



If the Settlement is approved by the Court, Court-appointed Lead Counsel for Plaintiffs, Brower Piven, A Professional Corporation, 488 Madison Avenue, 8<sup>th</sup> Floor, New York, NY 10022 and Court-appointed Co-Lead Counsel for Plaintiffs, Levi & Korsinsky, LLP, 30 Broad Street, 24<sup>th</sup> Floor, New York, NY 10004 (“Plaintiffs’ Counsel”) will apply to the Court for an award of attorneys’ fees not to exceed 33.33% of the Settlement Fund (as defined below), and reimbursement of out-of-pocket expenses, as compensation for successfully prosecuting the Action. You may contact the claims administrator, the firm The Garden City Group, Inc. (“Claims Administrator”), or a representative of Plaintiffs’ Counsel for further information about the Settlement; see below under “Further Information” for the contact information.

**Statement of Plaintiffs’ Recovery** – The proposed Settlement with Defendants creates a fund in the amount of \$79,000,000 in cash, which will include interest that accrues prior to distribution (“Settlement Fund”). Based on Plaintiffs’ Counsel’s estimate of the number of shares of stock that may have been damaged by the alleged fraud, and assuming that all those shares participate in the Settlement, Plaintiffs estimate that the average recovery would be approximately \$0.145 per share. Your recovery from this fund, however, will depend on a number of variables, including the number of shares of E\*TRADE securities you purchased during the Settlement Class Period, the timing of your purchases and any sales, the number and amount of claims actually filed, and the estimate of recoverable losses based on the analysis of Plaintiffs’ damages consultant. You are advised to review the Plan of Allocation set forth on pages 6 to 9 below in the Notice, which provides the actual formulas that will be applied to claims submitted by each eligible individual, corporation, partnership, limited partnership, association, joint stock company, joint venture, limited liability company, professional corporation, estate, legal representative, heir, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their predecessors, successors, representatives, or assignees (“Person”) who falls within the definition of the Settlement Class (“Settlement Class Member”). This estimate above is also before deduction of any Court-awarded expenses, such as attorneys’ fees and out-of-pocket expenses, and the cost of sending this Notice and administering the distribution of the Settlement proceeds.

**Statement of Potential Outcome of Case** – Plaintiffs and Defendants disagree on the potential liability of Defendants and they do not agree on the average amount of damages per share, if any, that would be recoverable if Plaintiffs were to have prevailed at trial on each claim alleged. Defendants deny that they are liable in any respect or that Plaintiffs suffered any injury. The issues on which the parties disagree include: (1) whether any Defendant engaged in any conduct subject to challenge under the federal securities laws; (2) the amounts by which E\*TRADE securities were allegedly artificially inflated (if at all) during the Settlement Class Period (as defined above); (3) the effect of various market forces influencing the trading price of E\*TRADE securities at various times during the Settlement Class Period; (4) the extent to which the various matters that Plaintiffs alleged were materially false or misleading influenced (if at all) the trading price of E\*TRADE securities during the Settlement Class Period; (5) the extent to which the various allegedly adverse material facts that Plaintiffs alleged were omitted influenced (if at all) the trading price of E\*TRADE securities during the Settlement Class Period; (6) whether the statements made or facts allegedly omitted were material, false, misleading, or otherwise actionable under the securities laws; and (7) whether, even if liability could be proven, total damages would be greater than \$0.

**Statement of Attorneys’ Fees and Costs Sought** – Plaintiffs’ Counsel have committed a substantial amount of time prosecuting claims against Defendants on behalf of Plaintiffs and the Settlement Class. In addition, they have not been reimbursed for out-of-pocket expenses. If the Settlement is approved by the Court, Plaintiffs’ Counsel will apply to the Court for an award of attorneys’ fees not to exceed 33.33% of the Settlement Fund and reimbursement of out-of-pocket expenses not to exceed \$750,000, to be paid from the Settlement Fund. If the amounts described above are requested and approved by the Court, the average cost will be approximately \$0.049 per share. In addition, Plaintiffs’ Counsel may apply to the Court, from time to time, for their fees and expenses, including hourly time billing incurred solely for administration of the Settlement.

**Reasons for Settlement** – Plaintiffs believe that the proposed Settlement with Defendants is an excellent recovery and is in the best interests of the Settlement Class. Because of the risks associated with continuing to litigate and proceeding to trial, there was a danger that the Settlement Class would not have prevailed on their claims against Defendants, in which case the Settlement Class would receive nothing from Defendants. The amount of damages recoverable by Settlement Class Members was and is challenged by Defendants. Recoverable damages in this case are limited to losses caused by conduct actionable under applicable law and, had the Action gone to trial, Defendants would have asserted that all or most of the losses of Settlement Class Members were caused by non-actionable conduct or market, industry, or general economic factors. Defendants would also assert, among other things, that their conduct complied with all applicable legal standards and that they did not act with the required state of mind to be liable for any violations of the federal securities laws.

