

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF GEORGIA

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IN RE NETBANK, INC.  
SECURITIES LITIGATION

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:  
: Civil Action No.  
: 1:07-cv-2298-TCB  
: JURY TRIAL DEMANDED  
:

**NOTICE OF PROPOSED SETTLEMENT,  
MOTION FOR ATTORNEYS' FEES AND EXPENSES, AND HEARING THEREON**

**IF YOU PURCHASED THE PUBLICLY-REGISTERED COMMON STOCK OF NETBANK, INC. DURING THE PERIOD BEGINNING MARCH 16, 2005 THROUGH MAY 21, 2007, AND HELD THOSE SHARES ON MAY 21, 2007, YOU COULD GET MONEY FROM A CLASS ACTION SETTLEMENT.**

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

*This is not a notice that you have been sued.*

- The settlement of a lawsuit will provide \$12.5 million in cash, plus interest, to pay claims from investors who bought the publicly-registered common stock of NetBank, Inc. ("NetBank" or the "Company") during the Class Period from March 16, 2005 to May 21, 2007, and held that stock as of May 21, 2007 and suffered losses. Depending on the number of eligible shares purchased by investors who elect to participate in the settlement and when those shares were purchased and sold, the average distribution is estimated to be \$0.664 per share purchased in the Class Period on or before May 18, 2007 and \$0.077 per share purchased on May 21, 2007 – before deduction of Court-approved fees and expenses described below. A further description of the Plan of Allocation is on pages 12 to 15 below.
- The settlement, subject to court approval, resolves a class action lawsuit in federal court over whether NetBank and individual Defendants misled investors about NetBank's common stock and other financial information. The settlement avoids costs and risks to you and the Class from continuing the lawsuit, it pays money to investors like you, and it releases the individual Defendants from liability.
- If the settlement is approved by the Court, the Court-appointed lawyers for investors, Berger & Montague, P.C. and Gorby Peters & Associates, LLC, will ask the Court for an award of attorneys' fees of \$4,250,000, which amounts to approximately 34% of the settlement fund, and expenses of up to \$1,280,000 incurred in investigating the facts, litigating the case, and negotiating the settlement. The Lead Plaintiff will also ask the Court to award him up to \$5,000 in payment of his expenses in this case. These payments, if approved, will come out of the \$12.5 million settlement fund, and are estimated to be an average of \$0.294 per each average damaged share purchased in the Class Period on or before May 18, 2007 and \$0.034 per each average damaged share purchased on May 21, 2007. Therefore, the approximate net recovery, after deduction of attorney fees and expenses (if approved in full by the Court and before deducting any notice and administration costs), is an average of \$0.370 per each average damaged share purchased in the Class Period on or before May 18, 2007 and \$0.043 per each average damaged share purchased on May 21, 2007.
- Lead Plaintiff and the Defendants do not agree on the average amount of damages per share that would be recoverable if the Lead Plaintiff were to have prevailed on each claim alleged. The issues on which the parties disagree include: (1) the amount by which NetBank common stock was allegedly artificially inflated (if at all) during the Class Period; (2) the extent to which external factors, such as general market and industry conditions, influenced the trading price of NetBank common stock at various times during the Class Period; (3) the extent to which the various matters that Lead Plaintiff alleged were materially false or misleading or omitted material facts influenced (if at all) the trading price of NetBank common stock; (4) whether the statements made or facts allegedly omitted were material, false, misleading or otherwise actionable under the securities laws; (5) whether the claims alleged by Lead Plaintiff are barred, in whole or in part, by the statutes of limitations; (6) whether NetBank or any of the Defendants acted with the wrongful intent alleged by Lead Plaintiff; and (7) whether, even if liability could be proven, total damages would be more than \$0 per damaged share. The Defendants deny all liability and believe they would win the case at trial.
- If you are a Class Member (as the term is defined below), your legal rights are affected by the settlement, regardless of whether you act or do not act. **Read this notice carefully.**

**YOUR LEGAL RIGHTS AND OPTIONS**

<b>You can:</b>	<b>That Means:</b>
<b>Submit a Claim Form</b>	If the proposed settlement is finally approved by the Court, you may share in the proceeds if your claim is received, timely and valid and you meet the other requirements of the Plan of Allocation described on pages 12 to 15 below. This is the only way to get a payment. You will be bound by the Judgment and release described below if you stay in the Class regardless of whether you submit a claim.
<b>Exclude Yourself</b>	You can ask to be excluded from the Class. If excluded, you will get no payment from this settlement and will not be part of the Settlement Class, and will not be bound by any Judgment. This is the only option that allows you to ever be part of any other separate lawsuit against any of the individual Defendants about the legal claims being settled in this case.
<b>Object</b>	If you remain part of the Class and you don't like the settlement, or any part of it, or the application for attorneys' fees or expenses, you can write to the Court and counsel to explain why.
<b>Go to a Hearing</b>	If you remain part of the Class, you can write to the Court and ask to speak at the Settlement Fairness Hearing on November 9, 2011 when the Court considers the fairness of the settlement and the request for attorneys' fees and reimbursement of litigation expenses of Plaintiff's Lead Counsel.
<b>Do Nothing</b>	You will get no payment and give up your rights to sue the individual Defendants about the claims that are resolved by this settlement. You will be bound by any Judgment entered by the Court.

- These rights and options — **and the deadlines to exercise them** — are explained in this Notice.
- The Court in charge of this case, which has given preliminary approval to the settlement, still has to decide whether to give final approval of the settlement (subject to any appeals) as fair, reasonable, and adequate.

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## **BASIC INFORMATION**

### **1. Why did I get this Notice package?**

You or someone in your family may have purchased NetBank common stock during the period beginning March 16, 2005 through May 21, 2007.

The Court caused this Notice to be sent to you because you have a right to know about a proposed settlement of a class action lawsuit, a hearing to be held by the Court to consider the fairness, reasonableness and adequacy of the settlement, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves it and after any objections or appeals are resolved, a claims administrator appointed by the Court will make the payments that the settlement allows.

This Notice explains this lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. It is not an expression of any opinion by the Court with respect to the truth of the allegations of the litigation or the merits of the claims or defenses asserted.

