to exceed \$202.80 per \$1,000 face value of the 13-M2.
    3. Remaining unsold as of the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-M2 is the difference between the purchase price per \$1,000 face value of the 13-M2 and \$748.20, with the recognized loss not to exceed \$202.80 per \$1,000 face value of the 13-M2.
  - iii. For purchases of the 13-M2 between February 25, 2004 and May 13, 2004, inclusive:
    1. The recognized loss per \$1,000 face value of the 13-M2 is zero dollars.
- h. Plan of Allocation For the Merit Series 13 Class B1 (the "13-B1")
- i. For purchases of the 13-B1 between February 7, 2000 and February 24, 2004, inclusive:
    1. Sold prior to February 24, 2004, the recognized loss per \$1,000 face value of the 13-B1 is zero dollars.

2. Sold on or after February 24, 2004 but before the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-B1 is the difference between the purchase price per \$1,000 face value of the 13-B1 and the sales price per \$1,000 face value of the 13-B1, with the recognized loss not to exceed \$658.10 per \$1,000 face value of the 13-B1.
  3. Remaining unsold as of the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-B1 is the difference between the purchase price per \$1,000 face value of the 13-B1 and \$211.90, with the recognized loss not to exceed \$658.10 per \$1,000 face value of the 13-B1.
- ii. For purchases of the 13-B1 between February 25, 2004 and May 13, 2004, inclusive:
1. The recognized loss per \$1,000 face value of the 13-B1 is zero dollars.

25. The "Recognized Loss" will be used solely to calculate the relative amount of the Net Settlement Fund for each Authorized Claimant and does not reflect the actual amount an Authorized Claimant may expect to recover from the Net Settlement Fund or any actual losses. The combined Recognized Claims of all Authorized Claimants may be greater than the Net Settlement Fund. If this is the case, and subject to the \$10.00 minimum payment requirement described in paragraph 21 above, each Authorized Claimant shall receive his, her or its *pro rata* share of the Net Settlement Fund, which shall be his, her or its Recognized Claim divided by the total of all Recognized Claims to be paid, multiplied by the total amount in the Net Settlement Fund.

26. Payment pursuant to the Plan of Allocation shall be conclusive against all Authorized Claimants. No Person shall have any claim based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further order(s) of the Court against Lead Counsel, Lead Plaintiff, Class Members, the Claims Administrator, Defendants or the Dynex Released Parties (defined below), or any person designated by Lead Counsel. All Members of the Class who fail to timely submit an acceptable Claim Form by the deadline set by the Court, or such other deadline as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to the Settlement, but will in all other respects be subject to and bound by the terms of the Settlement, including the release of the Released Claims.

27. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the claim of any Member of the Class.

28. The Plan of Allocation set forth herein is the proposed plan submitted by Lead Plaintiff and Lead Counsel for the Court's approval. The Court may approve this plan as proposed or it may modify it without further notice to the Class.

<b>WHAT RIGHTS AM I GIVING UP BY AGREEING TO THE SETTLEMENT?</b>
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29. If the Settlement is approved, the Court will enter a judgment (the "Judgment"). The Judgment will dismiss with prejudice the claims asserted against Defendants in the Action and will provide that Lead Plaintiff and all other Members of the Class, on behalf of themselves and any of their personal representatives, spouses, domestic partners, trustees, heirs, executors, administrators, successors or assigns shall be deemed to have – and by operation of the Judgment shall have – fully and finally released, relinquished, waived, discharged and dismissed each and every Released Claim (as defined in ¶34 below), including Unknown Claims (as defined in ¶36 below), against the Dynex Released Parties (as defined in ¶35 below), and shall forever be enjoined from pursuing any or all Released Claims against any Dynex Released Party, whether directly or indirectly, whether on their own behalf or otherwise, and regardless of whether or not such Class Member executes and delivers a Proof of Claim Form (except that the foregoing provision shall not apply to any such representative, spouse, domestic partner, trustee, heir, executor, administrator, successor or assign who independently would be a member of the Class and timely excludes himself, herself or itself).