**Further Information** – You may contact a representative of Plaintiffs’ Counsel for further information about the Settlement by calling the following toll-free number: 1-800-903-8296. You also may email Plaintiffs’ Counsel at the following email address: [etradesecuritiesclassaction@gcginc.com](mailto:etradesecuritiesclassaction@gcginc.com). Any written inquiries about the Action should be addressed to Plaintiffs’ Counsel at:

E\*TRADE Securities Class Action  
Claims Administrator  
c/o The Garden City Group, Inc.  
PO Box 9888  
Dublin, OH 43017-5788

## **II. NOTICE OF HEARING ON PROPOSED SETTLEMENT**

A settlement hearing will be held on October 11, 2012, at 3:00 p.m., before the Honorable J. Paul Oetken, United States District Judge, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007 (“Settlement Hearing”). The purpose of the Settlement Hearing will be: (1) to determine whether the Court should grant final certification to the Settlement Class pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure; (2) to determine whether the Settlement consisting of \$79,000,000 in cash should be approved as fair, reasonable, and adequate to the Settlement Class and the proposed Judgment (as defined on page 10) entered; (3) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable, and should be approved by the Court; (4) to determine whether any applications for attorneys’ fees or expenses to Plaintiffs’ Counsel should be approved; and (5) to rule upon such other matters as the Court may deem appropriate. The Court may adjourn or continue the Settlement Hearing without further notice to the Settlement Class.

## **III. THE LITIGATION**

Currently pending before the United States District Court for the Southern District of New York is a consolidated action purportedly on behalf of all persons who purchased the securities of E\*TRADE during the Settlement Class Period and who were damaged thereby. The defendants named in the Action are E\*TRADE and the Individual Defendants: Mitchell H. Caplan (former CEO), Robert J. Simmons (former CFO), and Dennis E. Webb (head of capital markets division).

On October 2, 2007, plaintiff Larry Freudenberg filed a complaint in the United States District Court for the Southern District of New York captioned *Freudenberg v. E\*TRADE Financial Corp.*, et al., Civil Action No. 07 Civ. 8538 (“Freudenberg Action”). By Court Order dated July 16, 2008, the Freudenberg Action was consolidated with four other actions: *Boston v. E\*TRADE Financial Corp.*, et al., Civil Action No. 07 Civ. 8808; *Thulman v. E\*TRADE Financial Corp.*, et al., Civil Action No. 07 Civ. 9651; *Davidson v. E\*TRADE Financial Corp.*, et al., Civil Action No. 07 Civ. 10400; and *Ferenc v. E\*TRADE Financial Corp.*, et al., Civil Action No. 07 Civ. 10540. By the same Order, Kristen Management Limited, Straxton Properties, Inc., and Javed Fiyaz were appointed as lead plaintiffs and Ira Newman was appointed as co-lead plaintiff. The Order also provided that Brower Piven, A Professional Corporation was appointed lead counsel (“Lead Counsel”), and Levi & Korsinsky LLP was appointed co-lead counsel (“Co-Lead Counsel”).

On January 16, 2009, Plaintiffs filed their Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws (“Complaint”) asserting violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 arising out of Defendants’ alleged false and misleading statements concerning, among other things, the Company’s mortgage business. Defendants filed their motion to dismiss the Complaint on April 2, 2009; the Court denied Defendants’ motion on May 11, 2010.

During the course of litigation, Plaintiffs conducted extensive discovery. Defendants produced to Plaintiffs for their review more than 12 million pages of documents. In addition, Plaintiffs issued subpoenas to over 27 third-parties, and received and reviewed more than 4 million pages of documents in response to these subpoenas. Plaintiffs also conducted depositions of defendants Caplan and Webb.

On September 26, 2011, the parties participated in a mediation session with the Honorable Layn R. Phillips (Ret.), but did not reach a resolution. The parties met without Judge Phillips on November 7, 2011 and had a number of telephone calls over the course of several months concerning possible settlement. On December 17, 2011, the parties again participated in a mediation session with Judge Phillips. During the course of this mediation, the parties reached an agreement-in-principle to settle the Action. Subsequently, the counsel for Plaintiffs and Defendants continued negotiations, resulting in the terms and conditions set forth in the Stipulation.

#### **IV. CLAIMS OF THE SETTLEMENT CLASS AND BENEFITS OF SETTLEMENT**

Plaintiffs believe that the claims asserted in the Action against Defendants have merit and that the evidence developed to date supports those claims. However, Plaintiffs and their counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendants through trial and through appeals. Plaintiffs and their counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Action, as well as the difficulties and delays inherent in such litigation. Plaintiffs and their counsel also are mindful of the inherent problems of proof under and possible defenses to the securities law violations asserted in the Action. Plaintiffs and their counsel believe that the settlement set forth in the Stipulation confers substantial benefits upon the Settlement Class. Based on their evaluation, Plaintiffs and their counsel have determined that the Settlement set forth in the Stipulation is in the best interests of Plaintiffs and the Settlement Class.