The Court in charge of the case is the United States District Court for the Northern District of Georgia, and the case is known as *In re NetBank, Inc. Securities Litigation*, 1:07-cv-2298-TCB (the "Lawsuit"). U.S. District Judge Timothy C. Batten, Sr., is the Judge in charge of this class action. The person who sued is called the "Lead Plaintiff." The persons who are being sued are former officers and directors of NetBank: Steven F. Herbert, Douglas K. Freeman, James P. Gross, Thomas H. Muller, Jr., Eula L. Adams and David W. Johnson, Jr., are called the "Defendants."

### **2. What is this lawsuit about?**

Beginning on September 19, 2007, two class actions were instituted on behalf of purchasers of NetBank common stock, alleging claims against NetBank and certain of its officers and directors for violations of the federal securities laws. By an Order of the Court dated April 21, 2008, the Court consolidated the class actions filed, appointed Robert A. Brown to serve as the Lead Plaintiff, and appointed Berger & Montague, P.C. as Lead Counsel for the Lead Plaintiff. Gorby Peters & Associates, LLC was retained to serve as Local Counsel for the Lead Plaintiff.

On July 3, 2008, the Lead Plaintiff filed a Consolidated and Amended Class Action Complaint on behalf of the Class (the “Complaint”) against certain of NetBank’s former officers and directors, including Defendants Steven F. Herbert, Douglas K. Freeman, James P. Gross, Thomas H. Muller, Jr., Eula L. Adams and David W. Johnson, Jr. Former NetBank director Catherine Ghiglieri was also named as a defendant in the Complaint but was dismissed from the litigation by agreement on September 12, 2008. The Complaint did not include NetBank as a defendant because NetBank had by then filed for bankruptcy and all further litigation against NetBank was stayed by the protections afforded under the federal bankruptcy laws.

The Complaint alleges two bases for relief: (1) violation of § 10(b) of the Securities Exchange Act of 1934 and the related SEC Rule 10b-5; and (2) violation of § 20(a) of the Securities Exchange Act of 1934. The Complaint alleges, among other things, that NetBank and the Defendants artificially inflated the market price of NetBank common stock by making false and misleading statements during the years 2005, 2006 and 2007, regarding the financial results, operations and condition of the Company. Among other things, the Lead Plaintiff alleges that NetBank publicly issued false financial statements of its operating results and financial condition, as well as misrepresentations and omissions concerning its business operations, including its subprime mortgage exposure, mortgage underwriting and risk control practices, reserves and controls, compliance with Generally Accepted Accounting Principles (GAAP) and regulatory requirements, the departure of its outside auditor, its ability to file accurate financial statements, its stated book value, and its true financial condition and results.

The Complaint further alleges that the truth about NetBank began to be disclosed to the public on May 21, 2007, when NetBank announced that, as a result of significant deficiency in its core banking business, the Company sold its \$2.5 billion of core and brokered deposits, its held-for-investment loan portfolio, all of the assets and liabilities of NetBank Business Finance (the business financing arm of NetBank’s banking subsidiary), the Company’s small business equipment leasing and financing operation, and the NetBank brand and related trademarks and service marks. NetBank reported that the sell-off would result in a loss of \$60-70 million. Lead Plaintiff alleges that these disclosures were effectively admissions that the Company’s books and valuations were grossly overstated and misstated, and that not only had NetBank failed to account properly for its mortgage business, but that even its “core” banking business was on the verge of collapse. As a result of these disclosures, NetBank’s common stock price fell 66%, from \$1.75 per share on May 18, 2007 to \$0.59 per share on May 21, 2007. In their Answer filed March 2, 2009, the Defendants denied any wrongdoing or liability whatsoever arising from Lead Plaintiff’s allegations and asserted several affirmative defenses to Lead Plaintiff’s claims.

On April 17, 2009, the Lead Plaintiff filed a motion to certify this litigation as a class action.

On August 7, 2009, following extensive briefing and expert submissions, the Court granted Lead Plaintiff’s motion, certified the Lawsuit as a class action, appointed Robert A. Brown as the representative of the Class (the “Class Representative”) and designated Berger & Montague, P.C. to serve as Lead Counsel for the Class. On August 21, 2009, Defendants filed a motion to request that the Court reconsider its decision to certify this litigation as a class action. By Order dated September 4, 2009, the Court stayed this litigation in order to allow the parties to engage in a mediation in an effort to settle the Lawsuit. The mediation was unsuccessful, and on March 29, 2010, the Court lifted the stay. On April 27, 2010, the Court denied Defendants’ motion for reconsideration of the Court’s decision to certify this litigation as a class action. On May 11, 2010, Defendants filed a petition with the U.S. Court of Appeals for the Eleventh Circuit seeking permission to file an appeal pursuant to Federal Rule of Civil Procedure 23(f). The Defendants’ petition was denied on September 9, 2010.

For approximately three years, the parties engaged in vigorous litigation and extensive discovery. The Parties’ efforts consisted of, among other things: extensive factual investigation; consultation with proposed experts regarding the claims or defenses asserted in the Lawsuit as they relate to valuation, accounting, banking, the state of the banking and mortgage industries, mortgage lending practices, corporate governance, loss causation, market efficiency, statistics, damages and various regulatory matters including those relating to publicly traded corporations, banking and the mortgage industry; interviews of persons with knowledge concerning the facts and events at issue; numerous discovery requests to and documentary productions from third-parties; the collection, exchange and analysis of documents; the examination by deposition of thirty-two separate persons or entities (including various proposed expert witnesses) with an additional twelve depositions scheduled to be taken at the time the parties reached an agreement in principle to settle the Lawsuit; and the drafting of and/or preparation of voluminous reports by proposed experts and extensive discovery from and analysis by proposed experts.

Lead Plaintiff’s discovery efforts also included, among other things: the service of seven sets of request for admission totaling over 11,000 individual requests; four sets of interrogatories and three sets of contention interrogatories; several requests for the production of documents to Defendants in response to which the Defendants collectively produced 348,797 pages of documents and over 1,600,000 individual electronic documents in their native format, the total volume of which is estimated to exceed 10,000,000 pages; the issuance of 412 third party

subpoenas for documents in response to which third parties produced over 9,900,000 pages of documents; and the review and analysis of the nearly 20,000,000 pages of documents produced in the litigation.

On September 9, 2009, Lead Plaintiff and the Defendants held a formal mediation to discuss the possibility of settling the Lawsuit. The Parties concluded the mediation without reaching an agreement to settle the Lawsuit and continued to vigorously litigate.

On March 25, 2011, Defendants filed a motion for partial summary judgment relating to certain of Lead Plaintiff's accounting related claims and loss causation.

