

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE OPNEXT, INC.  
SECURITIES LITIGATION

Case No. 08-CV-920-JAP-LHG

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT,  
MOTION FOR ATTORNEYS' FEES AND SETTLEMENT FAIRNESS HEARING**

If you purchased or otherwise acquired the common stock of Opnext, Inc. ("Opnext") pursuant or traceable to Opnext's February 14, 2007 Initial Public Offering (the "IPO") during the time period between February 14, 2007 and February 13, 2008, inclusive (the "Class Period"), then you could get a payment from a class action settlement.

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

- The settlement will provide a \$2,000,000 settlement fund for the benefit of investors who bought shares of Opnext common stock pursuant or traceable to the IPO during the Class Period.
- The settlement resolves a lawsuit over whether Opnext's Registration Statement and Prospectus for the IPO contained false or misleading statements.
- Your legal rights are affected whether you act or do not act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
<b>SUBMIT A PROOF OF CLAIM FORM BY FEBRUARY 5, 2010</b>	The only way to become eligible to receive a payment.
<b>EXCLUDE YOURSELF BY DECEMBER 22, 2009</b>	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Opnext and the other Released Parties about the Settled Claims.
<b>OBJECT BY DECEMBER 22, 2009</b>	Write to the Court about why you do not like the Settlement.
<b>GO TO A HEARING ON JANUARY 6, 2010</b>	Ask to speak in Court about the Settlement.
<b>DO NOTHING</b>	Get no payment. Give up rights.

- These rights and options - **and the deadlines to exercise them** - are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after appeals are resolved. Please be patient.

## SUMMARY OF NOTICE

### Statement of Plaintiff Recovery

Pursuant to the Settlement described herein, a Settlement Fund consisting of \$2,000,000 in cash, plus interest, has been established. Plaintiffs estimate that there were approximately 19.4 million shares of Opnext common stock issued pursuant to the IPO which may have been damaged. Plaintiffs estimate that the average recovery per allegedly damaged share of Opnext common stock under the settlement is 10¢ per allegedly damaged share<sup>1</sup> before deduction of Court-awarded attorneys' fees and expenses. A Class Member's actual recovery will be a proportion of the Net Settlement Fund determined by that claimant's Recognized Claim as compared to the total Recognized Claims of all Class Members who submit acceptable Proofs of Claim. Depending on the number of claims submitted, when during the Class Period a Class Member purchased shares of Opnext's common stock, the purchase price paid, and whether those shares were held at the end of the Class Period or sold during the Class Period, and, if sold, when they were sold and the amount received, an individual Class Member may receive more or less than this average amount. See the Plan of Allocation beginning on page 9 for more information on your Recognized Claim.

### Statement of Potential Outcome of Case

The parties disagree on both liability and damages and do not agree on the average amount of damages per share that would be recoverable if plaintiffs were to have prevailed on each claim alleged. The issues on which the parties disagree include whether Class Members could trace their purchases to the IPO in view of sales of shares by other investors and whether there are recoverable damages. The Defendants deny that they are liable to the Lead Plaintiff or any other Class Member and deny that Lead Plaintiff or the Class Members have suffered any damages.

### Statement of Attorneys' Fees and Costs Sought

Plaintiffs' Counsel are moving the Court to award attorneys' fees not to exceed one-third (33⅓%) of the Gross Settlement Fund, and for reimbursement of expenses incurred in connection with the prosecution of this Action in the approximate amount of \$60,000. The requested fees and expenses would amount to an average of approximately 3.4¢ per allegedly damaged share in total for fees and expenses. Plaintiffs' Counsel have expended considerable time and effort in the prosecution of this litigation on a contingent fee basis, and have advanced the expenses of the litigation, in the expectation that if they were successful in obtaining a recovery for the Class, they would be paid from such recovery. In this type of litigation, it is customary for counsel to be awarded a percentage of the common fund recovery as their attorneys' fees.