#### **V. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

Defendants have denied and continue to deny each and all of the claims alleged in the Action. Defendants deny that they have committed or intended to commit any wrongdoing or violations of law arising out of any of the conduct, statements, acts, or omissions alleged in the Action, and maintain that their conduct was at all times proper and in compliance with applicable provisions of law. Defendants further deny that they made any material misstatements or omissions in E\*TRADE's public filings, press releases, or other public statements, that Plaintiffs or the Settlement Class have suffered any damages, that the prices of E\*TRADE securities were artificially inflated by reasons of alleged misrepresentations, non-disclosures or otherwise, and that Plaintiffs or the Settlement Class were harmed by any conduct alleged in the Action or that could have been alleged therein. Each of the Individual Defendants further asserts that, at all relevant times, they acted in good faith and in a manner they reasonably believed to be in the best interests of E\*TRADE and its shareholders. Defendants, however, recognize the uncertainty and the risk inherent in any litigation, especially complex securities litigation, and the difficulties and substantial burdens, expense, and length of time that may be necessary to defend the Action through the conclusion of discovery, summary judgment motions, trial, post-trial motions, and appeals. Defendants have therefore determined to settle the Action on the terms and conditions set forth in the Stipulation and to put the Released Claims (as defined on page 10) to rest finally and forever, without in any way acknowledging any wrongdoing, fault, liability, or damages to Plaintiffs and the Settlement Class.

#### **VI. TERMS OF THE PROPOSED SETTLEMENT**

E\*TRADE has paid, or caused to be paid, cash in the amount of \$79,000,000 into an escrow account, which will earn interest for the benefit of the Settlement Class, pursuant to the terms of the Stipulation, until distributed to eligible claiming Settlement Class Members. In exchange for such payment, the Released Claims (as defined on page 10) will be released, discharged, and dismissed with prejudice as against each of the Released Persons (as defined on page 10). A portion of the Settlement Fund will be used for certain administrative expenses, including the costs of printing and mailing this Notice, the cost of publishing newspaper notices, payment of any taxes assessed against the Settlement Fund and costs associated with the processing of claims submitted. In addition, as explained herein, a portion of the Settlement Fund may be awarded by the Court to award Plaintiffs' Counsel attorneys' fees and expenses. The Settlement Fund less (i) any Court-awarded attorneys' fees, costs, and expenses; (ii) notice and administration costs; (iii) taxes and tax expenses; and (iv) other Court-approved deductions that occur before distribution of the proceeds of the Settlement to the Settlement Class ("Net Settlement Fund"), will be distributed to any Settlement Class Member whose claim for recovery has been allowed pursuant to the terms of the Stipulation ("Authorized Claimant") according to the Plan of Allocation described below.

#### **VII. REQUESTING EXCLUSION FROM THE SETTLEMENT CLASS**

If you do not wish to be included in the Settlement Class and you do not wish to participate in the proposed settlement described in this Notice you may request to be excluded. To do so, you must send a letter, **postmarked no later than September 10, 2012**. In this letter, you must set forth: (a) your name, current address, and day-time and evening telephone numbers; (b) the dates of all your purchases and/or sales of E\*TRADE securities during the Settlement Class Period; (c) the number of shares purchased and/or sold on each such date; (d) the prices paid and/or received for all such shares on each such date excluding all purchases and/or sales taxes, commissions and other transaction expenses; and (e) a clear and unambiguous statement that you wish to be excluded from the Settlement Class. The request for exclusion should be addressed as follows:

E\*TRADE Securities Class Action  
Claims Administrator  
c/o The Garden City Group, Inc.  
Attn: Exclusions Department  
PO Box 9888  
Dublin, OH 43017-5788

NO REQUEST FOR EXCLUSION WILL BE CONSIDERED VALID UNLESS ALL OF THE INFORMATION DESCRIBED ABOVE IS INCLUDED IN ANY SUCH REQUEST. NO FURTHER OPPORTUNITY TO REQUEST EXCLUSION WILL BE GIVEN IN THIS ACTION.

If you validly request exclusion from the Settlement Class: (a) you will be excluded from the Settlement Class; (b) you shall have no rights under the Stipulation; (c) you shall not be entitled to submit any Proof of Claim forms; (d) you will not share in the proceeds of the Settlement described herein; (e) you will not be bound by any judgment entered in the Action; and (f) you will not be precluded, by reason of your decision to request exclusion from the Settlement Class, from otherwise prosecuting an individual claim, if timely, against the Defendants based on the matters complained of in the Action.

### **VIII. THE RIGHTS OF SETTLEMENT CLASS MEMBERS**

If you are a Settlement Class Member, you have the following options:

1. You may file a Proof of Claim. If you submit a Proof of Claim, you will share in the proceeds of the proposed Settlement if your claim is valid and if the proposed Settlement is finally approved by the Court. In addition, you will be bound by the Judgment and release described below.
2. If you have not timely and validly requested exclusion from the Settlement Class (see Section XIV below), you may object to the Settlement. However, if your objection is rejected, you will be bound by the Settlement and the Judgment just as if you had not objected.
3. You may do nothing at all. If you choose this option, you will not share in the proceeds of the Settlement, but you will be bound by any judgment entered by the Court in connection with the Settlement, and you shall be deemed to have, and by operation of the Judgment shall have, fully released all of the Released Claims against the Released Persons.
4. If you are a Settlement Class Member, you may, but are not required to, enter an appearance through counsel of your own choosing at your own expense. If you do not do so, you will be represented by Plaintiffs' Counsel, who are:

David A.P. Brower  
Brian C. Kerr  
**BROWER PIVEN**  
**A PROFESSIONAL CORPORATION**  
488 Madison Avenue, 8th Floor  
New York, NY 10022

*Plaintiffs' Lead Counsel*

Eduard Korsinsky  
Shannon L. Hopkins  
**LEVI & KORSINSKY, LLP**  
30 Broad Street, 24th Floor  
New York, NY 10004

*Plaintiffs' Co-Lead Counsel*

You will not be charged personally for the services of Plaintiffs' Counsel.