On April 6, 2011, Lead Plaintiff and the Defendants again met to discuss the possibility of resolving the Lawsuit. As a result of intensive negotiations, the Lead Plaintiff and the Settling Defendants<sup>1</sup> reached an agreement in principle to settle the Lawsuit for \$12,500,000. On April 8, 2011, the Parties submitted a [proposed] Consent Order Staying All Non-Settlement Related Proceedings and Deadlines Pending Filing of Settlement Related Documents to notify the Court that the Parties had agreed in principle to a settlement of this Lawsuit and to request a stay of the litigation. On April 11, 2011, the Court granted the parties' [proposed] Consent Order Staying All Non-Settlement Related Proceedings and Deadlines Pending Filing of Settlement Related Documents.

On April 25, 2011, the Parties executed a Memorandum of Understanding (the "MOU"), which outlines the essential terms of the proposed settlement. On July 8, 2011, the Parties executed a Stipulation and Agreement of Settlement (the "Settlement Agreement"), which was preliminarily approved by the Court on July 27, 2011.

Throughout the pendency of this Lawsuit, as described above, Plaintiff's Counsel engaged in an on-going and extensive investigation of NetBank and the Defendants, conducted extensive fact discovery, consulted with proposed experts in accounting, corporate governance, banking, various regulatory matters, the mortgage industry, loss causation, market efficiency, statistical analysis and the assessment and calculation of damages, regarding the claims and potential damages in this Lawsuit, and interviewed numerous persons with knowledge concerning the facts at issue. Plaintiff's Counsel have also considered the limited insurance funds available to satisfy any judgment that may be obtained and the Defendants' inability to personally satisfy such a judgment, the difficulties and delays inherent in trial and subsequent appeals, the inherent problems of proof, the Defendants' defenses, the risks of a successful appeal of the Court's prior orders, and the uncertain outcome of any litigation. Based upon the discovery adduced, their investigation and consultation with Lead Plaintiff's proposed experts and consulting experts in accounting, corporate governance, banking, various regulatory matters, the mortgage industry, loss causation, market efficiency, statistical analysis and the assessment and calculation of damages, the claims asserted, the evidence developed, and the damages that might be proven in the Lawsuit, Plaintiff's Counsel believe that the settlement provides an excellent recovery for all Class Members measured against the risks and uncertainties of further litigation, trial and any appeals that may follow.

Lead Plaintiff and Plaintiff's Counsel believe that the Class' claims have merit. Yet, they have concluded that it is in the best interests of Lead Plaintiff and the Class to settle the Lawsuit on the terms contained in the Settlement Agreement after primarily considering, among others, the following factors: (1) the substantial financial benefits provided by the settlement for the Class; (2) the attendant risks of continued litigation and trial; (3) the expense and length of time necessary to prosecute the Lawsuit through trial; (4) the defenses asserted by and available to the Defendants; (5) the uncertainties of the outcome of this complex litigation; (6) the fact that resolution, whenever and however determined, would likely be subject to appellate review, as a consequence of which it might be many more years until final adjudication of the Lawsuit which has been pending since September 19, 2007; (7) the limited amount of funds available from Defendants' insurer to satisfy a trial judgment rendered and ultimately payable at some time in the future, particularly relative to the amount of that policy that had been utilized to defend this and other actions and matters related to NetBank and which, as a consequence, would not be available to satisfy any judgment; (8) the Defendants' respective individual ability to personally satisfy a trial judgment rendered and ultimately payable at some unknown time in the future; (9) the fact that NetBank, Inc. is in the process of a court-supervised liquidation, with no reasonable prospect of continuing business and will have no assets to satisfy any portion of any trial judgment rendered; (10) the common stock of NetBank, Inc. was delisted from the NASDAQ on August 3, 2007, is no longer traded on any open and efficient market and is generally considered to be worthless; and (11) the desirability of permitting the settlement to be consummated as provided by the terms of the Settlement Agreement. Plaintiff's Counsel believe that it is therefore desirable that the Released Claims be fully and finally compromised, settled and resolved by Class Members with prejudice.

At all times, Defendants have denied and continue to deny that they have committed or have attempted to commit, any of the wrongful acts or violations of law or duty that are alleged in the Lawsuit. Defendants contend that at all times and in all respects they have acted properly under the circumstances. Defendants believe that their defenses to the claims asserted against them are strong and that they would prevail either at summary judgment or at trial. Nevertheless, the Settling Defendants desired to settle and terminate the claims of the

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<sup>1</sup> The "Settling Defendants" are Douglas K. Freeman, James P. Gross, Thomas H. Muller, Jr., Eula L. Adams and David W. Johnson, Jr.

Class in order to avoid the burden, inconvenience and expense necessitated with completing the remaining fact discovery, the preparation of expert reports and expert discovery, and to prepare the Lawsuit for trial and the conduct of trial, and to finally put to rest any and all claims that were or could have been asserted in the Lawsuit, or arising out of the matters set forth in the pleadings, without in any way acknowledging any fault or liability.

### 3. What is a class action?

In a class action, the plaintiff is called the Class Representative, and he/she sues on behalf of numerous people who have similar claims. All these people with similar claims are a class, and each one is a class member. One court resolves the claims of all class members, except for those who properly exclude themselves from the class.

### 4. Why is there a settlement?

Instead of litigating the Lawsuit through trial, Lead Plaintiff and the Settling Defendants, after considerable arm's length negotiations, following extensive litigation and discovery spanning over three years, agreed to a compromise of the claims for \$12.5 million. The Court did not decide in favor of Lead Plaintiff or Defendants. Lead Plaintiff believes the Class could have obtained a money judgment if trial proceeded; the Defendants think the Lead Plaintiff would not have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the risks, cost and delay of a trial and possible appeals, and the people affected will get compensation. The Lead Plaintiff and the attorneys believe the settlement is best for all Class Members.

The Lead Plaintiff believes that the proposed settlement is an excellent recovery and is in the best interests of the Class. At the time this settlement was reached, Defendants had filed a motion for partial summary judgment seeking to dismiss a portion of the Lawsuit and a substantial portion of the damages claimed. Because of risks associated with continuing to litigate and proceeding to trial, it was possible that the Class would not have prevailed on any of its claims, in which case the Class would receive nothing. The amount of damages recoverable by the Class 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 litigation gone to trial, Defendants would have asserted that all or most of the losses of Class Members were caused by non-actionable market, industry or general economic factors. In fact, Defendants argued that the absence of loss causation for damages required complete dismissal of the case. Finally, any judgment at trial would have to be collected from the six individual Defendants, who have limited means.