### Identification of Lawyers' Representatives

Further information regarding the Action and this Notice may be obtained by contacting Plaintiff's Co-Lead Counsel: James S. Notis, Esq., Gardy & Notis, LLP, 560 Sylvan Avenue, Englewood Cliffs, New Jersey 07632, Telephone (201) 567-7377, and Leigh Smith, Esq., Milberg LLP, One Penn Plaza, New York, New York 10119-0165, Telephone (212) 594-5300.

### Reasons for the Settlement

For the plaintiffs, the principal reason for the Settlement is the benefit to be provided to the Class now. This benefit must be compared to the risks that no recovery might be achieved for the Class after a contested trial and likely appeals, possibly years into the future. Among other things, Lead Plaintiff considered the risks in establishing that any drop in the value of the Opnext common stock following new disclosures on February 13, 2008 was attributed to an alleged misstatement in the Registration Statement and Prospectus for the IPO completed nearly one year earlier on February 14, 2007, as well as the risks in establishing that all shares purchased by all members of the Class could be deemed traceable to the shares registered and sold in the IPO. For the Defendants, who have denied and continue to deny all allegations of wrongdoing or liability whatsoever, the principal reason for the settlement is to eliminate the expense, risks, and uncertain outcome of the litigation.

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<sup>1</sup> An allegedly damaged share might have been traded more than once during the Class Period, and the indicated average recovery would be the total for all purchasers of that share.

**WHAT THIS NOTICE CONTAINS**

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## BASIC INFORMATION

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

You or someone in your family may have purchased or otherwise acquired shares of Opnext common stock pursuant or traceable to Opnext's February 14, 2007 IPO during the time period between February 14, 2007 and February 13, 2008, inclusive.

The Court directed that this Notice be sent to Class Members because they have a right to know about a proposed settlement of a class action lawsuit, and about all of their options, before the Court decides whether to approve the Settlement. If the Court approves the settlement, and after objections and appeals are resolved, an administrator appointed by the Court will make the payments that the Settlement allows.

This package explains the lawsuit, the Settlement, Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the District of New Jersey, and the case is known as *In re Opnext, Inc., Securities Litigation*, Case No. 08-CV-920-JAP-LHG. This case was assigned to United States District Judge Joel A. Pisano. The people who sued are called plaintiffs. The Court appointed one of the plaintiffs, New Jersey Building Laborers Pension Fund, to act as the "Lead Plaintiff" on behalf of all similarly situated claimants. Opnext, Inc. and the other persons and entities sued are called the "Defendants." The "Defendants" include the following individuals: Harry L. Bosco, Robert J. Nobile, Tetsuo Takemura, Ryuichi Otsuki, Naoya Takahashi, David Lee and John F. Otto, Jr. (the "Individual Defendants" and, together with Opnext, the "Opnext Defendants"); and entities: Goldman, Sachs & Co., J.P. Morgan Securities Inc., CIBC World Markets, Cowen and Company, LLC, and Jefferies & Company, Inc. (the "Underwriter Defendants"); and Hitachi, Ltd. ("Hitachi"), a shareholder of Opnext. Opnext's auditor, Ernst & Young LLP, was initially named as a defendant but it was voluntarily dismissed from this Action and it is not a "Defendant."

### 2. What is this lawsuit about?

The lawsuit claimed that Opnext's Registration Statement and Prospectus used in its February 14, 2007 IPO contained false or misleading statements concerning its recent revenues and earnings, because Opnext disclosed on February 13, 2008 that it would restate certain financial reports that had been included in the Registration Statement and Prospectus. The lawsuit claimed that the Opnext Defendants and Underwriter Defendants were liable under Sections 11, 12(a)(2) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §§77k and 77l, and that the Individual Defendants and Hitachi were liable under Section 15 of the Securities Act, 15 U.S.C. §770, to the persons who purchased Opnext common stock pursuant or traceable to the IPO during the Class Period. The lawsuit seeks money damages against the Defendants. The Defendants deny all allegations of misconduct or liability contained in the Complaint, and deny having engaged in any wrongdoing whatsoever.