## **IX. PLAN OF ALLOCATION**

The Net Settlement Fund will be distributed to Settlement Class Members who submit valid and timely Proofs of Claim in connection with this Settlement, and have an allowable loss under the Plan of Allocation described below. You will be eligible to participate in the distribution only to the extent you had a net loss on your overall transactions in E\*TRADE securities during the Settlement Class Period. If you had a net gain from your overall transactions in E\*TRADE securities during the Settlement Class Period, the value of the Recognized Claim will be zero. If you suffered a net loss on your overall transactions in E\*TRADE securities during the Settlement Class Period, but that loss was less than the Recognized Claim calculated below, then the Recognized Claim shall be limited to the amount of the actual loss. For purposes of determining whether you had a net gain or suffered a net loss from your overall transactions in E\*TRADE securities that will receive payment under this Plan of Allocation during the Settlement Class Period, the Claims Administrator shall: (i) for each E\*TRADE security, total the amount paid for those securities purchased during the Settlement Class Period by the claimant excluding all taxes, commissions, and other purchase fees ("Total Purchase Amount"); (ii) for each E\*TRADE security, match any sales of those securities purchased during the Settlement Class Period first against the Settlement Class Member's opening position in such security (the proceeds of those sales will not be considered for purposes of calculating gains or losses); (iii) for each E\*TRADE security, total the amount received for sales of the remaining E\*TRADE securities sold during the Settlement Class Period excluding all taxes, commissions, and other sales fees ("Sales Proceeds"); and (iv) ascribe a \$3.55 per common share holding value for the number of shares of E\*TRADE securities purchased during the Settlement Class Period and still held at the end of the Settlement Class Period ("Holding Value"). The Holding Value is based upon the closing price of E\*TRADE securities on November 12, 2007 – the first full trading day after the end of the Settlement Class Period. The difference between (i) the Total Purchase Amount and the (ii) sum of the Sales Proceeds and Holding Value, will be deemed your net gain or net loss on your overall transactions in E\*TRADE securities during the Settlement Class Period.

In the event that a Settlement Class Member made more than one purchase or sale of a particular E\*TRADE security, all purchases and sales shall be matched on a First-In-First-Out ("FIFO") basis. Settlement Class Period sales will be matched first against any particular E\*TRADE security held at the beginning of the Class Period and then against purchases during the Settlement Class Period in chronological order. For all purposes, the transaction date and not the settlement date shall be used as the date for determining eligibility to file a claim. Gifts and transfers of securities are not eligible purchases. The covering purchase of a "short" sale is not an eligible purchase. No distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than \$10.00.

For purposes of determining the amount an Authorized Claimant may recover under the Plan of Allocation, Plaintiffs' Counsel have consulted with their damages expert. The Court may modify the Plan of Allocation without further notice to the Settlement Class. The Court has also reserved jurisdiction to allow, disallow, or adjust the claim of any Settlement Class Member on equitable grounds.

Payment pursuant to the Plan of Allocation set forth below shall be conclusive against all Authorized Claimants. No Person shall have any claim against the Defendants or the Plaintiffs on behalf of themselves and the Settlement Class (collectively the "Settling Parties"), Plaintiffs' Counsel, or the Claims Administrator or other Person designated by Plaintiffs' Lead Counsel based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court. All Settlement Class Members who have failed to complete and file a valid and timely Proof of Claim in this Settlement shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of the Judgment entered and the releases given.

Subject to the foregoing, under the Plan of Allocation, each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's Recognized Loss bears to the total of the Recognized Loss of all Authorized Claimants ("pro rata share").

### **Calculation of Recognized Loss for E\*TRADE Common Stock Purchases:**

Please note all calculations of purchase prices and sale prices under this Plan of Allocation are exclusive of all purchase or sales taxes, commissions and other transaction expenses.

- (i) For each share of E\*TRADE common stock purchased or otherwise acquired between April 19, 2006 and July 25, 2007, inclusive, and held at the close of business on February 7, 2008, the recognized loss per share is \$3.42.