Plaintiff's Lead Counsel have extensively litigated and investigated the case since it was filed in the fall of 2007. Based upon their extensive investigation, as described more fully in the section entitled, "2. What is this lawsuit about?" above, their consultation with experts and their evaluation of the claims of the Class Members against the Defendants and defenses that might be asserted, Plaintiff's Lead Counsel believe that the settlement is fair, reasonable and adequate and in the best interests of the Class. The settlement provides an immediate and certain recovery. By settling, Lead Plaintiff and Defendants avoid the cost, uncertainty, and delay of continued litigation. The parties engaged in extensive negotiations that led to the settlement described in this Notice. Plaintiff's Lead Counsel believe the settlement is fair because they were not certain that the Class would win on any of the claims and even if they did win, they might not get any more money than the \$12.5 million, plus interest, and that Defendants' insurers have agreed to pay to settle the lawsuit, for a number of reasons. Defendants' lawyers believe the settlement is fair because even though Defendants deny Lead Plaintiff's claims, Defendants avoid the cost of continued litigation and risk of losing at trial.

## **WHO IS INCLUDED IN THE SETTLEMENT**

### 5. How do I know if I am a Class Member?

For the purposes of settlement, everyone who fits the following description is a Class Member:

All persons who, during the period March 16, 2005 through and including May 21, 2007, purchased or otherwise acquired the publicly-registered common stock of NetBank, Inc., held such stock as of May 21, 2007, and were damaged as a result (the "Class").

"Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated organization, and any other type of legal entity, and their respective executors, administrators, representatives, agents, attorneys, heirs, successors, and/or assigns.

Excluded from the Class are Defendants Steven F. Herbert, Douglas K. Freeman, James P. Gross, Thomas H. Muller, Jr., Eula L. Adams and David W. Johnson, Jr. (collectively, the "Defendants"), members of the immediate families of any Defendant, any entity in which any of the Defendants has or had a controlling interest, any person or entity affiliated with any of the Defendants, and the legal representatives, heirs, successors or assigns of any

of the Defendants. Also excluded are former executive officers and/or directors of NetBank that served at any time during the Class Period, as well as the members of the immediate family or an heir, successor or assign of the foregoing.

In other words, you are a Class Member and part of the settlement if you purchased the publicly-registered common stock of NetBank between and including March 16, 2005 and May 21, 2007 and you continued to hold that stock as of May 21, 2007, and you are not excluded from the Class for the reasons set forth in the definition above. See “Are there any exceptions to being included as a Class Member?”, below.

#### **6. Are there any exceptions to being included as a Class Member?**

Yes. As mentioned in the description above, you are **not** a Class Member if **any** of the following applies to you:

- You exclude yourself from the Class.
- You sold all of your shares of the common stock of NetBank before May 21, 2007.
- You are a Defendant.
- You are a former executive officer and/or director, or have served as an executive officer and/or director of NetBank at any time during the Class Period.
- You are a member of the immediate family or an heir, successor or assign of the foregoing.
- You are a firm, trust, corporation, or other entity in which any Defendant has a controlling interest.

#### **7. I am still not sure if I'm included.**

If you are still not sure whether you are included, you can ask for free help. You can contact the Claims Administrator toll-free at 1-800-768-8450 or you can fill out the claim form described in question 10, to see if you qualify. You can also contact Plaintiff's Lead Counsel at the address listed in paragraph 16 below.

### **THE SETTLEMENT BENEFITS**

#### **8. What does the settlement provide?**

Defendants' insurers have paid \$12.5 million into an escrow account that is earning interest for the benefit of the Class (the “Settlement Fund”). Depending on the number of eligible shares purchased by Class Members who elect to participate in the settlement and when those shares were purchased and sold, the average distribution is estimated to be \$0.664 per each average damaged share purchased in the Class Period on or before May 18, 2007 and \$0.077 per each average damaged share purchased on May 21, 2007 – before deduction of Court-approved fees and expenses. The average distribution after deduction of attorney fees and expenses (if approved in full by the Court and before deducting any notice and administration costs) is estimated to be \$0.370 per each average damaged share purchased in the Class Period on or before May 18, 2007 and \$0.043 per each average damaged share purchased on May 21, 2007. A further description of the Plan of Allocation is on pages 12 to 15 below.

A portion of the proceeds will be used for the costs of printing and mailing this Notice, the cost of publishing the newspaper and newswire Notices, payment of taxes assessed against the Settlement Fund and costs associated with the processing of claims submitted. In addition, as explained in response to question number 17 below, a portion of the Settlement Fund may be awarded by the Court to Lead Plaintiff and Plaintiff's Lead Counsel as attorneys' fees and for reimbursement of expenses. The balance of the Settlement Fund (the “Net Settlement Fund”) will be distributed according to the Plan of Allocation described on pages 12 to 15 below to Class Members who submit valid and timely Proof of Claim and Release forms with required supporting material. In exchange for the payment by Defendants' insurers, the claims described in response to question number 12 below, “*What am I giving up to get a payment or stay in the Class?*” will be released, discharged, and dismissed with prejudice.

The proposed settlement represents a compromise of disputed claims and does not mean that any of the Defendants have been found liable for any claims asserted by Lead Plaintiff. The Defendants specifically deny any liability on their part and settled this case to avoid the expense and uncertainty of complex litigation. The settlement is subject to approval by the Court following the Settlement Fairness Hearing.

#### **9. How much will my payment be?**

As indicated in response to question number 8 above, your share of the Net Settlement Fund will depend on the number of valid and timely claim forms that Class Members send in, how many shares of NetBank common stock you bought, and when you bought and sold them. You should look at the Plan of Allocation section of this Notice that appears on pages 12 to 15 below for a description of the calculations to be made in computing the amounts to be paid to the “Authorized Claimants,” that is those investors who submit valid and timely Proof of Claim and Release forms establishing that they are Class Members.

## 10. How can I get a payment?

To qualify for payment, you must timely send in a Proof of Claim and Release form that is received by the Claims Administrator. A Proof of Claim and Release form is attached to this Notice. Read the instructions carefully, fill out the form, include all the documents the form asks for, sign it, and mail it postmarked no later than December 10, 2011. Unless the Court orders otherwise, if you do not timely submit a Proof of Claim, you will be barred from receiving any payments from the Net Settlement Fund, but will in all other respects be bound by the Final Judgment in the case.