### 3. Why is this a class action?

In a class action, one or more people called class representatives (in this case the New Jersey Building Laborers Pension Fund), sue on behalf of people who have similar claims. All these people are a class or class members. Bringing a case, such as this one, as a class action allows adjudication of many similar claims of persons and entities that might be economically too small to bring individual actions. One court resolves the issues for all class members, except for those who exclude themselves from the class.

### 4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, Lead Plaintiff and the Opnext Defendants, with the assistance of retired United States District Judge Nicholas H. Politan acting as a mediator, agreed to a settlement. The Lead Plaintiff and Plaintiff's Co-Lead Counsel think the Settlement is best for the Class insofar as it avoids the risks and costs of a trial and the people affected will get some compensation.

## WHO IS IN THE SETTLEMENT

To see if you will get money from this Settlement, you first have to decide if you are a Class Member.

### 5. How do I know if I am part of the Settlement?

The Court directed, for the purposes of the proposed settlement only, that everyone who fits this description is a Class Member: *all persons who purchased or otherwise acquired the common stock of Opnext pursuant or traceable to Opnext's February 14, 2007 Initial Public Offering during the time period between February 14, 2007 and February 13, 2008, inclusive.*

6. Are there exceptions to being included?

Excluded from the Class are Defendants, their respective officers and directors, and, at all relevant times, the members of their immediate families, their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a majority interest.

If one of your mutual funds purchased shares of Opnext during the Class Period, that alone does not make you a Class Member. You are a Class Member only if you directly purchased or otherwise acquired shares of Opnext stock pursuant or traceable to Opnext's February 14, 2007 IPO during the time period between February 14, 2007 and February 13, 2008, inclusive. Check your investment records or contact your broker to see if you purchased or otherwise acquired Opnext stock during the time period between February 14, 2007 and February 13, 2008.

If you sold Opnext stock during the Class Period, that alone does not make you a Class Member. You are a Class Member only if you purchased or otherwise acquired your shares during the time period between February 14, 2007 and February 13, 2008, inclusive.

7. What if I am still not sure if I am included?

If you are still not sure whether you are included, you can ask for free help. You can call (800) 804-6915, or visit [www.OpnextSecuritiesLitigation.com](http://www.OpnextSecuritiesLitigation.com) for more information. Or you can fill out and return the Proof of Claim form described below, in question 10, to see if you qualify.

### THE SETTLEMENT BENEFITS — WHAT YOU GET

8. What does the Settlement provide?

In exchange for the Settlement and dismissal of the Action, Opnext has agreed to cause its insurers to create a \$2 million fund to be divided, after fees and expenses, among all Class Members who send in valid Proof of Claim forms.

9. How much will my payment be?

Your share of the fund will depend on the total Recognized Claims represented by the valid Proof of Claim forms that Class Members send in, how many shares of Opnext stock you bought, how much you paid for them, and when you bought and whether or when you sold them, and if so for how much you sold them.

You can calculate your Recognized Claim in accordance with the formula shown below in the Plan of Allocation. It is unlikely that you will get a payment for all of your Recognized Claim. After all Class Members have sent in their Proof of Claim forms, the payment you get will be a part of the Net Settlement Fund equal to your Recognized Claim divided by the total of everyone's Recognized Claims. See the Plan of Allocation beginning on page 9 for more information on your Recognized Claim.

### HOW YOU GET A PAYMENT — SUBMITTING A PROOF OF CLAIM FORM

10. How can I get a payment?

To qualify for a payment, you must send in a Proof of Claim form. A Proof of Claim form is being circulated with this Notice. You may also get a Proof of Claim form on the Internet at [www.OpnextSecuritiesLitigation.com](http://www.OpnextSecuritiesLitigation.com). Read the instructions carefully, fill out the Proof of Claim form, include all the documents the form asks for, sign it, and mail it postmarked not later than **February 5, 2010**.

11. When would I get my payment?

The Court will hold a hearing on **January 6, 2010**, to decide whether to approve the settlement. If the Court approves the Settlement after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. It also takes time for all the Proofs of Claim to be processed. 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, and that means that, upon the "Effective Date," you will release all "Settled Claims" (as defined below) against the "Released Parties" (as defined below).