30. Lead Plaintiff and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Lead Plaintiff shall expressly - and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have - fully, finally and forever settled and released any and all Released Claims, known or Unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiffs and Defendants acknowledge, and Class Members by law and operation of the Judgment shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims was separately bargained for and was a material element of the Settlement.

31. The Judgment also will provide that Defendants and each of the other Dynex Released Parties, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, shall be deemed by operation of law to have released, waived, discharged and dismissed each and every Released Claim (as defined below), and shall forever be enjoined from prosecuting any or all Released Claims, against Lead Plaintiff, all other Class Members, and Lead Counsel.

32. Capitalized terms not otherwise defined have the meaning set forth in the Stipulation. In case of any conflict between the terms and definitions set forth in this Notice and the Stipulations, the latter terms and definitions shall govern. For ease of reference, certain of the terms pertaining to Class Members' release of claims are repeated and set forth below:

33. "Dynex Related Parties" means Defendants' respective past or present heirs, executors, estates, administrators, predecessors, successors, assigns, attorneys, accountants, auditors, parents, partners, trustees, subsidiaries, affiliates, insurers and reinsurers, employers, employees, members, directors, managing directors, officers, investment bankers, consultants, and agents, and each of their respective heirs, executors, administrators, affiliates, predecessors, successors, (including but not limited to successors in bankruptcy), and assigns.

34. "Released Claims" means, with respect to the Dynex Released Parties, any and all claims, debts, demands, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class, and/or individual in nature, including both known claims and "Unknown Claims" (as defined herein), which have been or could have been asserted in the Action, or in any other action or forum, by Lead Plaintiff and/or Members of the Class or any of them against the Dynex Released Parties and which arise out of or in connection with, or are based upon or relate in any way to, (i) the sale or purchase of the Merit Bonds, or (ii) the allegations, transactions, facts, matters or occurrences referred to or alleged in the Second Amended Complaint, except claims relating to enforcement of the terms and conditions of this Agreement. "Released Claims" means, with respect to Lead Plaintiff, Members of the Class, and Lead Counsel, any claims that arise out of or relate in any way to the institution, prosecution, or settlement of, or are otherwise related to, the Action, including any claim that one or more of them acted in bad faith or without a reasonable basis in prosecuting the Action, including but not limited to claims of any violation of Rule 11 of the Federal Rules of Civil Procedure or any applicable ethical rules relating to the prosecution, defense or settlement of the Action, that were or could have been alleged in the Action by the Dynex Released Parties against Lead Plaintiff, any Class Member or their respective attorneys, except claims relating to enforcement of the terms and conditions of this Agreement.

35. "Dynex Released Parties" means Defendants, and the Dynex Related Parties.

36. "Unknown Claims" means and includes any and all claims that any Party does not (for whatever reason, including but not limited to concealment of the existence of, or factual basis for, such claims) know or suspect to exist in his, her or its favor at the time of the release of the Released Claims, which if known by him, her or it might have affected his, her or its settlement and release of the Released Claims, or his, her or its decision not to object to this Settlement or not to exclude himself, herself or itself from the Class. With respect to any and all Released Claims, the Parties agree that, upon the Effective Date, they shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, to the fullest extent permitted by law, any provisions, rights, and benefits conferred by any law of the United States, or of any state or territory of the United States, or principle of common law, including or which is equivalent, comparable, or similar in any way to Cal. Civ. Code § 1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

#### **WHAT PAYMENT ARE THE ATTORNEYS FOR THE CLASS SEEKING? HOW WILL THE LAWYERS BE PAID?**

37. Lead Counsel has not received any payment for its services in pursuing claims against Defendants on behalf of the Class, nor has Lead Counsel been reimbursed for its out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel intends to apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed one-third of the Settlement Fund (or \$2,475,000.00), net of Court-approved Litigation Expenses, plus interest at the same rate and for the same time period as earned by the Settlement Fund. At the same time, Lead Counsel also intends to apply for the reimbursement of certain Litigation Expenses in an amount not to exceed \$750,000 plus interest at the same rate and for the same time period as earned by the Settlement Fund. Litigation Expenses may include reimbursement of the expenses of Plaintiffs in accordance with 15 U.S.C. § 78u-4(a)(4). The sums approved by the Court will be paid from the Settlement Fund. Members of the Class are not personally liable for the payment of these sums.