## 11. When would I get my payment?

The settlement is conditioned on two main events: (1) the entry of the Final Judgment by the Court, as provided for in the Settlement Agreement, after the Court holds a hearing to decide whether to approve the settlement; and (2) the expiration of the applicable period to file all appeals from the judgment. If the settlement is approved, it is possible there may be an appeal by someone. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Also, if certain conditions of the settlement described in the Settlement Agreement are not met, the settlement will be terminated and become null and void. In addition, the Claims Administrator will need time to process all of the timely claims before any distribution can be made. Please be patient.

## 12. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are staying in the Class. That means that you will give up any claims relating to, and cannot sue any of the Defendants for, any of the claims brought by Lead Plaintiff in this matter, as described more fully below. It also means that all of the Court's orders will apply to you and legally bind you. If you sign the Proof of Claim and Release form, you will agree to a "Release of Claims," attached to the Proof of Claim form, which describes exactly the legal claims that you give up if you stay in the Class. You will not give up, however, any claims you have against the Defendants based on other claims that do not relate to Lead Plaintiff's claims here.

If the proposed settlement is approved, the Court will enter a Final Judgment and Order of Dismissal with Prejudice ("Judgment"). The Judgment will dismiss the Released Claims with prejudice as to all Released Persons. The Judgment will provide that all 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 all Class Members and counsel to the Lead Plaintiff from all claims arising out of the prosecution and settlement of the Lawsuit or the Released Claims.

"Released Claims" means any and all claims, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or unmatured, that have been, could have been, or in the future can or might be asserted in the Lawsuit or in any court, tribunal or proceeding (including, but not limited to, any claims arising under federal or state statutory or common law relating to alleged fraud, breach of any duty, negligence, violations of the federal securities laws or otherwise) by or on behalf of Lead Plaintiff or any Member of the Class, against the "Released Persons," whether or not any such Released Persons were named, served with process or appeared in the Lawsuit, arising out of, or relating in any manner to the allegations, facts, events, acquisitions, matters, acts, occurrences, statements, representations, misrepresentations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, through and including the effective date of this settlement, which have been or could have been alleged in the Lawsuit or which are embraced, involved, set forth in, referred to, or otherwise related in any way to: (i) the Lawsuit and any of the Complaints therein, or any amendment thereto; (ii) the fiduciary obligations of any of the Defendants or Released Persons to Lead Plaintiff or the Class; or (iii) the negotiations in connection with the Lawsuit, or any amendment thereto; (iv) the disclosures or disclosure obligations of Defendants or Released Persons in connection with the Lawsuit. The Released Claims include "Unknown Claims" as defined below.

"Released Persons" means each and all of the Defendants and each of their Related Parties. "Related Parties" means each of a 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, assigns, spouses, heirs, related or affiliated entities, any entity in which a Defendant has a controlling interest, any member of any Defendant's immediate family, or any trust of which any Defendant is the settlor or which is for the benefit of any Defendant's family.

"Unknown Claims" means any Released Claims which any Lead Plaintiff or 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 which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this settlement or to request exclusion therefrom. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the effective date,

the Lead Plaintiff shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived 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.**

The Lead Plaintiff shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived 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. The 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 the 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, 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. The Lead Plaintiff acknowledges, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want to be bound by the Judgment or have the opportunity for payment from this settlement, and instead want to keep your claims and the right to sue the Defendants on your own about the legal issues in this case, then you must take steps to get out. This is called excluding yourself from – or opting out of – the Class.

#### **13. How do I get out of the settlement?**

If you do not wish to be included in the 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 submit a written request for exclusion that must be received on or before October 11, 2011 and must include: (a) the name, address, and telephone number of the person(s) requesting exclusion; (b) identification of each of the person's purchases and sales of NetBank, Inc. common stock made during the Class Period, including the dates of purchase or sale, the number of shares purchased and/or sold, and the price paid or received per share for each such purchase or sale; (c) provide proper evidence of the person's purchases and sales of NetBank common stock during the Class Period; and (d) state that the person wishes to be excluded from the Class. No request will be considered valid unless all of the information described above is included in the request. The request must be addressed as follows:

NetBank Securities Litigation  
Claims Administrator  
c/o Heffler, Radetich & Saitta LLP  
P.O. Box 58999  
Philadelphia, PA 19102-8999

You cannot exclude yourself by phone or by e-mail.

**If you ask to be excluded from the Class, you will not get any settlement payment, and you cannot object to the settlement.** If you exclude yourself, you will not be legally bound by anything that happens in this Lawsuit. You may be able to sue (or continue to sue) the Defendants in the future about the claims in this Lawsuit.

#### **14. If I don't exclude myself, can I sue Defendants for the same things later?**

No. Unless you exclude yourself, you give up any right to sue any of the Defendants about the claims that this settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue any lawsuit alleging the same claims as are alleged herein. Remember, the exclusion deadline is October 11, 2011. See also Question No. 12, "*What am I giving up to get a payment or stay in the Class?*".

#### **15. If I exclude myself, can I get money from this settlement?**

No. If you exclude yourself, do not send in a Proof of Claim and Release form to ask for any money.

## THE LAWYERS REPRESENTING YOU

### 16. Do I have a lawyer in this case?

The law firms that brought the Lawsuit have been representing you and the other Class Members. These lawyers are called Plaintiff's Lead Counsel and Local Counsel:

Lead Counsel for the Class

Merrill G. Davidoff, Esq.  
Michael Dell'Angelo, Esq.  
Lane L. Vines, Esq.  
BERGER & MONTAGUE, P.C.  
1622 Locust Street  
Philadelphia, PA 19103

Local Counsel for the Class

Michael J. Gorby, Esq.  
Mary Donne Peters, Esq.  
GORBY PETERS &  
ASSOCIATES, LLC  
Two Ravinia Drive, Suite 1500  
Atlanta, GA 30346-2104

You can send any questions to the Claims Administrator at:

*In re NetBank, Inc. Securities Litigation*

Claims Administrator  
c/o Heffler, Radetich & Saitta LLP  
P.O. Box 58999  
Philadelphia, PA 19102-8999

You also have the right to get your own lawyer, at your own expense.