“Settled Claims” means any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known claims and Unknown Claims, (i) that have been asserted in this Action by the members of the Class or any of them against any of the Released Parties, or (ii) that could have been asserted in any forum by the members of the Class or any of them against any of the Released Parties that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the July 30, 2008 Complaint and relate to the purchase, sale or other acquisition or disposition or holding of shares of Opnext common stock in or traceable to Opnext’s February 14, 2007 IPO, or (iii) that relate to the administration of the Net Settlement Fund.

“Released Parties” means any and all of the Defendants, their past or present subsidiaries, parents, affiliates, successors and predecessors, or other individual or entity in which any Defendant has a majority interest or which is related to or affiliated with any of the Defendants, and each of their respective officers, directors, agents, employees, attorneys, advisors, investment advisors, auditors (including, but not limited to, Ernst & Young LLP, which Lead Plaintiff voluntarily dismissed from this Action without prejudice), accountants, insurers, successors, and assigns.

The “Effective Date” will occur when an Order entered by the Court approving the Settlement becomes final and no longer subject to appeal.

If you remain a member of the Class, all of the Court’s orders will apply to you and legally bind you.

### EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement, but you want to keep any right you may have to sue or continue to sue the Defendants and the other Released Parties on your own about the Settled Claims, then you must take steps to get out. This is called excluding yourself — or is sometimes referred to as “opting out” of the Class. The Defendants may withdraw from and terminate the Settlement if putative Class Members who purchased or otherwise acquired in excess of a certain amount of Opnext common stock during the Class Period exclude themselves from the Class.

13. How do I get out of the proposed settlement?

To exclude yourself from the Class, you must send a signed letter by mail stating that you “request exclusion from the Class in the *In re Opnext, Inc. Securities Litigation*.” Your letter should state the date(s), price(s), and number(s) of shares of all your purchases, acquisitions, and sales of Opnext common stock during the time period between February 14, 2007 and February 13, 2008, inclusive. In addition, be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request postmarked no later than **December 22, 2009** to:

Opnext Securities Litigation Exclusions  
c/o Rust Consulting, Inc.  
P.O. Box 2212  
Faribault, MN 55021-1612

You cannot exclude yourself by telephone or by e-mail. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit, and you may be able to sue (or continue to sue) the Defendants and the other Released Parties in the future.

14. If I do not exclude myself, can I sue the Defendants and the other Released Parties for the same thing later?

No. Unless you exclude yourself, you give up any rights to sue the Defendants and the other Released Parties for any and all Settled Claims. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue your own lawsuit. Remember, the exclusion deadline is **December 22, 2009**.

15. If I exclude myself, can I get money from the proposed settlement?

No. If you exclude yourself, do not send in a Proof of Claim form to ask for any money. But, you may exercise any right you may have to sue, continue to sue, or be part of a different lawsuit against the Defendants and the other Released Parties.

## THE LAWYERS REPRESENTING THE CLASS

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

The Court ordered that the law firms of Gardy & Notis, LLP in Englewood Cliffs, New Jersey, and Milberg LLP in New York, New York will represent the Class. These lawyers are called Plaintiff's Co-Lead Counsel. You will not be separately charged for these lawyers. The Court will determine the amount of Plaintiff's Co-Lead Counsel's fees and expenses, which will be paid from the Gross Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

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

Plaintiff's Co-Lead Counsel are moving the Court to award attorneys' fees from the Gross Settlement Fund in an amount not to exceed one-third (33 $\frac{1}{3}$ %) of the Gross Settlement Fund and for reimbursement of their expenses in the approximate amount of \$60,000, plus interest on such expenses at the same rate as earned by the Settlement Fund.

The motion for attorneys' fees will be submitted on behalf of Plaintiff's Co-Lead Counsel and the following additional Plaintiffs' Counsel: Kroll Heineman, LLC, Metro Corporate Campus I, 99 Wood Avenue South, Suite 307, Iselin, New Jersey 08830.

Milberg LLP has an agreement to share its fees with Kroll Heineman, LLC as a referring law firm, relating to the prosecution of the Action.