- (ii) For each share of E\*TRADE common stock purchased or otherwise acquired between April 19, 2006 and July 25, 2007, inclusive, and sold between November 12, 2007 and February 7, 2008, inclusive, the recognized loss per share is \$3.42.
- (iii) For each share of E\*TRADE common stock purchased or otherwise acquired between April 19, 2006 and July 25, 2007, inclusive, and sold between July 26, 2007 and August 10, 2007, inclusive, the recognized loss per share is the **lesser** of:
  - (a) \$0.17; **or**
  - (b) the price paid less the price received.
- (iv) For each share of E\*TRADE common stock purchased or otherwise acquired between April 19, 2006 and July 25, 2007, inclusive, and sold between August 13, 2007 and October 17, 2007, the recognized loss per share is \$0.52.
- (v) For each share of E\*TRADE common stock purchased or otherwise acquired between April 19, 2006 and July 25, 2007, inclusive, and sold between October 18, 2007 and November 9, 2007, inclusive, the recognized loss per share is \$0.97.
- (vi) For each share of E\*TRADE common stock purchased or otherwise acquired between April 19, 2006 and July 25, 2007, inclusive, and sold on or before July 25, 2007, the recognized loss is \$0.
- (vii) For each share of E\*TRADE common stock purchased or otherwise acquired between July 26, 2007 and August 10, 2007, and held at the close of business on February 7, 2008, the recognized loss per share is \$3.25.
- (viii) For each share of E\*TRADE common stock purchased or otherwise acquired between July 26, 2007 and August 10, 2007, inclusive, and sold between November 12, 2007 and February 7, 2008, inclusive, the recognized loss per share is \$3.25.
- (ix) For each share of E\*TRADE common stock purchased or otherwise acquired between July 26, 2007 and August 10, 2007, inclusive, and sold between August 13, 2007 and October 17, 2007, inclusive, the recognized loss per share is the **lesser** of:
  - (a) \$0.35; **or**
  - (b) the price paid less the price received.
- (x) For each share of E\*TRADE common stock purchased or otherwise acquired between July 26, 2007 and August 10, 2007, inclusive, and sold between October 18, 2007 and November 9, 2007, inclusive, the recognized loss per share is \$0.80.
- (xi) For each share of E\*TRADE common stock purchased or otherwise acquired between July 26, 2007 and August 10, 2007, inclusive, and sold on or before August 10, 2007, the recognized loss is \$0.
- (xii) For each share of E\*TRADE common stock purchased or otherwise acquired between August 13, 2007 and October 17, 2007, inclusive, and held at the close of business on February 7, 2008, the recognized loss per share is \$2.90.
- (xiii) For each share of E\*TRADE common stock purchased or otherwise acquired between August 13, 2007 and October 17, 2007, inclusive, and sold between November 12, 2007 and February 7, 2008, inclusive, the recognized loss per share is \$2.90.
- (xiv) For each share of E\*TRADE common stock purchased or otherwise acquired between August 13, 2007 and October 17, 2007, inclusive, and sold between October 18, 2007 and November 9, 2007, inclusive, the recognized loss per share is the **lesser** of:
  - (a) \$0.45; **or**
  - (b) the price paid less the price received.

- (xv) For each share of E\*TRADE common stock purchased or otherwise acquired between August 13, 2007 and October 17, 2007, inclusive, and sold on or before October 17, 2007, the recognized loss is \$0.
- (xvi) For each share of E\*TRADE common stock purchased or otherwise acquired between October 18, 2007 and November 9, 2007, inclusive, and held at the close of business on February 7, 2008, the recognized loss per share is \$2.45.
- (xvii) For each share of E\*TRADE common stock purchased or otherwise acquired between October 18, 2007 and November 9, 2007, inclusive, and sold between November 12, 2007 and February 7, 2008, inclusive, the recognized loss per share is the **lesser** of:
- (a) \$2.45;
  - (b) the price paid less \$3.55;
  - (c) the price paid less the price received; **or**
  - (d) the price paid less the price in Table A on the date of sale.
- (xviii) For each share of E\*TRADE common stock purchased or otherwise acquired between October 18, 2007 and November 9, 2007, inclusive, and sold on or before November 9, 2007, the recognized loss is \$0.

**TABLE A**

DATE	PRICE	DATE	PRICE	DATE	PRICE	DATE	PRICE
11/12/07	3.55	12/04/07	4.71	12/26/07	4.29	01/17/08	3.90
11/13/07	4.28	12/05/07	4.66	12/27/07	4.27	01/18/08	3.88
11/14/07	4.70	12/06/07	4.63	12/28/07	4.25	01/22/08	3.86
11/15/07	4.89	12/07/07	4.60	12/31/07	4.23	01/23/08	3.85
11/16/07	5.00	12/10/07	4.59	01/02/08	4.21	01/24/08	3.85
11/19/07	4.95	12/11/07	4.56	01/03/08	4.18	01/25/08	3.84
11/20/07	4.79	12/12/07	4.54	01/04/08	4.16	01/28/08	3.85
11/21/07	4.72	12/13/07	4.51	01/07/08	4.12	01/29/08	3.85
11/23/07	4.79	12/14/07	4.49	01/08/08	4.07	01/30/08	3.86
11/26/07	4.77	12/17/07	4.46	01/09/08	4.03	01/31/08	3.88
11/27/07	4.78	12/18/07	4.43	01/10/08	4.01	02/01/08	3.90
11/28/07	4.82	12/19/07	4.40	01/11/08	3.98	02/04/08	3.92
11/29/07	4.82	12/20/07	4.36	01/14/08	3.97	02/05/08	3.93
11/30/07	4.81	12/21/07	4.33	01/15/08	3.94	02/06/08	3.94
12/03/07	4.76	12/24/07	4.31	01/16/08	3.92	02/07/08	3.95