### 17. How will the lawyers be paid?

At the Settlement Fairness Hearing, Plaintiff's Lead Counsel will ask the Court to approve payment of up to \$4,250,000, which amounts to approximately 34% of the settlement fund, to them for attorneys' fees and a payment of up to \$1,280,000 to them for reimbursement of expenses. These fees and expenses, plus a proportionate share of the interest earned by the settlement fund, would pay Plaintiff's Lead Counsel for investigating the facts, litigating the case, and negotiating the settlement, and would reimburse their expenses incurred in doing so. The Court may award less than these amounts. In addition, the Lead Plaintiff will also ask the Court to award him up to \$5,000 in payment of his expenses in serving as Class Representative. These payments will come out of the \$12.5 million, plus interest, settlement fund and are estimated to be an average of \$0.294 per each average damaged share purchased in the Class Period on or before May 18, 2007 and \$0.034 per each average damaged share purchased on May 21, 2007. The Court may award less than the amounts requested.

## OBJECTING TO THE SETTLEMENT

If you object to the settlement, you can tell the Court.

### 18. How do I tell the Court that I do not like the settlement?

If you are a Class Member and do not opt out, you can object to the settlement if you do not like any part of it. You can also object to the request for attorneys' fees and expenses and the proposed plan of allocation. To object, you must send a letter including the information below, saying that you object to the settlement in *In re NetBank, Inc. Securities Litigation*, 1:07-cv-2298-TCB. Your letter must also include: (a) your full name, address, and phone number; (b) evidence that you purchased the publicly-registered common stock of NetBank between March 16, 2005 and May 21, 2007 and a list of your Class Period transactions in NetBank, Inc., common stock, including brokerage confirmation receipts or other documentary evidence of such transactions; (c) a written statement of all grounds for your 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 Settlement Fairness 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) your signature, even if you are represented by counsel. If you intend to appear at the Settlement Fairness Hearing through counsel, your objection must also state the identity of all attorneys who will appear at the Settlement Fairness Hearing. If you do not make your objection in the manner provided, you shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed settlement as set forth in the Settlement Agreement, to the Plan of Allocation, or to the application for an award of attorneys' fees and reimbursement of expenses to counsel for the plaintiffs or expenses of the Lead Plaintiff, unless otherwise ordered by the Court. The filing of a Proof of Claim by a Class Member does not preclude a Class Member from objecting to the settlement. However, if the settlement is approved, you will be bound by the Settlement and the Judgment just as if you had not objected.

In order for your objection to be considered by the Court, it must be received by Plaintiff's Lead Counsel and counsel for Defendants at the addresses set forth below by no later than October 11, 2011. Mail the objection, **postmarked no later than October 11, 2011 to all three of these different places:**

United States District Court  
for the Northern District of Georgia  
Clerk's Office  
2211 Richard B. Russell Federal Building  
and United States Courthouse  
75 Spring Street, SW  
Atlanta, GA 30303-3309

*Lead Counsel for the Class:*  
BERGER & MONTAGUE, P.C.  
Merrill G. Davidoff, Esq.  
1622 Locust Street  
Philadelphia, PA 19103

*Counsel for Defendants:*  
KING & SPALDING LLP  
Michael R. Smith, Esq.  
1180 Peachtree Street, N.E.  
Atlanta, GA 30309-3521

Only Class Members who have submitted written notices of objection in the manner described above will be entitled to be heard at the Settlement Fairness Hearing, unless the Court orders otherwise.

#### **19. What's the difference between objecting and excluding?**

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because you are no longer bound by the result in this case.

### **THE COURT'S SETTLEMENT FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the settlement. You do not need to attend that hearing, but are welcome to attend if you so desire.

#### **20. When and where will the Court decide whether to approve the settlement?**

The Court will hold a Settlement Fairness Hearing at 10 a.m. on November 9, 2011 before the Honorable Timothy C. Batten, Sr., United States District Court for the Northern District of Georgia, 2106 Richard B. Russell Federal Building and United States Courthouse, 75 Spring Street, SW, Atlanta, GA 30303-3309. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate; whether the proposed plan to distribute the settlement proceeds (the "Plan of Allocation" described on pages 12 to 15 below) is reasonable; and whether the application by Plaintiff's Lead Counsel for attorneys' fees and expenses, and award to the Lead Plaintiff should be approved. If there are objections, the Court will consider them. The Court will listen to people who have made a written request to speak at the hearing per the requirements set forth in paragraph 18 of this Notice. After the hearing, the Court will decide whether to approve the settlement and the attorneys' fees and reimbursement of expenses request. We do not know how long these decisions will take.

#### **21. Do I have to come to the Settlement Fairness Hearing?**

No. Plaintiff's Lead Counsel will answer questions the Judge may have. But, you are welcome to come at your own expense. If you send a timely objection that meets the requirements set forth in paragraph 18 of this Notice, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

#### **22. May I speak at the Settlement Fairness Hearing?**

You may ask the Court for permission to speak at the Settlement Fairness Hearing. However, you cannot speak at the hearing if you excluded yourself from the Class. Please see paragraph 18 of this Notice for the requirements you must follow to request the Court's permission to be heard at the Settlement Fairness Hearing.

### **IF YOU DO NOTHING**

#### **23. What happens if I do nothing at all?**

If you do nothing, you'll get no money from this settlement. You must file a Proof of Claim and Release form to be eligible to receive anything from the settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants about the legal issues in this case, ever again.

## **GETTING MORE INFORMATION**

### **24. Are there more details about the settlement?**

Yes. This Notice summarizes the most important aspects of the proposed settlement. You can review a copy of the entire Settlement Agreement and other documents filed in the Lawsuit, during normal business hours, at the office of the Clerk, United States District Court for the Northern District of Georgia, 2211 Richard B. Russell Federal Building and United States Courthouse, 75 Spring Street, SW, Atlanta, GA 30303-3309 (refer to case No. 1:07-cv-2298-TCB), or by writing to NetBank Securities Litigation, Claims Administrator, c/o Heffler, Radetich & Saitta LLP, P.O. Box 58999, Philadelphia, PA 19102-8999 or [www.hrsclaimsadministration.com](http://www.hrsclaimsadministration.com).

You also can call the Claims Administrator toll-free at 1-800-768-8450 to find answers to common questions about the settlement and obtain information about the status of the settlement approval process.