Plaintiff's Co-Lead Counsel, without further notice to the Class, will subsequently apply to the Court for payment of the Claims Administrator's fees and expenses incurred in connection with giving notice, administering the settlement and distributing the settlement proceeds to the members of the Class.

## OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

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

If you are a Class Member, you can object to the Settlement or any of its terms, the proposed Plan of Allocation and/or the application by Plaintiff's Co-Lead Counsel for an award of fees and expenses. You may write to the Court setting out your objection. You may give reasons why you think the Court should not approve any or all of the Settlement terms or arrangements. The Court will consider your views if you file a proper objection within the deadline identified, and according to the following procedures.

To object, you must send a signed letter stating that you "object to the proposed settlement in the *In re Opnext, Inc. Securities Litigation*." Be sure to include your name, address, telephone number, and your signature, identify the date(s), price(s), and number(s) of shares of all purchases, acquisitions, and sales of Opnext common stock during the time period between February 14, 2007 and February 13, 2008, inclusive, and state the reasons why you object to the Settlement. Your objection must be filed with the Court and served on all the following counsel on or before **December 22, 2009**:

#### COURT

Clerk of the Court  
Clarkson S. Fisher Building  
& U.S. Courthouse  
402 East State Street  
Room 2020  
Trenton, NJ 08608

#### PLAINTIFF'S CO-LEAD COUNSEL

James S. Notis, Esq.  
Gardy & Notis, LLP  
560 Sylvan Avenue  
Englewood Cliffs, NJ 07632

#### OPNEXT DEFENDANTS' COUNSEL

Alan E. Kraus, Esq.  
Latham & Watkins, LLP  
One Newark Center  
Newark, NJ 07101

#### UNDERWRITER DEFENDANTS' COUNSEL

David L. Barres, Esq.  
Mintz Levin Cohn Ferris  
Glovsky and Popeo, P.C.  
666 Third Avenue  
New York, NY 10017

#### HITACHI'S COUNSEL

Edmund Polubinski III, Esq.  
Angela T. Bellizzi, Esq.  
Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017

You do not need to go to the Settlement Fairness Hearing to have your written objection considered by the Court. At the Settlement Fairness Hearing, any Class Member who has not previously submitted a request for exclusion from the Class and who has complied with the procedures set out in this question 18 and question 22 below for filing with the Court and providing to the counsel for Plaintiffs and Defendants a statement of an intention to appear at the Settlement Fairness Hearing may also appear and be heard, to the extent allowed by the Court, to state any objection to the Settlement, the Plan of Allocation or Plaintiff's Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of expenses. Any such objector may appear in person or arrange, at that objector's expense, for a lawyer to represent the objector at the Hearing.

19. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the proposed settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

#### THE COURT'S SETTLEMENT FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the proposed settlement. You may attend and you may ask to speak, but you do not have to.

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

The Court will hold a Settlement Fairness Hearing at **10:00 a.m. on January 6, 2010**, at the Clarkson S. Fisher Building & U.S. Courthouse and Post Office Building, Court Room 1, 402 East State Street, Trenton, New Jersey 08608. At this hearing the Court will consider whether or not the Settlement is fair, reasonable and adequate. The Court will take into consideration any written objections filed in accordance with the instructions at question 18. The Court also may listen to people who have properly indicated, within the deadline identified above, an intention to speak at the hearing; but decisions regarding the conduct of the hearing will be made by the Court. See question 22 for more information about speaking at the hearing. If the Court approves the Settlement as being fair, reasonable and adequate, then the Court will thereafter consider the proposed Plan of Allocation for the proceeds of the Settlement and the application of Plaintiff's Co-Lead Counsel for attorneys' fees and reimbursement of expenses. We do not know how long these decisions will take. You should be aware that the Court may change the date and time of the Settlement Fairness Hearing. Thus, if you want to come to the hearing, you should check with Plaintiff's Co-Lead Counsel before coming to be sure that the date and/or time has not changed.