**Calculation of Recognized Loss for E\*TRADE Call Option Purchases:**

- (i) The Recognized Claim for each call option contract on E\*TRADE common stock purchased or otherwise acquired during the Settlement Class Period and sold during the Settlement Class Period shall be twenty-five percent (25%) of the lesser of (1) the per share recognized loss as referenced above for all shares covered by the call option contract on the date the call option was purchased, less the per share recognized loss for all shares covered by the call option contract on the date the call option was sold, or (2) the difference between: (a) the amount paid per call option contract and (b) the sale price received per option contract received when said call options were sold (if the option expired worthless while still owned by the Authorized Claimant, the sales price shall be deemed to be Zero (\$0.00)).
- (ii) The Recognized Claim for each call option contract on E\*TRADE common stock purchased or otherwise acquired during the Settlement Class Period and held on November 12, 2007 will be twenty-five percent (25%) of the lesser of (1) the per share recognized loss for all shares covered by the call option contract on the date the call option was purchased, or (2) the difference between: (a) the amount paid per call option contract and (b) the sale price received per option contract received when said call options were sold (if the option expired worthless while still owned by the Authorized Claimant, the sales price shall be deemed to be Zero (\$0.00)).

- (iii) Shares of E\*TRADE common stock acquired during the Settlement Class Period through the exercise of a call option shall be treated as a purchase on the date of exercise for the exercise price plus the cost of the call option, and any Recognized Claim arising from such transaction shall be computed as provided for other purchases of E\*TRADE common stock as set forth herein.
- (iv) No Recognized Claim shall be calculated based upon the sale or writing of any call option that was subsequently repurchased.

**Calculation of Recognized Loss for E\*TRADE Put Option Sales:**

- (i) The Recognized Claim for each put option contract on E\*TRADE common stock sold or written during the Settlement Class Period and repurchased during the Settlement Class Period shall be fifty percent (50%) of the lesser of (1) the per share recognized loss for all shares covered by the put option contract on the date the put option was sold, less the per share recognized loss for all shares covered by the put option contract on the date the put option was repurchased, or (2) the difference between: (a) the amount received per put option contract and (b) the repurchase price paid per contract when said put options were repurchased (if the option expired worthless, the repurchase price shall be deemed to be Zero (\$0.00)).
- (ii) The Recognized Claim for each put option contract on E\*TRADE common stock sold during the Settlement Class Period and extant on November 12, 2007 will be fifty percent (50%) of the lesser of (1) the per share recognized loss for all shares covered by the put option contract on the date the put option was sold, (2) the difference between: (a) the amount received per put option contract and (b) the repurchase price paid per option contract when said put options were repurchased (if the option expired worthless, the repurchase price shall be deemed to be Zero (\$0.00)).
- (iii) For E\*TRADE put options that were sold or written during the Settlement Class Period, that were "put" to the Authorized Claimant (i.e., exercised) at any time, the Authorized Claimant's Recognized Claim shall be calculated as a purchase of E\*TRADE common stock as if the sale of the put option were instead a purchase of E\*TRADE common stock on the date of the sale or writing of the put option, and the "purchase price paid" shall be the strike price of the put option less the proceeds received from the sale of the put option.
- (iv) No Recognized Claim shall be calculated based upon the sale of any put option that was previously purchased.

The total recovery payable to Authorized Claimants from transactions in call or put options shall not exceed five percent (5%) of the amount to be distributed to all Authorized Claimants.

\* \* \*

For all purposes, transaction prices shall exclude all taxes, commissions and other transaction expenses. In addition, the transaction date, and not the settlement date, shall be used as the date for determining inflation per share, eligibility to file a claim, and the calculation of Recognized Losses. All purchases and sales of E\*TRADE securities shall be accounted for and matched using the FIFO method of accounting.

**X. PARTICIPATION IN THE SETTLEMENT**

TO PARTICIPATE IN THE DISTRIBUTION OF THE NET SETTLEMENT FUND, YOU MUST TIMELY COMPLETE AND RETURN A VALID PROOF OF CLAIM IN CONNECTION WITH THIS SETTLEMENT.

**A Proof of Claim is being sent with this Notice. If you are a Settlement Class Member and need an additional Proof of Claim, copies may be obtained by telephoning the Claims Administrator at 1-800-903-8296 or by downloading the form on the internet at [www.gcginc.com](http://www.gcginc.com).**

The Proof of Claim, with all supporting documents (DO NOT SEND ORIGINALS), must be **postmarked no later than OCTOBER 31, 2012**, and delivered to the Claims Administrator at the address below. DO NOT SEND a Proof of Claim to counsel for the Settling Parties or the Court.