**PLEASE DO NOT CALL THE COURT OR THE CLERK'S OFFICE ABOUT THIS SETTLEMENT.**

## **SPECIAL NOTICE TO NOMINEES**

### **25. Special Notice to Banks, Trustees, Brokerage Firms or Other Nominees**

If you hold or held any shares of the publicly-registered common stock of NetBank, Inc. purchased during the Class Period as nominee for a beneficial owner, then, within ten (10) days after you receive this Notice, you must either: (1) send a copy of this Notice and the Proof of Claim by First-Class Mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

NetBank Securities Litigation  
Claims Administrator  
c/o Heffler, Radetich & Saitta LLP  
P.O. Box 58999  
Philadelphia, PA 19102-8999

If you choose to mail the Notice and Proof of Claim and Release form yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing. Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for, or advancement of, reasonable costs actually incurred or expected to be incurred in connection with forwarding the Notice and Proof of Claim and which would not have been incurred but for the obligation to forward the Notice and Proof of Claim, upon submission of appropriate documentation to the Claims Administrator.

## **UNDERSTANDING YOUR PAYMENT – THE PLAN OF ALLOCATION**

The following sets forth the Plan of Allocation that will be used in the administration of the settlement. Please note that the approval of the settlement is separate from, and not conditioned on, the Court's approval of the Plan of Allocation. The Net Settlement Fund will not, however, be distributed to any Authorized Claimants until the Court approves the Plan of Allocation.

***Although the following Plan of Allocation is specified for purposes of this Notice, you do not need to make any of the described calculations yourself. The Claims Administrator will make all of these calculations for you.***

### **A. Introduction to the Plan of Allocation:**

1. If you qualify to claim any portion of the Net Settlement Fund, you must complete the accompanying Proof of Claim form, and mail it, no later than December 10, 2011 to:

NetBank Securities Litigation  
Claims Administrator  
c/o Heffler, Radetich & Saitta LLP  
P.O. Box 58999  
Philadelphia, PA 19102-8999

2. The Plan of Allocation is based upon Plaintiff's Lead Counsel's assessment of the merits and the relative strengths and weaknesses, including maximum recoverable damages, of the claims asserted by the Lead Plaintiff on behalf of the Class. In developing this Plan of Allocation, Plaintiff's Lead Counsel conferred with its consultants and the specific formula for computing the "Recognized Loss" described below, which reflects the input of these consultants. Among other things, the formula that will be used reflects the different amounts of estimated likely maximum damages that Claimants could recover, based on the date on which the NetBank stock was purchased, and the degree to which the estimated likely maximum recoverable damages varied during the Class Period – thus reflect-

ing changing market conditions, the volatile prices for the NetBank, Inc. common stock, and the impact of the public disclosures made by NetBank and the Defendants. Defendants dispute that the Class is entitled to any damages, and particularly the amounts to be recognized in the Plan of Allocation below.

3. Under the federal securities laws, persons who purchased NetBank common stock may recover, in general, only for losses proximately caused by disclosures correcting Defendants' prior misleading statements, and may not recover for any price declines caused by general market factors or by disclosures of other negative information not alleged to have corrected prior misstatements. Similarly, persons who both purchased and sold NetBank common stock prior to a corrective disclosure or between corrective disclosures may not have recoverable damages resulting from those transactions.

4. In formulating this Plan of Allocation, Plaintiff's Lead Counsel considered, among other things, that the Class Period covers some 27 months, during which there was volatility for both the stock market generally and the price of NetBank common stock in particular. Based on NetBank's public disclosures during the Class Period and an analysis of the associated movements in NetBank's stock price, Plaintiff's Lead Counsel has identified five disclosure dates (the "Disclosure Dates") for which Lead Plaintiff contends alleged material misrepresentations and omissions made by NetBank and the Defendants caused significant price movements in NetBank's common stock on the day of the disclosure and/or the day or two days following the disclosure. The Disclosure Dates are summarized as follows:

(a) At the time that the market closed on July 25, 2006, NetBank announced that: the company would "record additional provision expense of approximately \$15 million" in connection with mortgage repurchases; the company's mortgage servicing rights were impaired and would be written down by approximately \$15 million; and "the company would also record impairment to goodwill on its recreational vehicle and boat lending operation" of approximately \$6.5 million. These disclosures led to a decline in NetBank's stock price of \$0.72 per share on July 26, 2006, and a decline of \$0.36 per share on the following day.

(b) On August 8, 2006, NetBank's stock price dropped following disclosures that the company would record a goodwill impairment of more than \$6 million, and thereby eliminate all of the goodwill related to its subsidiary loan operations known as Beacon Credit Services. These disclosures led to a decline in NetBank's stock price of \$0.43 per share on August 8, 2006; however, the following day, the stock price closed up \$0.16 per share.

(c) On October 25, 2006, NetBank's stock price dropped following disclosures that the company would record "an after-tax loss of between \$1.50 and \$1.60 per share," resulting from the sale of a majority of the company's mortgage servicing rights as well as "\$19.5 million in after-tax goodwill impairment associated with the company's non-conforming mortgage business [Meritage Mortgage Corporation]." These disclosures led to a decline in NetBank's stock price of \$0.35 per share on October 25, 2006, and a decline of \$0.14 per share on the following day.

(d) On November 8, 2006, NetBank's stock price dropped following disclosures that the company would incur a \$14 to \$15 million charge in connection with exiting and selling its non-conforming mortgage subsidiary, Meritage Mortgage Corporation, and its ATM processing business, NetBank Payment Systems. These disclosures led to a decline in NetBank's stock price of \$0.26 per share on November 8, 2006; however, the following day, the stock price closed up \$0.06 per share.

(e) On May 21, 2007, NetBank's stock price dropped following disclosures that announced, in sum, that NetBank "has executed an asset purchase and liability assumption agreement" with EverBank Financial Corporation, for which "[t]he purchase price represents a discount to the current carrying value of the assets and liabilities being conveyed, and NetBank anticipates recording a loss on sale of between \$60 and \$70 million at close." The above disclosures, represented the end of the Class Period, and led to a sharp decline in NetBank's stock price of \$1.16 per share on May 21, 2007, and a decline of \$0.22 per share on the following day.

#### **B. Calculating Recognized Losses and Payable Claims:**

5. The Net Settlement Fund will be allocated among the "Authorized Claimants" in accordance with the Plan of Allocation described below. The amount so allocated to each Authorized Claimant is referred to as the Authorized Claimant's "Payable Claim."

6. The Payable Claim will be calculated so that each Authorized Claimant shall receive, on a proportionate basis, that share of the Net Settlement Fund that the Authorized Claimant's Recognized Loss (as defined below) bears to the total Recognized Losses of all Authorized Claimants, subject to the further provisions of this Plan of Allocation set forth below.