21. Do I have to come to the hearing?

No. Plaintiff's Co-Lead Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

22. May I speak at the hearing?

If you object to the Settlement as described in question 18 above, you may also ask the Court for permission to speak at the Settlement Fairness Hearing. To do so, you must include with your objection a statement stating that it is your "Notice of Intention to Appear in the *In re Opnext, Inc. Securities Litigation*, Case No. 08-CV-920-JAP-LHG." Persons who intend to object to the Settlement, the Plan of Allocation, and/or counsel's application for an award of attorneys' fees and expenses and desire to present evidence at the Settlement Fairness Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Fairness Hearing. Unless otherwise ordered by the Court, you cannot speak at the hearing if you excluded yourself from the Class or if you have not provided written notice of your intention to speak at the Settlement Fairness Hearing by the deadline identified, and in accordance with the procedures described here and in question 18 above.

#### IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you will get no money from this settlement and you will be precluded from starting a lawsuit, continuing with a lawsuit, or being part of any other lawsuit against any of the Defendants or the other Released Parties about the Settled Claims in this

case, ever again. To share in the Net Settlement Fund, you must submit a Proof of Claim form (*see* question 10). To start, continue or be a part of any other lawsuit against any or all of the Defendants and the other Released Parties about the Settled Claims in this case, you must exclude yourself from this Class (*see* question 13).

#### GETTING MORE INFORMATION

24. Are there more details about the proposed settlement?

This Notice summarizes the proposed settlement. More details are in a Stipulation and Agreement of Settlement dated September 8, 2009 (the “Stipulation”). You can get a copy of the Stipulation by writing to: James S. Notis, Esq., Gardy & Notis, LLP, 560 Sylvan Avenue, Englewood Cliffs, NJ 07632; or Leigh Smith, Esq., Milberg LLP, One Penn Plaza, New York, NY 10119-0165, or by visiting [www.OpnextSecuritiesLitigation.com](http://www.OpnextSecuritiesLitigation.com).

You also can call the Claims Administrator at (800) 804-6915, toll free; write to Opnext Securities Litigation Settlement, c/o Rust Consulting, Inc., P.O. Box 2212, Faribault, MN 55021-1612; or visit the website at [www.OpnextSecuritiesLitigation.com](http://www.OpnextSecuritiesLitigation.com), where you will find answers to common questions about the settlement, a Proof of Claim form, plus other information to help you determine whether you are a Class Member and whether you are eligible for a payment.

25. How do I get more information?

For even more detailed information concerning the matters involved in this Action, you may refer to the pleadings, to the Stipulation, to the Orders entered by the Court and to the other papers filed in the Action, which may be inspected at the Office of the Clerk of the Court, United States District Court for the District of New Jersey, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street Room 2020, Trenton, New Jersey 08608 during regular business hours.

#### PROPOSED PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS AMONG CLASS MEMBERS

The \$2 Million Settlement Amount and the interest earned thereon shall be the Gross Settlement Fund. The Gross Settlement Fund, less all taxes, approved costs, fees and expenses (the “Net Settlement Fund”) shall be distributed to members of the Class who submit acceptable Proofs of Claim (“Authorized Claimants”). The Claims Administrator shall determine each Authorized Claimant’s *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant’s “Recognized Claim.” The Recognized Claim formula set forth below is not intended to be an estimate of the amount that a Class Member might have been able to recover after a trial; nor is it an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Claim formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants.

The following proposed Plan of Allocation reflects Plaintiffs’ contention that because of alleged misrepresentations and omissions in the Registration Statement and Prospectus for Opnext’s February 14, 2007 initial public offering, about, among other things, the Company’s inventory and trade payables balances and the reported amounts of its cost of goods sold and other income expense and net, were improperly recorded for the fiscal years ending March 31, 2006 and March 31, 2007, and for the affected quarterly periods in each of those years, the price of Opnext common stock was allegedly artificially inflated from the time of its IPO on or about February 14, 2007, until February 13, 2008. Plaintiffs further contend that some of the alleged artificial inflation dissipated over this period as Opnext failed to report sales and earnings consistent with the amounts stated in the Registration and Prospectus and until February 13, 2008, when the company acknowledged that the certain figures stated in the Registration Statement and Prospectus were incorrect, and the alleged artificial inflation was finally fully eliminated.