E\*TRADE Securities Class Action  
Claims Administrator  
c/o The Garden City Group, Inc.  
PO Box 9888  
Dublin, OH 43017-5788

Unless the Court orders otherwise, if you do not timely submit a valid Proof of Claim, you will be barred from receiving any payment from the Net Settlement Fund, but will in all other respects be bound by the provisions of the Stipulation and the Judgment. The Court may disallow or adjust the claim of any Settlement Class Member. Each claimant will be deemed to have submitted to the jurisdiction of the United States District Court for the Southern District of New York with respect to his, her, or its Proof of Claim.

#### **XI. DISMISSAL AND RELEASES**

If the proposed Settlement is approved, the Court will enter a Final Judgment and Order of Dismissal (“Judgment”). The Judgment will dismiss the Released Claims with prejudice as to the Released Persons, as such terms are defined below. The Judgment will provide that all Settlement Class Members shall be deemed to have released and forever discharged all Released Claims against all Released Persons and that the Released Persons shall be deemed to have released and discharged Plaintiffs, Plaintiffs’ Counsel, and Settlement Class Members from all claims (including Unknown Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims.

“Released Claims” means any and all claims, debts, demands, rights, liabilities, and causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, restitution, rescission, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability 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 unliquidated, at law or in equity, matured or unmatured, including, without limitation, claims arising under Sections 10(b) or 20(a) of the Securities Exchange Act of 1934 and claims for control person liability, whether class or individual in nature, including both known claims and Unknown Claims (as defined below), whether or not concealed or hidden that (i) have been asserted in this Action or in the Complaint by the Plaintiffs against any of the Released Persons (as defined below), or (ii) could have been asserted in the Action or any other forum by the Plaintiffs or any Settlement Class Member (or any person who inherited or otherwise acquired E\*TRADE securities from a Settlement Class Member) against any of the Released Persons that arise out of, or are based upon or related in any way to: (a) such Settlement Class Member’s purchase, acquisition, disposition, sale or retention of, or other transaction in, E\*TRADE securities during the Settlement Class Period, or (b) the allegations, transactions, facts, matters or occurrences, representations or omissions involved in the Action, or set forth or referred to in the Complaint, including without limitation, claims that arise out of or relate to any disclosures, Securities and Exchange Commission filings, press releases, registration statements, offering memoranda, or other public statements by or on behalf of E\*TRADE during the Settlement Class Period. “Released Claims” do not include the claims being prosecuted in a derivative capacity on behalf of E\*TRADE in *Rubery, et al. v. Caplan, et al.*, Civil Action No. 07 Civ 8612, or any claims to enforce the terms of the Settlement or the Stipulation.

“Released Persons” means each Defendant’s past or present directors, officers, employees, partners, insurers, co-insurers, reinsurers, controlling shareholders, attorneys, accountants or auditors, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, agents, assigns, spouses, heirs, executors, estates, administrators, related or affiliated entities, any entity in which a Defendant has a controlling interest, any members of any Individual Defendant’s immediate family, or any trust of which any Individual Defendant is the settlor or which is for the benefit of any Individual Defendant’s family.

“Unknown Claims” means any claims that Plaintiffs or any Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Persons that, if known by him, her, or it, would or might have affected his, her, or its settlement with and release of the Released Persons, or would or might have affected his, her, or its decisions with respect to this settlement. Plaintiffs and Settlement 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 Plaintiffs upon the Effective Date shall expressly, fully, finally, and forever settle and release and each Settlement 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 that is negligent, 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. Plaintiffs acknowledge, and the

Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the inclusion of Unknown Claims in the definition of Released Claims was separately bargained for and a key element of the settlement of which this release is a material and essential part. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiffs shall expressly waive and relinquish, and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived and relinquished, the provisions, rights, and benefits of California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiffs shall expressly waive and relinquish, and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived and relinquished, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542.

## **XII. APPLICATION FOR ATTORNEYS' FEES AND EXPENSES**

At the Settlement Hearing, Plaintiffs' Counsel will request that the Court award attorneys' fees in an amount not to exceed 33.33% of the Settlement Fund, plus their costs and expenses in an amount not to exceed \$750,000, which were incurred and not previously reimbursed in connection with prosecuting the claims in the Action, plus interest. Plaintiffs' Counsel's fee application will be filed with the Court on August 10, 2012. All such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees, costs, or expenses.

Plaintiffs' Counsel have committed a substantial amount of time prosecuting claims on behalf of Plaintiffs and the Settlement Class. In addition, they have not been reimbursed for any of their costs and expenses. The amounts requested by Plaintiffs' Counsel will compensate counsel for their efforts in achieving the Settlement for the benefit of the Settlement Class, and for their risk in undertaking this representation on a wholly contingent basis. The amount to be requested is within the range of fees awarded to plaintiffs' counsel under similar circumstances in other litigations of this type. Plaintiffs' Counsel may thereafter from time to time apply to the Court, without further notice to the Settlement Class, for an additional award of attorneys' fees and costs incurred in connection with administering the Settlement. All such awards shall be subject to the approval of the Court.