7. For shares purchased at any time during the period from March 16, 2005 through May 18, 2007 that also were sold, either at a gain or a loss, at any time during the period from March 16, 2005 through May 18, 2007, the "Recognized Loss" is zero.

8. For shares that were both purchased and sold on May 21, 2007, either at a gain or a loss, the “Recognized Loss” is zero.

9. For shares purchased during the period from March 16, 2005 through May 18, 2007 that were held after the close of trading on May 18, 2007, and sold on May 21, 2007, the “Recognized Loss” is the smaller of either: (a) the purchase price less the sales price; (b) the purchase price less the \$0.59 closing price on May 21, 2007; or (c) the maximum “Recognized Loss” per share figures set out in Column B in the table below.

10. For shares purchased during the period from March 16, 2005 through May 18, 2007 that were held after the close of trading on May 21, 2007, the “Recognized Loss” is the smaller of either: (a) the purchase price less the \$0.37 closing price on May 21, 2007; or (b) the maximum “Recognized Loss” per share figures set out in Column C in the table below.

11. For shares that were purchased on May 21, 2007, and still held after the close of trading on May 21, 2007, the “Recognized Loss” is \$0.22 per share.

	<u>Column A</u>	<u>Column B</u>	<u>Column C</u>
	<b>For Shares Purchased on or During the Following Dates</b>	<b>Maximum Recognized Loss/Share Sold on 5/21/07</b>	<b>Maximum Recognized Loss/Share Retained on 5/21/07</b>
<b>a.</b>	03/16/05 - 07/25/06, inclusive	\$3.20	\$3.42
<b>b.</b>	07/26/06	\$2.48	\$2.70
<b>c.</b>	07/27/06 - 08/07/06, inclusive	\$2.12	\$2.34
<b>d.</b>	08/08/06	\$1.69	\$1.91
<b>e.</b>	08/09/06 - 10/24/06, inclusive	\$1.85	\$2.07
<b>f.</b>	10/25/06	\$1.49	\$1.71
<b>g.</b>	10/26/06 - 11/07/06, inclusive	\$1.36	\$1.58
<b>h.</b>	11/08/06	\$1.10	\$1.32
<b>i.</b>	11/09/06 - 05/18/07, inclusive	\$1.16	\$1.38
<b>j.</b>	05/21/07	\$0.00	\$0.22

**C. General Provisions Applicable to the Plan of Allocation:**

12. In processing claims, first-in, first-out (“FIFO”) accounting will be applied to holdings at the beginning of the Class Period and any purchases and sales during the Class Period. For example, FIFO will be used to match the first shares of NetBank common stock sold against any shares held as of March 15, 2005 (prior to the start of the Class Period) and then on a FIFO basis against any additional purchases of shares of NetBank common stock on the basis of the assumption that the first shares of NetBank common stock purchased were the first shares of NetBank common stock sold.

13. The amount paid or received for NetBank common stock should exclude all commissions, taxes and fees.

14. The purchase or sale date of any NetBank common stock is the “trade” date, not the “settlement” date.

15. The restrictions on computing Recognized Losses set out in the four bullet points below apply to all claims. As a practical matter, however, they apply primarily to certain transactions engaged in by sophisticated traders or certain corporate or institutional claimants:

- “Short” sales will not be recognized for any amount of loss on the “cover” or purchase transaction, and no Recognized Loss will be computed for any such covering purchase transaction.
- No Recognized Loss will be computed for any transactions in NetBank common stock engaged in by market makers.
- In computing the Recognized Loss on any NetBank common stock, no Recognized Loss will be computed for any option premium paid, or received, where the shares of NetBank were purchased or sold by reason of having exercised or been assigned an option.
- If the shares of NetBank common stock that were purchased were not publicly-registered shares, the Recognized Loss is zero. The definition of the Class as certified by the Court (see answer to Question #5 in the Notice above) includes only persons who purchased “the publicly-registered common stock of NetBank, Inc.”

16. If you inherited or received a gift of NetBank common stock during the Class Period, that inheritance or gift is not considered a purchase of NetBank common stock unless your ancestor or donor was the actual purchaser of

NetBank common stock during the Class Period. You, as a recipient of a gift or inheritance, and the original purchaser may not both file a claim with regard to the same shares of NetBank common stock. If both you and the donor (or you and your ancestor's estate) make such a claim, only the claim filed by the recipient (or heir) will be honored.

17. Shares of the common stock of NetBank, Inc. "transferred into," "delivered into" or "received into" the Claimant's account, will not be considered as a purchase of shares unless the Claimant submits documentation demonstrating that the original purchase of these shares occurred during the Class Period. Also, shares purchased and subsequently "transferred out" of Claimant's account will not be considered part of Claimant's claim, as the right to file for those shares belongs to the person or party receiving the shares.

18. To conserve administrative costs, no claim will be paid unless the Authorized Claimant is entitled to at least \$15 from the Net Settlement Fund.

19. Nothing in this Plan of Allocation represents an admission by any of the Defendants that there is liability or damage of any kind as a result of the allegations in the Complaint or that the dollar amounts set forth in this Plan of Allocation reflect actual or potential damages to the Class.

20. Payment in the manner set forth above will be deemed conclusive compliance with the Settlement Agreement as to all Authorized Claimants. All Class Members who fail to submit valid Proofs of Claim and Release forms that the Claims Administrator receives timely will be barred from participating in the distribution of the Net Settlement Fund but otherwise will be bound by all of the terms of the Settlement Agreement, including the terms of any final orders or judgments entered and the releases given to Defendants and others. If you want confirmation that the Claims Administrator received your Proof of Claim and Release form, you should mail it in a way that allows the United States Postal Service to provide you with delivery confirmation.

21. No Authorized Claimant will have any claim against Lead Plaintiff, Plaintiff's Counsel or the Claims Administrator, or any other agent designated by Plaintiff's Lead Counsel based on the distributions made substantially in accordance with the Settlement Agreement, the Plan of Allocation or further orders of the Court. In addition, in the interest of achieving substantial justice, Plaintiff's Lead Counsel will have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Proofs of Claim filed.

22. You also can call the Claims Administrator toll-free at 1-800-768-8450 to find answers to common questions about the Plan of Allocation and the settlement.

**PLEASE DO NOT CALL THE COURT OR THE CLERK'S OFFICE ABOUT THIS SETTLEMENT.**

Dated: August 12, 2011

United States District Court  
for the Northern District of Georgia  
Honorable Timothy C. Batten, Sr., Judge