38. Defendants take no position on the request by Lead Counsel for attorneys' fees and reimbursement of Litigation Expenses or on the allocation of attorneys' fees and expenses among counsel representing the Class.

#### **HOW DO I PARTICIPATE IN THE SETTLEMENT?**

39. If you purchased Series 12 or Series 13 Merit Bonds, and you are not excluded by the definition of the Class and did not, or do not elect to exclude yourself from the Class, then you are a Member of the Class and you will be bound by the proposed Settlement if the Court approves it, and by any judgment or determination of the Court affecting the Class. If you are a Member of the Class, you must submit a Claim Form and supporting documentation to establish your entitlement to share in the Settlement. A Claim Form is included with this Notice, or you may go to the website maintained by the Claims Administrator for the Settlement to download a Claim Form. The website is [www.gcginc.com](http://www.gcginc.com). You may also request a Claim Form by calling toll-free (800) 231-1815. Copies of the Claim Form can also be downloaded from Lead Counsel's website at [www.cohenmilstein.com/cases/234/dynex-capital](http://www.cohenmilstein.com/cases/234/dynex-capital) or from Defendants website at [www.dynexcapital.com/payment](http://www.dynexcapital.com/payment). Those who already excluded themselves from the Class or validly submit a written request for exclusion from the Class by February 21, 2012, and those who do not submit timely and valid Claim Forms with adequate supporting documentation, will not be eligible to share in the Settlement. Please retain all records of your ownership of, or transactions in the Merit Bonds, as they may be needed to document your claim.

40. As a Class Member, you are represented by Lead Plaintiff and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her notice of appearance on the attorneys listed in the section below entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?"

41. If you do not request exclusion from the Class and you wish to object to the Settlement or any of its terms, the proposed Plan of Allocation, or Lead Counsel's application for attorneys' fees and reimbursement of litigation expenses, you may present your objections by following the instructions in the section below entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?"

#### **WHAT IF I DO NOT WANT TO BE A PART OF THE SETTLEMENT? HOW DO I EXCLUDE MYSELF?**

42. Class Members will be bound by all determinations and judgments in this lawsuit, including those concerning the Settlement, whether favorable or unfavorable, unless such person or entity (i) has already submitted a request for exclusion from the

Class as described in the Notice of Pendency, postmarked no later than September 30, 2011; or (ii) mails, by first-class mail (or its equivalent outside the United States), or otherwise delivers a written Request for Exclusion from the Class, addressed to: Dynex Capital Inc. Securities Litigation, c/o The Garden City Group, Inc., P.O. Box 9349, Dublin, OH 43017-4249. The exclusion request must be received no later than February 21, 2012. You will not be able to exclude yourself from the Class after that date. Each Request for Exclusion must provide (i) name, (ii) address, (iii) telephone number, (iv) cusip and name of the Merit Bond purchased (and, if applicable, sold) (v) prices or other consideration paid or received for such mortgage pass-through certificates, (vi) the date of each purchase or sale transaction, and (vii) a statement that the person or entity wishes to be excluded from the Class in *In re Dynex Capital, Inc. Securities Litigation*, CV 05-1897. It must also be signed by the person or entity requesting exclusion, and provide a telephone number and mailing address for that person or entity. Requests for exclusion will not be valid if they are not received within the time stated above, unless the Court otherwise determines. Keep a copy of everything you mail, in case something is lost during shipping or processing.

43. If you do not want to be part of the Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration or other proceeding concerning any of the Released Claims.

44. If a person or entity requests to be excluded from the Class, that person or entity will not receive any benefit provided for in the Settlement.

45. If members of the Class who purchased more than a certain number of Merit Bonds choose to exclude themselves from the Class, as set forth in a separate supplemental agreement between Lead Plaintiff and Dynex (the "Supplemental Agreement"), then Dynex shall have, in its sole and exclusive discretion, the option to terminate the Settlement in accordance with the terms of the Supplemental Agreement.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?  
DO I HAVE TO COME TO THE HEARING? MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?**

46. Any Member of the Class who did not request exclusion from the Class in the Action as set forth in the Notice of Pendency already distributed or who does not request exclusion pursuant to the instructions above, may object to or oppose the Settlement, the Plan of Allocation, or Lead Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses. Objections or oppositions must be in writing. You must file any written objection or opposition, together with copies of all other papers (including proof of purchases and/or sales of the Merit Bonds) and briefs, with the Clerk's Office at the United States District Court for the Southern District of New York, at the address set forth below for receipt on or before February 29, 2012. You must also serve the papers, by hand or first-class mail, on Lead Counsel for the Class and counsel for Defendants at the addresses set forth below so that the papers are received on or before February 29, 2012.

<p><b>Clerk's Office</b> UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK Clerk of the Court 500 Pearl Street New York, New York 10017</p>	<p><b>Lead Counsel for the Class</b> Joel P. Laitman Christopher Lometti Michael Eisenkraft Kenneth M. Rehns COHEN MILSTEIN SELLERS &amp; TOLL PLLC 88 Pine Street, 14<sup>th</sup> Floor New York, New York 10005</p>	<p><b>Counsel for the Defendants</b> Joseph Saltarelli HUNTON &amp; WILLIAMS LLP 200 Park Avenue New York, New York 10166  Edward Fuhr Matthew Boshier HUNTON &amp; WILLIAMS LLP 951 East Byrd Street Richmond, VA 23219</p>
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47. If you do not wish to object in person to the proposed Settlement, the proposed Plan of Allocation, and/or the application for attorneys' fees and reimbursement of litigation expenses, you do not need to attend the Final Approval Hearing. You can object to or participate in the Settlement without attending the Final Approval Hearing.

48. You may file a written objection without having to appear at the Final Approval Hearing. Any objection must include: (a) the full name, address and phone number of the objecting Class Member; (b) a list and documentation of all of that Class Member's transactions involving the Merit Bonds, including brokerage confirmation receipts or other competent documentary evidence of such transactions, including the amount and date of each purchase or sale and the price paid and/or received; (c) a written statement of all grounds for the objection accompanied by any legal support for the objection; (d) copies of any papers, briefs or other documents upon which the objection is based; (e) a list of all persons who will be called to testify in support of the objection; (f) a statement of whether you intend to appear at the Final Approval Hearing; (g) a list of other cases in which you or your counsel have appeared either as settlement objectors or as counsel for objectors in the preceding five years; and (h) the objector's signature, even if represented by counsel. If you intend to appear at the Final Approval Hearing through counsel, the objection must also state the identity of all attorneys who will appear on your behalf at the Final Approval Hearing. Any Member of the Class who does not make his, her or its objection in the manner provided for herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the Settlement as reflected in the Stipulation, to the Plan of Allocation or to the application by Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses. You may not appear at the Final Approval Hearing to present your objection, however, unless you first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

49. The Final Approval Hearing will be held on March 13, 2012, at 10:00 a.m. before the Honorable Harold Baer, at the United States District Court for the Southern District of New York, 500 Pearl Street, Courtroom 23B, New York, New York. The Court has the right to approve the Settlement, the Plan of Allocation or the request for attorneys' fees and reimbursement of litigation expenses at or

after the Final Approval Hearing without further notice to the members of the Class. The Court may re-schedule the Final Approval Hearing without further Notice to the Class.

50. You may not object to the Settlement or any aspect of it if you are not a Member of the Class or if you exclude yourself from the Class.

51. If you wish to be heard orally at the Final Approval Hearing in opposition to the approval of the Settlement, the Plan of Allocation, or Lead Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses, and if you have filed and served a timely written objection as described above, you also must notify the above counsel on or before February 29, 2012, concerning your intention to appear. Class Members who intend to object and desire to present evidence at the Final Approval Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing.

52. If you object to the Settlement, the Plan of Allocation and/or Lead Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses, or otherwise request to be heard at the Final Approval Hearing in the manner stated above, you are submitting to the jurisdiction of the Court with respect to the subject matter of the Settlement, including, but not limited to, the release of the Released Claims contained in the Final Order and Judgment. If the Court overrules your objection and approves the Settlement or the part of the Settlement to which you have objected, you only will potentially share in the Settlement Fund if you file a Claim Form in the manner stated in ¶39 above and the Claims Administrator approves your claim.

53. You are not required to hire an attorney to represent you in making written objections or in appearing at the Final Approval Hearing. If you decide to hire an attorney, which will be at your own expense, however, he or she must file a notice of appearance with the Court and serve it on Lead Counsel so that the notice is received on or before February 29, 2012.

54. The Final Approval Hearing may be postponed or adjourned by the Court without further written notice to the Class. If you intend to attend the Final Approval Hearing, you should confirm the date and time with Lead Counsel.

**UNLESS THE COURT ORDERS OTHERWISE, ANY CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED ABOVE WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE PROPOSED SETTLEMENT, THE PROPOSED PLAN OF ALLOCATION, OR LEAD COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES. CLASS MEMBERS DO NOT NEED TO APPEAR AT THE HEARING OR TAKE ANY OTHER ACTION TO INDICATE THEIR APPROVAL.**

**WHAT IF I BOUGHT CERTIFICATES ON SOMEONE ELSE'S BEHALF?**

55. If you purchased the Merit Bonds described above for the beneficial interest of a person or organization other than yourself, you must either (i) send a copy of this Notice to the beneficial owner of such certificates, postmarked no later than fourteen (14) days after you receive this Notice, or (ii) provide to In re Dynex Capital, Inc. Securities Litigation, c/o The Garden City Group, Inc., P.O. Box 9349, Dublin, OH 43017-4249 the names and addresses of such persons no later than fourteen (14) days after you receive this Notice. If you choose the second option, the Claims Administrator will send a copy of the Notice to the beneficial owner. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice may also be obtained by calling toll-free (800) 231-1815, and may be downloaded from the Claims Administrator's website, [www.gcginc.com](http://www.gcginc.com) or from Lead Counsel's website, <http://www.cohenmilstein.com/cases/234/dynex-capital>.

**CAN I SEE THE COURT FILE? WHO SHOULD I CONTACT IF I HAVE QUESTIONS?**

56. This Notice contains only a summary of the terms of the proposed Settlement. The terms of the Settlement are set forth in and governed by the Stipulation, and any orders or judgments entered by the Court pertaining to the Settlement. More detailed information about the Action is available at [www.gcginc.com](http://www.gcginc.com), <http://www.cohenmilstein.com/cases/234/dynex-capital>, and [www.dynexcapital.com/payment](http://www.dynexcapital.com/payment) including, among other documents, copies of the Stipulation, this Notice, the Claim Form and the already distributed Notice of Pendency.

57. All inquiries concerning this Notice or the Claim Form should be directed to:

In re Dynex Capital, Inc. Securities Litigation c/o The Garden City Group, Inc. PO Box 9349 Dublin, OH 43017-4249 Telephone: 1-800-231-1815 <b>Claims Administrator</b>	Joel P. Laitman, Esq. Christopher Lometti, Esq. Kenneth M. Rehns, Esq. Cohen Milstein Sellers & Toll PLLC 88 Pine Street, 14 <sup>th</sup> Floor New York, NY 10005 Telephone: 212-838-7797 <b>Lead Counsel</b>
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**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE CLERK OF COURT REGARDING THIS NOTICE.**

**By Order of the Clerk of Court  
United States District Court  
for the Southern District of New York.**

Dated: December 27, 2011