In allocating the settlement proceeds, the proposed Plan of Allocation also takes into account potential obstacles to recovery raised by the Defendants, including, but not limited to, (1) Defendants’ denial of any primary or control person liability under the Securities Act; (2) Defendants’ position that the decreases in Opnext’s common stock price prior to February 13, 2008 were the result of adverse developments unrelated to any alleged misrepresentations and that no damages were caused by the statements that Plaintiffs allege are false or misleading; (3) Defendant’s position that the price of Opnext common stock was not artificially inflated; (4) Defendants’ position that as early as June 8, 2007, Opnext shares issued outside of the IPO began trading in the market and therefore Class Members who purchased shares after that date would not be able to trace those shares to the IPO; and (5) Defendants’ argument that shortly after Opnext’s February 13, 2008 announcement, the price of Opnext shares returned to the levels at which they were trading prior to the announcement.

Opnext’s common stock was sold to the Class at \$15.00 per share on February 15, 2007, the first trading day for shares issued in the IPO. Almost one year later, on February 12, 2008, Opnext’s common stock closed at \$5.54 per share. On February 13, 2008, prior to the market’s opening, Opnext announced that it was going to re-state certain inventory, income and expense amounts contained in financial

reports that had been included in the Registration Statement and Prospectus. On February 13, 2008, Opnext's common stock closed at \$4.65. On February 20, 2008, the date this Action was commenced, the price of Opnext's common stock closed at \$4.50 per share.

Under the Securities Act, damages may be measured by the difference between the purchase price (but no more than the \$15 per share offering price) and the sale price, if sold prior to the commencement of litigation, or the value at the date of the commencement of the litigation (\$4.50 per share), or if higher, the sale price for shares sold after the commencement of the litigation. The Securities Act allows Defendants to affirmatively show that some or all of the claimed damages resulted from causes other than the allegedly false statements or omissions.

For purposes of allocating the settlement proceeds herein, the proposed Plan of Allocation averages the claim amount from plaintiffs' perspective and from a perspective taking into account certain of Defendants' arguments. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's "Recognized Claim."

"Recognized Claims" will be calculated for purposes of the Settlement as one-half of the sum of the "A-Claim" plus the "B-Claim" where: The "A-Claim" is equal to the total of the following, as applicable:

For shares of Opnext common stock purchased during the period February 15, 2007 through the close of trading on February 13, 2008, and

(a) Sold at a loss on or before the close of trading on February 13, 2008, an Authorized Claimant's "A-Claim" shall mean (x) the Purchase Price Paid, including commissions and transaction charges (but no more than \$15 per share) (the "PPP") minus (y) the sales proceeds received, net commissions and transaction charges (the "SPR"); plus

(b) Sold after the close of trading on February 13, 2008, an Authorized Claimant's "A-Claim" shall mean (x) the PPP, minus (y) the greater of: (a) \$4.50 per share, or (b) the SPR; plus

(c) Still held as of the date of filing their Proof of Claim form an Authorized Claimant's "A-Claim" shall mean (x) the PPP, minus (y) \$4.50 per share. :

The "B-Claim" is equal to the total of the following, as applicable:

For shares of Opnext common stock purchased during the period February 15, 2007 through the close of trading on June 7, 2007, and

(a) Sold at a loss on or before the close of trading on February 13, 2008, an Authorized Claimant's "B-Claim" shall mean Zero (\$0.00); plus

(b) Sold after the close of trading on February 13, 2008, an Authorized Claimant's "B-Claim" shall mean the lesser of (A) \$0.89 per share, or (B) the difference between (x) minus (y), where (x) is the PPP, and (y) is the greater of: (a) \$4.50 per share, or (b) the SPR; plus

(c) Still held as of the date of filing their Proof of Claim form an Authorized Claimant's "B-Claim" shall mean \$0.89 per share.

For shares of Opnext common stock purchased during the period June 8, 2007 through the close of trading on February 13, 2008, an Authorized Claimant's "B-Claim" shall mean Zero (\$0.00).

Purchases during the Class Period will be matched against sales during the Class Period on a First-In, First-Out ("FIFO") basis. Transactions resulting in a gain shall not be included.

Class Members who do not submit acceptable Proofs of Claim will not share in the settlement proceeds. Class Members who do not either file a request for exclusion or submit acceptable Proofs of Claim will nevertheless be bound by the judgment and the Settlement.

In the event a Class Member has more than one purchase, acquisition, or sale of Opnext common stock, all purchases, acquisitions, and sales shall be matched on a FIFO basis. A purchase, acquisition, or sale of Opnext common stock shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, devise or operation of law of Opnext common stock during the Class Period shall not be deemed a purchase, acquisition, or sale of Opnext common stock for the calculation of an Authorized Claimant's Recognized Claim, nor shall it be deemed an assignment of any claim relating to the purchase or acquisition of such shares unless specifically provided in the instrument of gift or assignment.

To the extent a Claimant had a gain from his, her or its overall transactions in Opnext common stock during the Class Period, the value of the Recognized Claim will be zero. To the extent that a Claimant suffered an overall loss on his, her or its overall transactions in Opnext common stock during the Class Period, but that loss was less than the Recognized Claim calculated above, then the Recognized Claim shall be limited to the amount of the actual loss.

For purposes of determining whether a Claimant had a gain from his, her or its overall transactions in Opnext common stock during the Class Period or suffered a loss, the Claims Administrator shall: (i) total the amount paid for all Opnext common stock purchased/acquired during the Class Period by the claimant (the "Total Purchase Amount"); (ii) total the amount received for sales of the remaining shares of Opnext common stock sold during the Class Period (the "Sales Proceeds"); and (iii) ascribe a \$4.65 per share holding value for the number of shares of Opnext common stock purchased or acquired during the Class Period and still held at the end of trading on February 13, 2008 ("Holding Value"). The difference between (x) the Total Purchase Amount ((i) above) and (y) the sum of the Sales Proceeds ((ii) above) and the Holding Value ((iii) above) will be deemed a Claimant's gain or loss on his, her or its overall transactions in Opnext common stock during the Class Period.

Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Claim as compared to the total Recognized Claims of all Authorized Claimants. Subject to the limits of the Net Settlement Fund, the minimum distribution amount to an Authorized Claimant with a valid Recognized Claim shall be \$10.00.

Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the settlement. If any funds remain in the Net Settlement Fund by reason of un-cashed distributions or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distributions, any balance remaining in the Net Settlement Fund one (1) year after the initial distribution of such funds shall be re-distributed to Class Members who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution. If after six months after such re-distribution any funds shall remain in the Net Settlement Fund, then such balance shall be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s) designated by Plaintiff's Co-Lead Counsel.

Plaintiffs, Defendants, their respective counsel, and all other Released Parties shall have no responsibility for or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the Plan of Allocation or the determination, administration, calculation, or payment of any Proof of Claim or non-performance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund or any losses incurred in connection therewith.

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

If you purchased or otherwise acquired common stock of Opnext pursuant or traceable to Opnext's February 14, 2007 IPO during the time period between February 14, 2007 and February 13, 2008, inclusive, for the beneficial interest of a person or organization other than yourself, the Court has directed that, WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS NOTICE, you either (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased or otherwise acquired Opnext common stock during such time period, or (b) request additional copies of this Notice and the Proof of Claim form, which will be provided to you free of charge, and within fourteen (14) days of your receipt of such additional copies, mail a Notice and Proof of Claim form directly to each of your beneficial purchasers of Opnext common stock. 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. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Those expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

Opnext Securities Litigation Settlement  
c/o Rust Consulting, Inc.  
P.O. Box 2212  
Faribault, MN 55021-1612  
Telephone: (800) 804-6915  
Website: [www.OpnextSecuritiesLitigation.com](http://www.OpnextSecuritiesLitigation.com)

DATED: October 21, 2009

By Order of The Court

Opnext Securities Litigation Settlement  
c/o Rust Consulting, Inc.  
P.O. Box 2212  
Faribault, MN 55021-1612

## IMPORTANT COURT DOCUMENTS