## **XIII. CONDITIONS FOR SETTLEMENT**

The Settlement is conditioned upon the occurrence of certain events described in the Stipulation. Those events include, among other things: (1) entry of the Judgment by the Court, as provided for in the Stipulation and (2) expiration of the time to appeal from or alter or amend the Judgment. If, for any reason, any one of the conditions described in the Stipulation is not met or the Stipulation otherwise does not become effective or, under certain specified conditions, the Stipulation is terminated and, thereby, becomes null and void, the parties to the Stipulation will be restored to their respective positions as of the date the Stipulation was executed.

## **XIV. THE RIGHT TO OBJECT AND BE HEARD AT THE HEARING**

Any Settlement Class Member who has not excluded himself, herself, or itself from the Settlement Class can object to the Settlement, or any part of it, the Plan of Allocation, and/or the application by Plaintiffs' Counsel for attorneys' fees and/or expenses. To object, any such Person must submit a written objection and copies of any papers and briefs so they are **received on or before September 10, 2012**, by each of the following:

Clerk of the Court  
Southern District of New York  
Daniel Patrick Moynihan U.S.  
Courthouse  
500 Pearl Street  
New York, NY 10007

Brower Piven  
A Professional Corporation  
David A.P. Brower  
488 Madison Avenue  
Eighth Floor  
New York, NY 10022

*Plaintiffs' Lead Counsel*

Davis Polk & Wardwell LLP  
Amelia T.R. Starr  
450 Lexington Avenue  
New York, NY 10017  
*Attorneys for Defendant E\*TRADE  
Financial Corporation and the  
Individual Defendants*

Any written objection must demonstrate the objecting Person's membership in the Settlement Class, including the dates of all such Settlement Class Member's purchases and/or sales of E\*TRADE securities during the Settlement Class Period, the number of shares purchased and/or sold on each such date, and the prices paid and/or received for all such shares on each such date (excluding all purchase and/or sale taxes, commissions and other transaction expenses). Only Settlement Class Members who have submitted written objections in this manner will be entitled to be heard at the Settlement Hearing, unless the Court orders otherwise. Persons who intend to object to the Settlement, the Plan of Allocation and/or Plaintiffs' Counsel's application for an award of Attorneys' fees or reimbursement of expenses, and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and any exhibits they intend to introduce into evidence at the Settlement Hearing.

If you wish to attend the Settlement Hearing in person and speak to the Court, you must ask the Court for permission. To do so, you must submit a written statement noting your intention to appear at the Settlement Hearing to the persons noted above so that it is **received on or before September 10, 2012**.

#### **XV. SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

If you purchased E\*TRADE securities between April 19, 2006 and November 9, 2007, both dates inclusive, for the beneficial interest of a person or entity other than yourself, THE COURT HAS DIRECTED THAT WITHIN SEVEN (7) DAYS OF YOUR RECEIPT OF THIS NOTICE, you either (a) provide to the Claims Administrator identified below the name and last known address of each person or entity for whom or which you purchased E\*TRADE securities during such time period or (b) request additional copies of this Notice, which will be provided to you free of charge, and within seven days mail the Notice directly to the beneficial owners of that E\*TRADE securities. If you select option (a) above, the Claims Administrator will cause copies of this Notice to be forwarded to the beneficial owners of securities referred to herein. If you choose to follow alternative procedure (b), the Court has directed that, upon such mailing, you send a statement to the Claims Administrator confirming that the mailing was made as directed. All communications concerning the foregoing should be addressed to the Claims Administrator:

E\*TRADE Securities Class Action  
Claims Administrator  
c/o The Garden City Group, Inc.  
PO Box 9888  
Dublin, OH 43017-5788  
1-800-903-8296

You are entitled to reimbursement for your reasonable and necessary expenses actually incurred in complying with the foregoing, including reimbursement of reasonable postage expenses and the reasonable costs of obtaining the names and addresses of beneficial owners. Those reasonable expenses and costs will be paid upon request and submission of appropriate supporting documentation. All requests for reimbursement should be sent to the Claims Administrator.

#### **XVI. EXAMINATION OF PAPERS**

This Notice is a summary and does not describe all of the details of the Stipulation. For full details of the matters discussed in this Notice, you may review the Stipulation filed with the Court, which may be inspected during business hours, at the office of the Clerk of the Court, Southern District of New York, Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, New York, NY 10007 or at [www.gcginc.com](http://www.gcginc.com).

If you have any questions about the Settlement, you may contact a representative of Plaintiffs' Counsel by calling the following toll-free number: 1-800-903-8296. You also may email Plaintiffs' Counsel at the following email address: [etradesecuritiesclassaction@gcginc.com](mailto:etradesecuritiesclassaction@gcginc.com). Any written inquiries about the Action should be addressed to Plaintiffs' Counsel at:

E\*TRADE Securities Class Action  
Claims Administrator  
c/o The Garden City Group, Inc.  
PO Box 9888  
Dublin, OH 43017-5788

***PLEASE DO NOT CONTACT THE COURT OR DEFENDANTS' COUNSEL REGARDING THIS NOTICE.***

Dated: July 3, 2012

BY THE ORDER OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK