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FORM 10-K

E TRADE FINANCIAL CORP - ETFC

Filed: November 09, 2000 (period: September 30, 2000)

Annual report with a comprehensive overview of the company

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

☒ **Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended September 30, 2000.**

or

☐ **Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Transition Period from _____ to _____.**

1-11921

(Commission file number)

E*TRADE Group, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

94-2844166

(I.R.S. Employer
Identification Number)

4500 Bohannon Drive, Menlo Park, CA 94025

(Address of principal executive offices and zip code)

(650) 331-6000

(Registrant's telephone number, including area code)

Securities Registered Pursuant to Section 12(b) of the Act: None

Securities Registered Pursuant to Section 12(g) of the Act:

Title of each class

Common Stock—\$0.01 par value

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

As of November 6, 2000, the aggregate market value of voting stock, comprised of the registrant's common stock and shares exchangeable into common stock, held by nonaffiliates of the registrant was approximately \$3,364,633,000 (based upon the closing price for shares of the registrant's common stock as reported by the National Market System of the National Association of Securities Dealers Regulation Automated Quotation System on that date). Shares of common stock held by each officer, director, and holder of 5% or more of the outstanding common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of November 6, 2000, there were 306,586,119 shares of common stock and 5,609,078 shares exchangeable into common stock outstanding. The Exchangeable Shares, which were issued by EGI Canada Corporation in connection with the acquisition of VERSUS Technologies, Inc., are exchangeable at any time into common stock on a one-for-one basis and entitle holders to dividend, voting, and other rights equivalent to holders of the registrant's common stock.

DOCUMENTS INCORPORATED BY REFERENCE

Definitive Proxy Statement relating to the Company's Annual Meeting of Shareowners, to be held December 21, 2000, to be filed hereafter (incorporated into Part III hereof).

E*TRADE Group, Inc.
Form 10-K Annual Report
For the Fiscal Year ended September 30, 2000

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UNLESS OTHERWISE INDICATED, REFERENCES TO "COMPANY" AND "E*TRADE" MEAN E*TRADE GROUP, INC. AND ITS SUBSIDIARIES, AND REFERENCES TO "FISCAL" MEAN THE COMPANY'S YEAR ENDED SEPTEMBER 30 (E.G., "FISCAL 2000" REPRESENTS THE PERIOD OCTOBER 1, 1999 TO SEPTEMBER 30, 2000).

E*TRADE, the E*TRADE logo, E*TRADE Bank, E*TRADE ATM, ClearStation, Equity Edge, Equity Resource, OptionsLink, ShareData, Stateless Architecture, Power E*TRADE, Destination E*TRADE, and TELE*MASTER are servicemarks or registered marks of E*TRADE Group, Inc. or its subsidiaries in the United States. Some of these and other trademarks are registered outside the United States.

PART I

ITEM 1. BUSINESS

E*TRADE Group, Inc. ("E*TRADE") is a global leader in online personal financial services offering value-added investing, banking, research and educational tools, premium customer service and a proprietary Stateless Architecture[®] infrastructure to our customers through services provided by our wholly-owned subsidiaries, including but not limited to, E*TRADE Securities, Inc. ("CCS"), ("E*TRADE Securities"), TIR (Holdings) Limited ("TIR"), E*TRADE Bank (the "Bank"), Card Capture Services, Inc., now E*TRADE Access Inc. ("E*TRADE Access"), VERSUS Technologies, Inc. ("VERSUS") and other international subsidiaries. We were incorporated in California in 1982 and were reincorporated in Delaware in July 1996. Our principal corporate offices are located at 4500 Bohannon Drive, Menlo Park, CA 94025. We offer automated order placement and execution, financial products and services that can be personalized, including portfolio tracking, charting and quote applications, "real-time" market commentary and analysis, news, professional research reports and other information services. Our products also include mutual funds, proprietary mutual funds, bond trading, banking, automated teller machine ("ATM") services, and access to participate in initial public offerings ("IPOs"). We provide our services 24 hours a day, 7 days a week by means of the Internet, automated telephone service, direct modem access, Internet-enabled wireless devices, and live telephone support.

During fiscal 2000, we expanded and diversified our business, executing upon our three key business strategies:

To build an efficient electronic business model

We have continued to build our technology infrastructure to increase the electronic delivery of statements, transaction confirmations,

real-time account openings, and access to our products and services through wireless platforms and content providers. In addition, we have expanded the capabilities of our technology infrastructure through the expansion of capacity and speed of execution.

To grow global, diversified revenue streams through strategic market initiatives, globalization, and acquisitions

We have diversified our revenue streams in fiscal 2000 through the acquisitions of Telebank Financial Corporation ("Telebank"), now E*TRADE Financial Corporation ("ETFC"), the holding company of E*TRADE Bank, and E*TRADE Access, VERSUS, and several of our international affiliates. With the acquisitions of ETFC and E*TRADE Access, we have begun to offer banking services through a nationwide network of ATMs. We have also positioned ourselves to grow internationally by increasing our institutional client base worldwide and enhancing our ability to conduct cross-border trading through the acquisitions of VERSUS and several other foreign affiliates. E*TRADE now serves over 465,000 international customers and has nine retail branded Web sites outside the United States.

To combine choice, service, product density, and personalization to provide superior, simplified financial solutions for our customers

Our asset gathering strategy has been designed to expand the value we provide to and derive from each of our customers. Through our acquisition of Electronic Investing Corporation ("elvesting") in July 2000, we will enable our customers to create personalized portfolios of securities via the Internet and trade in dollar denominated transactions. Our recent partnership with Ernst & Young, LLP ("E&Y") will give our customers access to electronic advisory services and E&Y's network of financial planners through a new company, Bright Future, Inc., conducting business as eAdvisor. Through strategic alliances with State Street Bank and Wit Soundview Group, Inc. ("Wit"), we will expand our asset management services by providing customers access to tax-advantaged college savings products, access to participation in IPOs, and Wit's world class research tools. Our cross-selling ability between brokerage, banking, global and institutional, and asset gathering customers, will enable us to diversify revenue by increasing services and products to our existing customers while minimizing costs to acquire new accounts. Also, through the acquisition of PrivateAccounts, Inc. ("PrivateAccounts") in October 2000, we expect to further expand our product portfolio to offer separate account management services for those investors who are looking for private management of their money.

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In January 2000, we completed our acquisition of Telebank, now ETFC. ETFC is the holding company of E*TRADE Bank, formerly Telebank, an Internet-based, federally chartered savings bank. We issued approximately 35.7 million shares of our common stock in connection with the acquisition. We pursued this acquisition primarily in order to enable us to become a competitive and immediate participant in the online banking market, thereby broadening our product portfolio and creating a leading end-to-end, "one-stop-shop" portal for managing personal finances and financial services online. The transaction was accounted for as a pooling of interests, and accordingly, all historical information has been prepared to give retroactive effect to the acquisition.

In August 2000, we acquired the outstanding shares of VERSUS, a Canadian-based provider of electronic securities trading services for institutional and retail investors and owner of the E*TRADE Canada license, in a share exchange. Through the acquisition of VERSUS, we increased our retail and institutional client base and will be able to incorporate the technology underlying the VERSUS Network, a scalable proprietary electronic trading platform, into our global cross-border trading platform, enabling institutions and investment dealers worldwide to route orders globally through our trading networks. Each VERSUS shareowner received approximately .725 shares of E*TRADE common stock or shares of EGI Canada Corporation ("ECC") that are exchangeable for shares of E*TRADE common stock (the "Exchangeable Shares") for every VERSUS share held (see Note 3 to the Consolidated Financial Statements). Options held by VERSUS associates were assumed by E*TRADE and, upon exercise, are convertible into approximately .725 shares of E*TRADE common stock. The acquisition was accounted for as a pooling of interests, and accordingly, all historical information has been prepared to give retroactive effect to the acquisition.

We have further expanded globally during fiscal 2000 through several key acquisitions of former licensees and through the formation of joint ventures. During the first quarter of fiscal 2000, we acquired 100% of the equity in E*TRADE U.K., E*TRADE Nordic AB, and E*TRADE NetBourse, which owns a 34% interest in CPR E*TRADE in France, expanding our branded Web site to customers in the United Kingdom, France, the Nordic countries, the Netherlands, Luxembourg, Austria, and Italy. However, we terminated our relationship with CPR E*TRADE in France in September 2000 and are now evaluating new opportunities in the French market. Acquisitions of our international affiliates, with the exception of VERSUS, have been accounted for under the purchase method.

During fiscal 2000, we also entered into joint venture agreements to establish online retail brokerage operations in Korea, Germany, and Norway. E*TRADE Korea was launched to offer customers in Korea attractive trading rates that provide significant savings compared to competitors' fees and no fees for deposits and other services. We maintain a 10% investment in E*TRADE Korea. The E*TRADE Germany AG joint venture has capitalized on the German market's strong growth in electronic personal financial services. We subsequently signed an agreement to increase our ownership percentage of E*TRADE Germany AG from 60% to 100% in the first quarter of fiscal 2001. E*TRADE Norway offers Norwegian and Swedish stocks and options trading to retail investors in Norway and gives us access to over 1.4 million clients of our joint venture partner. E*TRADE Japan KK was also launched and went public in fiscal 2000, at which point we sold a portion of our investment resulting in a gain of approximately \$77.5 million, and reducing our ownership percentage from 42% to 32%. The launch of E*TRADE Japan KK coincided with the deregulation of Japanese brokerage commission rates and enabled us to determine the commission structure for securities transactions for our Japanese investors, presenting them a wider range of investing opportunities than previously available. In the first quarter of fiscal 2001, E*TRADE South Africa was launched to offer online trading of stocks and warrants listed on the Johannesburg Stock Exchange as well as comprehensive market information to the largest investor market in Africa.

During the third quarter of fiscal 2000, we launched the first phase of our cross-border trading network, allowing investors in Sweden to purchase U.S. securities online in their own currency. We will continue to roll out cross-border trading in Australia and U.S. trading of foreign equities in fiscal 2001. We now serve customers through branded Web sites in Australia, Canada, Denmark, Japan, Korea, New Zealand, Norway, South Africa, Sweden, and the U.K. We expect to continue our global expansion efforts throughout fiscal 2001.

With the expansion of our business during fiscal 2000, we have separated our financial services into four major categories: 1) Domestic Retail Brokerage, 2) Banking, 3) Global and Institutional, and 4) Asset Gathering and Other. Domestic Retail Brokerage is comprised of the activities of our wholly-owned subsidiary, E*TRADE

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Securities, which offers domestic retail brokerage services by means of the Internet, automated telephone service, direct modem access, Internet-enabled wireless devices, and live telephone support. Banking is comprised primarily of the activities of the Bank, offering a wide range of Federal Deposit Insurance Corporation ("FDIC")-insured and other banking products, and E*TRADE Access, which operates a nationwide network of over 9,600 ATMs. These channels, in addition to the E*TRADE Zone, a service center located in the SuperTarget store in Roswell, Georgia, offering guests access to integrated banking, brokerage and investment planning services, and our 540 Madison Avenue, New York location, expected to open in the second quarter of 2001, will enhance customer convenience and extend the reach of our financial services portal by offering a blended approach to our services, combining "high-tech" with "high-touch," through a physical E*TRADE presence. Global and Institutional includes the activities of TIR, which provides services primarily to institutional investors, VERSUS, which provides both retail and institutional services, and our international affiliates which provide services primarily to non-domestic retail investors. These channels have allowed us to expand internationally and our expanding technology in these sectors has enabled us to launch the first phase of our cross-border trading platform, allowing retail customers in Sweden and Norway to buy U.S. equities in real time, online. In addition, we are developing an electronic trading platform for our institutional customers. Asset Gathering and Other includes our mutual fund operations, the Business Solutions Group ("BSG"), eInvesting, and other services focused on retirement/401(k) programs, college savings plans, delivery of electronic advice and money management, tiered product offerings and activities generated from our corporate operations. As the Asset Gathering and Other operations of our business represent emerging activities which are not material to our consolidated results for segment reporting purposes, management has combined Asset Gathering and Other with Domestic Retail Brokerage to form one of three reportable segments. Banking and Global and Institutional comprise the other two reportable segments constituting the manner in which management currently evaluates company performance.

For financial information by segment and geographic area for the three years ended September 30, 2000, see Note 23 to the Consolidated Financial Statements. No material part of our consolidated revenue is received from a single customer.

DOMESTIC RETAIL BROKERAGE

Business Overview

Our domestic retail brokerage business is comprised of the activities of E*TRADE Securities. As of September 30, 2000, we had 2,952,000 active brokerage accounts, up 90% for the year, with assets held in customer brokerage accounts in excess of \$59.9 billion, up 111% from last year. In fiscal 2000, we added 1,401,000 net new active brokerage accounts, an increase of 39% over the number of net new brokerage accounts added in fiscal 1999. Our average daily transaction volume was 167,000 in fiscal 2000, a 144% increase over the average daily transaction volume of 68,500 in fiscal 1999. The strong gains in new brokerage accounts, transactions and assets represent the success of our strategy to become *the* branded, global leader and recognized authority in electronic personal financial services as led by our domestic retail brokerage business. This strategy involves:

- leveraging our powerful brand to increase new customer accounts and assets held in customer accounts by offering a unique and compelling online experience;
- providing the broadest range of high-value-added tools, products and services;
- enabling "anytime, anywhere, anyway" access, worldwide, to actionable information; and
- integrating a broad-based digital financial media strategy with existing product and service offerings.

Products and Services

Our domestic retail brokerage and related investment services are based upon proprietary transaction-enabling technology and are designed to serve the needs of self-directed investors. Our services include fully-automated stock, option, fixed income and mutual fund order processing, online investment portfolio tracking, and financial market news and information. We offer our services to consumers through a broad range of electronic gateways, including the Internet, automated telephone service, Internet-enabled wireless devices, direct modem access, and live telephone representatives available 24 hours a day, 7 days a week. Customers have access to current account information regardless of which gateway they are using. We expanded our services significantly during fiscal 2000

with several important new offerings, including wireless access to quotes and trading, pre-open trading, online documents, and real-time account opening and funding.

We continually strive to increase the functionality of our services, as well as to offer new services that enhance customers' online investing experiences. Our services give consumers increased control over their personal investments by providing a link to the financial markets and to financial information through a user interface that can be customized and personalized. Our existing services and product offerings are described below.

Stock, Option, Fixed Income and Mutual Fund Investing

Customers can directly place orders to buy and sell NASDAQ and exchange-listed securities, as well as equity and index options, bonds and mutual funds through our automated order processing system. In fiscal 2000, we extended our trading window to include the hours from 8:00am-6:30pm Eastern Standard Time ("EST"), supporting trading for an additional 4 hours outside the regular market window. We support a range of order types, including market orders, limit orders (good-until-canceled or day), stop orders and short sales. System intelligence automatically checks the parameters of an order, together with the customer's available cash balance and positions held, prior to executing an order. All market orders for exchange-listed securities (subject to certain size limitations) are executed at the National Best Bid/Offer ("NBBO") or better, at the time of receipt by the third market firm or exchange. The NBBO is a dynamically updated representation of the combined highest bid and lowest offer quoted across all United States stock exchanges and market makers registered in a specific stock. Eligible orders are exposed to the marketplace for possible price improvement, but in no case are orders executed at a price inferior to the NBBO. Limit orders are executed based on an indicated price and time priority. All NASDAQ market orders, subject to certain size limitations, are executed at the Best Bid/Offer, Inside Market or better at the time of receipt by the market-maker. All transaction and portfolio records are automatically updated to reflect trading activity. Buy and sell orders placed when the markets are closed are automatically submitted prior to the next day's market opening unless the customer chose to enter the order as an extended-hours transaction. Account holders receive electronic notification of order executions, printed transaction confirmations and detailed statements. We also arrange for the transmittal of proxy, annual report and tender offer materials to customers.

Market Data and Financial Information

We continuously receive a direct feed of detailed quote data, market information and news. Customers can create their own personal lists of stocks and options for quick access to current trading information. We provide our customers and members free real-time price quotes, including stocks, options, major market indices, most active issues, and largest gainers and losers for the major exchanges. Users are alerted when a stock hits the price, volume or price to earnings ratio that they set. Through our alliances, we also provide access to breaking news, charts, market commentary and analysis and company financial information from over a dozen branded partners. As with after-hours trading, customers can access extended hours quotes, get breaking market news, and place orders. This service is made available via our relationship with the Archipelago Electronic Communications Network.

Portfolio Tracking and Records Management

Customers have online access to a listing of all their portfolio assets held by us, including data on the date of purchase, cost basis, current price and current market value. The system automatically calculates unrealized profits and losses for each asset held. Detailed account balance and transaction information includes cash and money market fund balances, buying power, net market portfolio value, dividends received, interest earned, deposits and withdrawals. Brokerage history includes all orders, executions, changes and cancellations. Tax records include total short-term or long-term gain/loss and commissions paid. Customers and registered members can also create watch lists to include most financial instruments a customer is interested in tracking—for example, assets held at another brokerage firm. These watch lists can include stocks, options, bonds and many mutual funds. In fiscal 2000, we introduced Online Documents, an optional service that allows customers to receive and view official account statements and transaction confirmations via the Internet, providing added convenience.

Cash Management Services

Fiscal 2000 marked the introduction of E*TRADE Account Express, a service that allows customers to open and fund new brokerage accounts in real-time via the Internet, streamlining the application process and minimizing paperwork for qualified customers. We continue to receive customer payments through the mail, federal wire system

or the Internet, and credit these funds to customer accounts upon receipt. We also provide other cash management services to our customers. For example, uninvested funds earn interest in a credit interest program or can be invested in one of nine money market mutual funds. In addition, we provide free checking services with no minimum balance requirement through a commercial bank and are exploring the expansion of these services. We also offer electronic funds transfer via the Internet and an automatic deposit program to allow scheduled periodic transfers of funds into customers' E*TRADE accounts.

Other Services

Fiscal 2000 marked significant progress in our quest for a leadership presence in wireless finance. Through alliances with AT&T Wireless, Sprint PCS, Verizon Wireless, Nextel Communications, OmniSky and OracleMobile, we are furthering our wireless strategy with the potential to offer our integrated wireless products and services to over 50 million wireless subscribers nationwide.

Our DSL program acknowledges the value of high-speed internet access, providing a premium service for our most active investors. Power E*TRADE Basic customers (more than 30 transactions per quarter) receive free DSL installation and discounted service. Power E*TRADE Platinum customers (more than 75 transactions per quarter) receive free installation and free monthly service. This program is delivered via our partnership with SBC Communications.

Our OptionsEdge service launched in fiscal 2000. OptionsEdge establishes E*TRADE as a leader in the options arena, providing free real-time options quotes to customers and members, most active options content, and powerful tools such as options chains and a Black-Scholes calculator.

Customers and Markets

Current domestic retail brokerage customers will continue to be a key target in our marketing communications as they represent a major opportunity for growing total assets and leveraging our cross-selling business strategy. We plan to expand our customer base with the acquisition of online investors from competitive brokerages, investors with traditional brokerage relationships, and new investors who are just beginning to build their financial future. We believe that a common goal of our customers is to take personal control of their finances and leverage timely ideas, insights and information to build wealth.

The domestic retail brokerage business plans to utilize the strength of its marketing partnerships, online and offline alliances and a sophisticated prospecting approach to identify, reach and convert new customers. The primary focus of these efforts will be on high-value investors, active traders and investors who have a strong affinity with one of our marketing partners.

Operations

Clearing

Clearing operations include the confirmation, receipt, settlement, custody and delivery functions involved in securities transactions. Performing our own clearing operations allows E*TRADE Securities to retain customer free credit balances and securities for use in margin lending activities subject to Securities and Exchange Commission ("SEC") and National Association of Securities Dealers Regulation, Inc. ("NASDR") rules. E*TRADE Securities has an agreement with BETA Systems through July 2003, for the provision of computer services to support order entry, order routing, securities processing, customer statement preparation, tax reporting, regulatory reporting, and other services necessary to manage a brokerage clearing business.

As a self-clearing brokerage, customers' securities typically are held in nominee name on deposit at one or more of the recognized securities industry depository trust companies, to facilitate ready transferability. We collect dividends and interest on securities held in nominee name and make the appropriate credits to customer accounts. We also facilitate exercise of subscription rights on securities held for our customers. We arrange for the transmittal of proxy, annual report and tender offer materials to customers. E*TRADE Securities relies on certificate

counts and microfilming procedures as deterrents to theft of securities and, as required by the NASDR and certain other regulatory authorities, carries fidelity bonds covering loss or theft.

Lending and Borrowing Activities

Margin Lending. We make loans to customers that are collateralized by customer securities. Our margin lending is subject to the margin rules of the Board of Governors of the Federal Reserve System, NASDR margin requirements and our internal policies, which are more stringent than the Federal Reserve and NASDR requirements. In permitting customers to purchase securities on margin, we take the risk of a market decline that could reduce the value of the collateral held by us to below the customers' indebtedness before the collateral can be sold, which could result in losses to us. Under applicable NASDR rules, in the event of a decline in the market value of the securities in a margin account, we are generally obligated to require the customer to deposit additional securities or cash in the account so that, at all times, the customer's equity in the account is at least 25% of the value of the securities in the account. Our current internal requirement, however, is that the customer's equity not fall below 30%. In the event a customer's equity falls below 30%, the customer will be required to increase the account's equity to 35%. Margin lending to customers constitutes the major portion of the basis on which our net capital requirements are determined under the SEC's Net Capital Rule. To the extent these activities expand, our net capital requirements will increase. See "Item 7. Risk factors—We may be fined or forced out of business if we do not maintain the net capital levels required by regulators" and "Item 7. Risk factors—As a significant portion of our revenues come from online investing services, any downturn in the securities industry could significantly harm our business."

Securities Lending and Borrowing. We borrow securities both to cover short sales and to complete customer transactions in the event a customer fails to deliver securities by the required settlement date. We collateralize such borrowings by depositing cash or securities with the lender and receive a rebate (in the case of cash collateral) or pay a fee calculated to yield a negotiated rate of return. When lending securities, we receive cash or securities and generally pay a rebate (in the case of cash collateral) to the other party in the transaction. Securities lending and borrowing transactions are executed pursuant to written agreements with counterparties that require that the securities borrowed be "marked-to-market" on a daily basis and that excess collateral be refunded or that additional collateral be furnished in the event of changes in the market value of the securities. The securities usually are "marked-to-market" on a daily basis through the facilities of the various national clearing organizations.

Order Processing

All market orders for exchange-listed securities (subject to certain size limitations) are executed at the NBBO or better, at the time of receipt by the third market firm or exchange. The NBBO is a dynamically updated representation of the combined highest bid and lowest offer quoted across all United States stock exchanges and market makers registered in a specific stock. Eligible orders are exposed to the marketplace for possible price improvement, but in no case are orders executed at a price inferior to the NBBO. Limit orders are executed based on an indicated price and time priority. All NASDAQ market orders, subject to certain size limitations, are executed at the Best Bid/Offer, Inside Market or better at the time of receipt by the market-maker. All transaction and portfolio records are automatically updated to reflect trading activity. Buy and sell orders placed when the markets are closed are automatically submitted prior to the next day's market opening unless the customer chose to enter the order as an extended-hours transaction. Account holders receive electronic notification of order executions, printed transaction confirmations and detailed statements. See "Item 7. Risk factors—We could be subject to customer litigation and our reputation could be materially harmed if our ability to correctly process customer transactions is slowed or interrupted."

The market for online investing services, particularly over the Internet, is rapidly evolving and intensely competitive, and we expect competition to continue to intensify in the future. See "Item 7. Risk factors—Our business will suffer if we cannot effectively compete."

The securities industry in the United States is subject to extensive regulation under both federal and state laws. See "Item 7. Risk factors—Our ability to attract customers and our profitability may suffer if changes in government regulation favor our competition or restrict our business practices" and "Item 7. Risk factors—We may be fined or forced out of business if we do not maintain the net capital levels required by regulators."

Access and Delivery of Services

Our services are widely accessible through multiple gateways, with automated order placement available 24 hours a day, 7 days a week by personal computer, touch-tone telephone, Internet-enabled wireless devices, and live telephone representatives. In August 1999, we further enhanced our ability to offer a superior customer experience by introducing access to live agent customer service on a 24×7×366 basis.

- **Personal Computer.** Customers using personal computers can access our system through the Internet or direct modem access. Our Web site combines an easy-to-use graphical user interface with the trading capabilities that experienced investors demand. The Web-based system also includes direct links to many investment-related resources on the Web. Alternatively, accessing our system by dialing directly through a modem offers a method for connecting to the trading system independent of either the Internet or a proprietary online service.
- **Touch-tone Telephone.** TELE*MASTER[®], our interactive investing system, provides customers with a convenient way to access quotes, place orders and access portfolio information using their voice or a touch-tone telephone keypad.
- **Internet-enabled Wireless Devices.** Customers may access our system via Internet-enabled wireless phones supporting the Handheld Device Markup Language (HDML) or Palm VII with built in modem or Palm V handheld computer equipped with an after-market wireless modem addition. Our Mobile E*TRADE suite of products allow customers to access quotes, place orders, view portfolio and account information and retrieve customized investment-related information wherever the customer's wireless provider offers data coverage.

BANKING

Business Overview

Our banking segment is primarily comprised of the business activities of the Bank and E*TRADE Access. The Bank offers high value financial products and services primarily over the Internet. Like traditional banks, we provide a wide range of FDIC-insured and other banking products and services to customers. Unlike traditional banks, we deliver these products and services through the Internet, telephone and ATMs, thus eliminating the costs associated with brick-and-mortar branches. We believe that this cost-efficient banking platform allows us to offer significantly higher rates and lower fees than traditional banks and enables worldwide delivery of products and services through "anytime, anywhere, anyway" access. We believe that our low cost structure is a significant competitive advantage over traditional banks with brick-and-mortar branches.

Currently, approximately 87% of our banking customer contacts occur over the Internet. Using our secure, comprehensive and customer-friendly Web site, individuals can open accounts, view consolidated balance statements, transfer funds between accounts (both intra-bank and intra-E*TRADE), pay bills and compare our premium rates to national averages. Additionally, we seek to provide superior customer service through highly trained customer service representatives located in our call centers, which are open 24 hours a day, 7 days a week.

In May 2000, we completed our acquisition of CCS, now E*TRADE Access, the largest independent network of centrally-managed ATMs in the U.S. This acquisition, a critical component of our "high tech, high touch" strategy, enabled us to deploy a nationwide ATM network of over 9,600 machines located in 48 states and 3 countries. We believe that our ATM network will enhance customer convenience and extend the reach of our financial services portal by providing physical touch-points for services. Importantly, the deployment of the ATM network does not require an investment in traditional brick-and-mortar branches. We are currently developing Financial Services Kiosks that offer advanced functionality and serve as a cost-effective delivery channel for cross-selling our products and services. We believe that the physical touch-point provided by our ATM network will expedite the adoption of Internet banking.

Our core banking strategy – high value products and services, superior customer service and "anytime, anywhere, anyway" convenience – has produced significant growth. From 1993 to 1997, deposits at the Bank increased at a compound annual growth rate of 47%. From 1997 through 2000, deposits increased at a compound annual growth rate of 140%. Future growth will be driven by continued adherence to this core strategy.

We are focused on cross-selling banking products to the E*TRADE customer base. Since acquiring ETFC in January 2000, the percentage of new banking accounts generated from "cross-sold" customers were 40%, 30%, and 7%, in the fourth, third, and second quarters, respectively, of fiscal 2000. Working with our Business Solutions Group, we have also begun to expand our electronic/physical presence in major corporations. During the third quarter of fiscal 2000, we announced that we will install E*TRADE ATMs at Oracle Corporation's major facilities to provide a range of banking and financial services to Oracle's 40,000+ employees. We expect to create similar "Virtual Credit Unions" for other companies during fiscal 2001.

Currently, we offer loans, credit cards and insurance products through strategic partnerships with other companies. We are evaluating whether to offer proprietary products in these areas.

The Bank asset acquisition strategy continues to be conservative. We purchase and manage pools of one-to-four family residential, first lien mortgage loans and investment-grade mortgage-backed securities. We do not currently originate residential mortgages or other loans, but instead purchase them in the secondary market.

Products and Services

We offer a variety of deposit products. Our interest checking accounts are designed for customers who seek premium yields and outstanding benefits, including unlimited personal check writing, free check printing, free Internet banking, free unlimited online bill payment, access to a nationwide ATM network, and an ATM/debit card. Our money market and SmartSaver accounts are designed for consumers who are seeking premium and super premium yields with immediate access to funds without term restrictions or early withdrawal penalties. Our standard certificates of deposit ("CDs") are designed for consumers who want a fixed premium yield for terms ranging from three months to five years. For those consumers who seek an even higher premium yield CD, we offer seven-to-ten year callable CDs, which are subject to redemption by us anytime after two years.

We currently offer several financial products through strategic alliances with other companies. Through E-Loan, an online mortgage broker, we offer co-branded, rate-competitive residential mortgage loans to our customers. Through InsWeb and Answer Financial Inc., we offer insurance products, and through First USA, we offer credit card services. We are evaluating whether to offer proprietary products in these areas.

Customers and Markets

We serve customers in all 50 states and several foreign countries. Over 68% of the Bank's customer base is concentrated in U.S. major metropolitan areas. In line with our marketing efforts, the Bank's highest concentration of customers are found in the cosmopolitan areas of Philadelphia (31.7%), New York (18.4%), Washington/Baltimore (15.3%), Los Angeles (8.0%), San Francisco (5.0%) and Chicago (4.5%).

Operations

With E*TRADE and ETFC as savings and loan holding companies and the Bank as a federally chartered savings bank, we are subject to extensive regulation, supervision and examination by the Office of Thrift Supervision ("OTS") as our primary federal regulator. We are also subject to regulation, supervision and examination by the FDIC. Further, as a financial services holding company, we are also subject to the SEC's Industry Guide 3 reporting requirements. Certain disclosure of financial information required by Guide 3 with respect to our banking services is provided below as a part of our discussion of banking operations.

Prior to its acquisition, ETFC reported its results of operations on a fiscal year ending December 31. Because we report on a fiscal year ending September 30, financial information contained in this document for fiscal 2000 and 1999 includes the results of ETFC for the twelve months ended September 30, 2000 and 1999. Fiscal 1998, 1997 and 1996 include the results of ETFC for the twelve months ended December 31, 1998, 1997 and 1996, respectively. Accordingly, the reconciliation of activities in certain accounts presented herein for the year ended September 30, 1999 will begin with the October 1, 1998 balance, whereas the September 30, 1998 reconciliation will cover ETFC's operating period from January

1, 1998 through December 31, 1998. This reconciliation causes certain amounts to be included in both fiscal 1999 and 1998.

Lending Activities

General. As part of our banking operations, we purchase whole loans and mortgage-backed and related securities rather than produce or originate loans.

Loan Portfolio Composition. At September 30, 2000, our net loans receivable totaled \$4.2 billion or 46.2% of total bank assets. As of the same date, \$4.2 billion, or 99.81%, of the total gross loan portfolio, consisted of one- to four-family residential mortgage loans. Prior to 1990, we originated a limited number of loans for the purchase or construction of multi-family and commercial real estate. However, as part of our general operating strategy and in response to risks associated with multi-family and commercial real estate lending and prevailing economic conditions, we stopped originating and purchasing such loans. At September 30, 2000, multi-family, commercial, and mixed-use real estate loans amounted to \$3.4 million, or 0.08%, of our total gross loan portfolio. The loan portfolio also included second trust residential mortgages, home equity lines of credit, automobile loans and loans secured by savings deposits totaling \$4.3 million, or 0.11%, of our total gross loan portfolio at September 30, 2000.

The following table presents information concerning our banking loan portfolio, in dollar amounts and in percentages, by type of loan.

	September 30, 2000		%	September 30, 1999		%	September 30, 1998		%	September 30, 1997		%	September 30, 1996		%
(dollars in thousands)															
Real estate loans:															
One- to four-family fixed-rate	\$	1,583,129	37.45%	\$	1,391,254	63.69%	\$	466,850	50.76%	\$	211,287	38.11 %	\$	142,211	38.59%
One- to four-family adjustable-rate		2,635,955	62.36		785,821	35.98		430,319	46.79		336,470	60.69		217,352	58.97
Multi-family		203	0.01		1,330	0.06		3,223	0.35		1,447	0.26		1,516	0.41
Commercial		2,717	0.06		3,050	0.14		8,916	0.97		3,033	0.55		4,017	1.09
Mixed-use		503	0.01		945	0.04		929	0.10		856	0.15		1,180	0.32
Land		—	0.00		279	0.01		316	0.03		463	0.08		781	0.21
Total real estate loans		4,222,507	99.89		2,182,679	99.92		910,553	99.00		553,556	99.84		367,057	99.59
Consumer and other loans:															
Home equity lines of credit and second mortgage loans		4,042	0.10		1,024	0.05		5,895	0.64		564	0.10		1,208	0.33
Lease financing		82	0.00		255	0.01		554	0.06		—	—		—	—
Other(1)		224	0.01		430	0.02		2,758	0.30		305	0.06		305	0.08
Total consumer and other loans		4,348	0.11		1,709	0.08		9,207	1.00		869	0.16		1,513	0.41
Total loans		4,226,855	100.00 %		2,184,388	100.00%		919,760	100.00%		554,425	100.00 %		368,570	100.00%
Deduct:															
Discounts and deferred fees on loans		(43,171)			(22,718)			(9,989)			(9,938)			(13,568)	
Allowance for loan losses		(10,930)			(7,161)			(4,766)			(3,594)			(2,957)	
Other		—			—			(151)			(189)			(224)	
Total		(54,101)			(29,879)			(14,906)			(13,721)			(16,749)	
Loans receivable, net	\$	4,172,754		\$	2,154,509		\$	904,854		\$	540,704		\$	351,821	

(1) Includes loans secured by automobiles and manufactured housing.

Maturity of Loan Portfolio. The following table shows, as of September 30, 2000, the dollar amount of non-originated loans maturing in our portfolio in the time periods indicated. This information includes scheduled principal repayments, based on the loans' contractual maturities. We report demand loans, loans with no stated repayment schedule and no stated maturity, and overdrafts as due within one year. The table below does not include any estimate of prepayments. Prepayments may significantly shorten the average life of a loan and may cause our actual repayment experience to differ from that shown below.

	Due In One Year Or Less	Due in One to Five Years	Due After Five Years	Total
(in thousands)				
Real estate loans:				
One- to four-family fixed-rate	\$ 235	\$ 3,101	\$ 1,579,793	\$ 1,583,129
One- to four-family adjustable-rate	36	936	2,634,983	2,635,955
Multi-family	—	5	198	203
Commercial	304	—	2,413	2,717
Mixed-use	9	177	317	503
Consumer and other loans:				
Home equity lines of credit and second mortgage loans	—	99	3,943	4,042
Lease financing	82	—	—	82
Other	43	181	—	224
Total	\$ 709	\$ 4,499	\$ 4,221,647	\$ 4,226,855

The following table shows, as of September 30, 2000, the dollar amount of our loans that mature after September 30, 2001. We have allocated these loans between those with fixed interest rates and those with adjustable interest rates.

	Fixed Rates	Adjustable Rates	Total
(in thousands)			
Real estate loans:			
One- to four-family	\$ 1,582,894	\$ 2,635,919	\$ 4,218,813
Multi-family	5	198	203
Commercial	292	2,121	2,413
Mixed-use	494	—	494
Consumer and other loans:			
Home equity lines of credit and second mortgage loans	3,660	382	4,042
Other	—	181	181
Total	\$ 1,587,345	\$ 2,638,801	\$ 4,226,146

Some loans contain due-on-sale clauses, which give us the right to declare a conventional loan immediately due and payable in the event, among other things, that the borrower sells the property. However, if market interest rates on current mortgage loans climb to a level substantially higher than rates on loans that we own, the average life of our loans tends to increase. Conversely, the average life of our mortgage loans tends to decrease when market interest rates on current loans fall substantially below rates on loans that we own.

Purchase of Loans. Substantially all of our loans are originated by third parties. The following table shows our loan purchases during the periods indicated.

	Loan Purchases
(in thousands)	
Year Ended:	
September 30, 2000	\$ 2,658,927
September 30, 1999	\$ 1,806,019
September 30, 1998	\$ 518,000
September 30, 1997	\$ 342,900
September 30, 1996	\$ 183,100

Additionally, during 1998, we acquired approximately \$150.0 million in loans through our acquisition with Direct Financial Corporation ("DFC").

The following table shows our loan, purchase, sale, and repayment activity during the periods indicated including loans acquired through

business combinations.

	Years Ended September 30,		
	2000	1999	1998
	(in thousands)		
Loans receivable—net at beginning of period	\$ 2,154,509	\$ 793,189	\$ 540,704
Loans purchased:			
One- to four-family variable-rate	2,235,900	535,571	299,817
One- to four-family fixed-rate	423,027	1,270,168	330,477
Multi-family	—	280	1,959
Commercial real estate	—	—	8,941
Consumer and other loans	—	—	26, 910
Total loans purchased	2,658,927	1,806,019	668, 104
Loans sold	(232,209)	(90,740)	(20,622)
Loan repurchases	(417)	(878)	—
Loan repayments	(424,283)	(353,916)	(280, 151)
Total loans sold, repurchased and repaid	(656,909)	(445,534)	(300,773)
Net change in deferred discounts and loan fees	20,252	2,379	(611)
Net transfers to REO	(269)	(266)	(1,923)
Net change in allowance for loan losses	(3,769)	(2,446)	(1,172)
Cost recovery/contra assets	—	197	—
Other loan debits/HELOC advances	13	971	525
Increase in total loans receivable	2,018,245	1,361,320	364, 150
Loans receivable—net at end of period	\$ 4,172,754	\$ 2,154,509	\$ 904,854

Our primary method of purchasing loans is through the secondary market, utilizing private investors. We purchase the loans in pools made up of multiple whole loans. In fiscal 2000, 1999 and 1998 we purchased 851 pools with 7,047 loans, 477 pools with 6,245 loans and 171 pools with 2,472 loans, respectively.

We have not originated any consumer loans during fiscal 2000, 1999 or 1998. Prior to fiscal 1998 we originated consumer loans as an accommodation to our customers or purchased such loans as part of larger loan packages. To service our loan portfolio, we enter into loan servicing contracts with multiple third party servicers.

CRA Lending Activities. The Bank participates in various community development programs in an effort to meet its responsibilities under the Community Reinvestment Act ("CRA"). We invest in loans or other investments secured by affordable housing for low- or moderate-income individuals and have committed to invest up to \$500,000 in a low-income housing tax credit fund that qualifies as a community development loan under the CRA. Senior management of the Bank serves on the boards of directors of non-profit organizations to promote community development. We also provide loan servicing for Habitat for Humanity of Northern Virginia, Inc., a non-profit organization whose purpose is to create affordable housing for those in need.

In 1995, the federal financial regulatory agencies revised the regulations that implement the CRA. The revised regulations set forth specific types of evaluations for wholesale banks, which are those that are not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers. Satisfaction of a wholesale bank's responsibilities under the CRA is measured by various criteria including the number and amount of community development loans, qualified investments, or community development services, and the use of innovative or complex community development services, qualified investments, or community development loans. The Bank has been approved as a wholesale bank and is currently in compliance with CRA requirements.

Delinquent, Non-performing and Other Problem Assets

General. We continually monitor our loan portfolio so that we will be able to anticipate and address potential and actual delinquencies. Based on the length of the delinquency period, we reclassify these assets as

non-performing and if necessary take possession of the underlying collateral. Once the Bank takes possession of the underlying collateral, the property is classified on our balance sheet as Real Estate Owned ("REO").

Non-performing Assets. Non-performing assets consist of loans for which interest is no longer being accrued, troubled debt restructuring ("TDRs") which are loans that have been restructured in order to increase the opportunity to collect amounts due on the loan and real estate acquired in settlement of loans. Interest previously accrued but not collected on non-accrual loans is reversed against current income when a loan is placed on non-accrual status. Accretion of deferred fees is discontinued for non-accrual loans. All loans at least ninety days past due, as well

as other loans considered uncollectible, are placed on non-accrual status. Payments received on non-accrual loans are applied to principal when it is doubtful that full payment will be collected.

REO. We initially record REO at estimated fair value less selling costs. Fair value is defined as the estimated amount that a real estate parcel would yield in a current sale between a willing buyer and a willing seller. Subsequent to foreclosure, management periodically reviews REO and establishes an allowance if the estimated fair value of the property, less estimated costs to sell, declines.

As of September 30, 2000, all of our REO consisted of one- to four-family real estate loans.

The following table presents information about our non-accrual loans, TDRs, and REO at the dates indicated.

	September 30, 2000	September 30, 1999	September 30, 1998	September 30, 1997	September 30, 1996
(dollars in thousands)					
Loans accounted for on a non-accrual basis:					
Real estate loans:					
One- to four-family	\$ 11,391	\$ 7,595	\$ 7,727	\$ 10,359	\$ 8,979
Commercial	657	664	372	568	1,217
Land	—	—	316	—	—
Home equity lines of credit and second mortgage loans	—	21	255	—	54
Other	—	60	205	—	—
Total	12,048	8,340	8,875	10,927	10,250
TDRs	—	—	—	425	435
Total of non-accrual loans and TDRs	12,048	8,340	8,875	11,352	10,685
REO: One- to four-family	850	539	1,460	681	1,300
Valuation allowance for REO	—	—	—	—	(65)
Total REO, net	850	539	1,460	681	1,235
Total non-performing assets, net	\$ 12,898	\$ 8,879	\$ 10,335	\$ 12,033	\$ 11,920
Total non-performing assets, net, as a percentage of total bank assets	0.14%	0.21%	0.45%	1.09%	1.84%
Total loss allowance as a percentage of total non-performing loans, net	90.72%	85.86%	53.70%	31.66%	27.67%

During fiscal 2000, our non-performing assets increased by \$4.0 million, or 45.3%, to \$12.9 million at September 30, 2000 from \$8.9 million at September 30, 1999. As a matter of policy, we actively monitor our non-performing assets.

During fiscal 2000 and 1999, if our non-accruing loans had been performing in accordance with their terms, we would have recorded interest income of approximately \$845,000 and \$550,000, respectively. However, none of the interest income disclosed was recognized as income during the periods.

Special Mention Loans. In certain situations, a borrower's past credit history may lead to doubt regarding the borrower's ability to repay under the loan's contractual terms, whether or not the loan is delinquent. Such loans, classified as "special mention" loans, continue to accrue interest and remain as a component of the loans receivable balance. These loans represented \$148,000 of the total loan portfolio at September 30, 2000, and are actively monitored.

Allowance for Loan Losses. As an investor in mortgage loans, we recognize that we will experience occasional credit losses. We believe the risk of credit loss varies with, among other things, the following:

- type of loan;
- creditworthiness of the borrower over the term of the loan;
- general economic conditions; and
- in the case of a secured loan, the quality of the security for the loan.

Our policy is to maintain an adequate allowance for loan losses based on, among other things, the following:

- our historical loan loss experience;
- regular reviews of delinquencies and loan portfolio quality;
- the industry's historical loan loss experience for similar asset types; and
- evaluation of economic conditions.

We increase our allowance for loan losses when we estimate that losses have been incurred by charging provisions for probable loan losses against income. Charge-offs reduce the allowance when losses are confirmed.

In establishing the allowance for loan losses, we set up specific allowances for probable losses that we have identified on specific loans. Additionally, we provide an unallocated allowance for estimated expected losses in the remainder of the loan portfolio. The allowances established by management are subject to review and approval by the Bank's board of directors. Each month, we review the allowance for adequacy, based on our assessment of the risk in our loan portfolio as a whole, considering the following factors:

- the composition and quality of the portfolio;
- delinquency trends;
- current charge-off and loss experience;
- the state of the real estate market; and
- general economic conditions.

During fiscal 2000, we recorded a net increase of \$3.8 million in the allowance for loan losses. The increase resulted from an additional provision of \$4.0 million, offset by net charge-offs of \$234,000. As of September 30, 2000, the total allowance for loan losses was \$10.9 million, of which \$391,000 represented reserves established by management for probable losses on specific loans.

The general allowance is computed on loans with a specific allowance based on an assessment of performing loans. Each month, the performing loan portfolio is stratified by asset type—one- to four-family, commercial, consumer, etc.—and a range of expected loss ratios is applied to each type of loan. Expected loss ratios range between 15 basis points and 300 basis points depending upon asset type, loan-to-value ratio and current market and economic conditions. The expected loss ratios are based on historical loss experience, adjusted to reflect industry loss experience as published by the OTS.

Also considered in the reserve computation is the positive impact of loans acquired that have a seller or third party credit enhancement. As of September 30, 2000, total loans receivable included nine pools of credit-enhanced one- to four-family mortgage loans totaling \$30.9 million, or 0.74%, of total gross loans outstanding. Reserves are not provided for loans in which the credit enhancement amount exceeds the amount of reserves that would otherwise be required. We have purchased certain loans with an expectation that not all contractual payments of the loan will be collected. Discounts attributable to credit issues are tracked separately and are not included as a component of the allowance for loan losses.

The loan portfolio provision recorded for fiscal 2000 was based upon the level of charge-offs and the significant growth in the portfolio. We believe that the combination of our loan loss allowance, net credit discount, and credit enhancement on certain loan pools is adequate to cover estimated losses.

We believe that we have established our existing loss allowances in accordance with generally accepted accounting principles. However, circumstances may change, regulators may request us to increase our allowance for losses. Such an increase could negatively affect our financial condition and earnings. The increase in the allowance for loan losses reflects the significant increase in the loan portfolio, from \$2,184 million at September 30, 1999 to \$4,226 million at September 30, 2000, and the fact that the Bank purchases, rather than originates in house, the majority of its loans. Even though our historic charge-offs are minimal, \$253,000 and \$458,000 in fiscal 2000 and 1999, respectively, we believe the allowance for loan losses, \$10.9 million (0.26% of total loans) and \$7.2 million (0.33% of total loans) at September 30, 2000 and 1999, respectively, is an appropriate estimate of the losses inherent in the loan portfolio.

The following table allocates the allowance for loan losses by loan category at the dates indicated. This allocation does not necessarily restrict the use of the allowance to absorb losses in any other category. The table also shows the percentage of total loans that each loan category represents.

	September 30, 2000		September 30, 1999		September 30, 1998		September 30, 1997		September 30, 1996	
	Amount	Percent of Loans in Each Category to Total Loans	Amount	Percent of Loans in Each Category to Total Loans	Amount	Percent of Loans in Each Category to Total Loans	Amount	Percent of Loans in Each Category to Total Loans	Amount	Percent of Loans in Each Category to Total Loans
(dollars in thousands)										
Real estate loans:										
One- to four-family	\$ 10,554	99.81%	\$ 7,055	99.67%	\$ 4,089	97.55%	\$ 3,271	98.80%	\$ 2,529	97.56%
Multi-family	3	0.01	23	0.06	32	0.35	15	0.26	15	0.41
Commercial	336	0.06	53	0.14	520	0.97	286	0.55	373	1.09
Mixed-use	8	0.01	17	0.04	9	0.10	9	0.15	12	0.32
Land	—	—	—	0.01	6	0.03	8	0.08	8	0.21
Lease financing	—	—	3	0.01	16	0.06	—	—	—	—
Home equity lines of credit and second mortgage loans	29	0.10	9	0.05	57	0.64	5	0.16	20	0.41
Other consumer	—	0.01	1	0.02	37	0.30	—	—	—	—

Total allowance for loan losses	\$ 10,930	100.00%	\$ 7,161	100.00%	\$ 4,766	100.00%	\$ 3,594	100.00%	\$ 2,957	100.00%
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The above amounts include specific reserves at September 30, 2000, 1999, 1998, 1997 and 1996, totaling \$391,000, \$406,000, \$449,000, \$510,000 and \$579,000, respectively, related to non-performing loans.

The following table shows the activity in our allowance for loan losses during the periods indicated.

	Years Ended September 30,				
	2000	1999	1998	1997	1996
	(in thousands)				
Allowance for loan losses at beginning of period	\$ 7,161	\$ 4,715	\$ 3,594	\$ 2,957	\$ 2,311
Charge-offs:					
Real estate loans	(240)	(400)	(463)	(304)	(409)
Other consumer loans	(13)	(56)	(76)	—	(28)
Other loans	—	(2)	(17)	—	—
Total charge-offs	(253)	(458)	(556)	(304)	(437)
Recoveries:					
Real estate loans	19	38	13	13	148
Other consumer loans	—	79	81	7	16
Other loan	—	4	5	—	—
Total recoveries	19	121	99	20	164
Net charge-offs	(234)	(337)	(457)	(284)	(273)
Loan loss allowance acquired in the acquisition with DFC	—	—	724	—	—
Additions charged to operations	4,003	2,783	905	921	919
Allowance for loan losses at end of period	\$ 10,930	\$ 7,161	\$ 4,766	\$ 3,594	\$ 2,957

Mortgage-Backed Securities

We maintain a significant portfolio of mortgage-backed securities, primarily in the following forms:

- privately insured mortgage pass through securities;

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- Government National Mortgage Association ("Ginnie Mae") participation certificates;
- Federal National Home Loan Mortgage Corporation ("Fannie Mae") participation certificates;
- Federal Home Loan Mortgage Corporation ("Freddie Mac") participation certificates; and
- securities issued by other non-agency organizations.

Principal and interest on Ginnie Mae certificates are guaranteed by the full faith and credit of the United States government. Fannie Mae and Freddie Mac certificates are each guaranteed by their respective agencies. Mortgage-backed securities generally entitle us to receive a pro rata portion of the cash flows from an identified pool of mortgages. We also invest in collateralized mortgage obligations ("CMOs"). CMOs are securities issued by special purpose entities generally collateralized by pools of mortgage-backed securities. The cash flows from these pools are segmented and paid in accordance with a predetermined priority to various classes of securities issued by the entity. Our CMOs are senior tranches collateralized by federal agency securities or whole loans. Over 99% of our CMO portfolio is comprised of securities with a triple 'A' rating. Although our CMO portfolio has maturity periods similar to our mortgage-backed pass-through securities, the nature of the CMO bonds acquired, primarily sequential pay bonds, provides for more predictable cash flows than the mortgage-backed securities. This reduces the duration risk, extension risk and price volatility of the CMO compared to mortgage-backed pass-through securities and thus allows us to target liabilities with shorter durations.

In accordance with Statement of Financial Accounting Standard ("SFAS") No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, we classify our mortgage-backed securities in one of three categories: held-to-maturity, available-for-sale or trading. During fiscal 2000, 1999 and 1998, we held no mortgage-backed securities classified as held-to-maturity.

The following table shows the activity in our available-for-sale mortgage-backed securities portfolio during the periods indicated.

Years Ended September 30,		
2000	1999	1998

	(in thousands)		
Mortgage-backed securities at beginning of period	\$ 1,426,053	\$ 798,860	\$ 319,203
Purchases:			
Pass-through securities	—	—	22,776
CMOs	3,579,379	1,159,652	1,092,487
Fannie Mae	590,236	92,378	8,405
Ginnie Mae	8,891	—	5,890
Freddie Mac	173,732	—	11,759
Other	—	—	19,586
Sales(1)	(1,140,935)	(285,414)	(294,161)
Repayments	(463,985)	(332,092)	(174,398)
Transfer to trading	—	—	(332)
Mark-to-market adjustments and deferred hedging gains/losses	15,182	(7,331)	948
Mortgage-backed securities at end of period	\$ 4,188,553	\$ 1,426,053	\$ 1,012,163

(1) Includes mortgage-backed securities on which call options have been exercised.

We buy and hold trading securities principally for the purpose of selling them in the near term. We carry these securities at market value with unrealized gains and losses recognized in income. At September 30, 2000, 1999 and 1998, we held \$3.4 million, \$38.3 million and \$29.6 million of trading securities, respectively. For fiscal 2000, 1999 and 1998, we also recognized \$750,000, \$1.4 million, and \$569,000, respectively, in realized gains from the sale of trading assets and \$195,000, (\$1.3) million, and (\$612,000), respectively, in unrealized appreciation (depreciation) of trading assets.

The following table shows the scheduled maturities, carrying values, and current yields for our portfolio of mortgage-backed securities, both available-for-sale and trading, at September 30, 2000.

	After One But Within Five Years		After Five But Within Ten Years		After Ten Years		Totals	
	Balance Due	Weighted Yield	Balance Due	Weighted Yield	Balance Due	Weighted Yield	Balance Due	Weighted Yield
	(dollars in thousands)							
Private issuer	\$ 73	7.50%	\$ —	—%	\$ 47,805	8.46%	\$ 47,878	8.46%
CMO's	—	—%	14,725	5.85%	3,351,634	7.77%	3,366,359	7.76%
Agencies	62	8.64%	—	—%	777,624	7.49%	777,686	7.49%
	\$ 135	8.02%	\$14,725	5.85%	\$4,177,063	7.73%	\$4,191,923	7.72%

Investment Securities

The following table shows the cost basis and fair value of our banking-related investment portfolio other than mortgage-backed securities at the dates indicated. The following table does not include investment securities we hold arising from our non-banking business segments. Consolidated information on all investment securities we hold is presented in "Item 8. Consolidated Financial Statements and Supplementary Data."

September 30, 2000		September 30, 1999		September 30, 1998	
Cost Basis	Fair Value	Cost Basis	Fair Value	Cost Basis	Fair Value
(in thousands)					

Available-for-sale investment securities:

Municipal bonds	\$ 15,005	\$ 13,945	\$ 15,605	\$ 14,390	\$ 15,750	\$ 16,028
Corporate bonds	272,431	265,066	130,166	122,559	154,534	153,205
Obligations of U.S. government agencies	13,291	12,898	18,264	18,018	26,661	27,992
Asset-backed	23,661	23,660	915	921	1,095	1,119
Preferred stock in Freddie Mac	5,000	4,356	5,000	4,950	5,000	4,988
Preferred stock in Fannie Mae	—	—	—	—	8,000	8,394
Other corporate stock	4,438	4,363	3,980	3,980	937	1,000
Other investments	12,318	12,036	13,967	13,804	7,814	7,632
Total	\$ 346,144	\$ 336,324	\$ 187,897	\$ 178,622	\$ 219,791	\$ 220,358

In addition to the available-for-sale investment securities listed above, we have an investment in the stock of the Federal Home Loan Bank ("FHLB") of Atlanta. The stock is recorded on our books at cost, which approximates fair value. The balance of FHLB stock was \$83.3 million and \$29.4 million at September 30, 2000 and September 30, 1999, respectively.

The following table shows the scheduled maturities, carrying values, and current yields for our banking-related investment portfolio of debt and equity securities at September 30, 2000.

	Within One Year		After One But Within Five Years		After Five But Within Ten Years		After Ten Years		Totals	
	Balance Due	Weighted Average Yield	Balance Due	Weighted Average Yield	Balance Due	Weighted Average Yield	Balance Due	Weighted Average Yield	Balance Due	Weighted Average Yield
(dollars in thousands)										
Municipal bonds(1)	\$ —	—%	\$ 230	4.20%	\$ 1,732	4.77%	\$ 11,983	5.87%	\$ 13,945	5.71%
Corporate debt	29,696	6.67%	44,109	6.28%	26,676	4.43%	164,585	6.78%	265,066	6.45%
Obligations of U.S. government agencies	—	—%	—	—%	—	—%	12,898	6.10%	12,898	6.10%
Asset-backed	—	—%	407	6.19%	19,296	4.68%	3,957	7.39%	23,660	5.16%
Other investments	14,637	6.84%	4,889	10.99%	—	—%	1,229	7.15%	20,755	7.84%
	<u>\$44,333</u>	<u>6.73%</u>	<u>\$ 49,635</u>	<u>6.73%</u>	<u>\$ 47,704</u>	<u>4.54%</u>	<u>\$ 194,652</u>	<u>6.69%</u>	<u>\$ 336,324</u>	<u>6.40%</u>

(1) Yields on tax exempt obligations are computed on a tax equivalent basis.

Deposits and Other Sources of Funds

The following table presents information about the various categories of the Bank's deposits for the periods indicated.

	Average Balance for the Year Ended September 30, 2000	Percentage of Deposits	Average Rate	Average Balance for the Year Ended September 30, 1999	Percentage of Deposits	Average Rate

The following table classifies our certificates of deposit and money market accounts by rate at the dates indicated.

	September 30, 2000	September 30, 1999
(in thousands)		
0-1.99%	\$ 1,489	\$ 1,594
2-3.99%	711	288
4-5.99%	687,983	1,440,573
6-7.99%	3,868,892	674,341
8-9.99%	24,941	610
10-11.99%	3	11
12-20.00%	9	12
	<u>\$ 4,584,028</u>	<u>\$ 2,117,429</u>

The following table classifies the amount of our large certificates of deposit, i.e., in amounts of \$100,000 or more, by time remaining until maturity, as of September 30, 2000.

	Certificates of Deposit
	(in thousands)
Three months or less	\$ 22,389
Three through six months	50,936
Six through twelve months	290,194
Over twelve months	226,864
Total	\$ 590,383

Borrowings

Although deposits are our primary source of funds, we also borrow from the FHLB of Atlanta and sell securities under agreements to repurchase to acquire additional funding. We are a member of the FHLB system, which, among other things, functions in a reserve credit capacity for savings institutions. This membership requires us to own capital stock in the FHLB of Atlanta. It also authorizes us to apply for advances on the security of FHLB stock and various home mortgages and other assets—principally securities that are obligations of, or guaranteed by, the United States government—provided we meet certain creditworthiness standards.

As of September 30, 2000, our outstanding advances from the FHLB of Atlanta totaled \$1.6 billion at interest rates ranging from 4.58% to 6.96% and at a weighted average rate of 6.47%.

We also borrow funds by selling securities to nationally recognized investment banking firms under agreements to repurchase the same securities. The investment banking firms hold the securities in custody. We treat repurchase agreements as borrowings and secure them with designated fixed- and variable-rate securities. We use the proceeds of these transactions to meet our cash flow or asset/liability matching needs.

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The following table presents information regarding repurchase agreements for the dates indicated.

	September 30, 2000	September 30, 1999	September 30, 1998
	(dollars in thousands)		
Weighted average balance during the year	\$ 1,471,435	\$ 555,552	\$ 259,846
Weighted average interest rate during the year	6.39%	5.32%	5.69%
Maximum month-end balance during the year	\$ 2,173,410	\$ 790,474	\$ 519,078
Private issuer mortgage-backed securities underlying the agreements as of the end of the year:			
Carrying value, including accrued interest	\$ 1,303,517	\$ 863,598	\$ 441,323
Estimated market value	\$ 1,289,313	\$ 832,397	\$ 438,955
Agency Securities underlying the agreements as of the end of the year:			
Carrying value, including accrued interest	\$ 648,433	\$ —	\$ —
Estimated market value	\$ 644,317	\$ —	\$ —

The following table sets forth information regarding the weighted average interest rates and the highest and average month end balances of our borrowings.

Category	Ending Balance	Monthly Weighted Average Rate	Maximum Amount At Month-End	Yearly Weighted Average Balance	Yearly Weighted Average Rate
	(dollars in thousands)				
At or for the year ended September 30, 2000:					
Advances from the FHLB of Atlanta	\$ 1,637,000	6.47%	\$ 2,074,500	\$ 1,225,783	6.17%
Securities sold under agreement to repurchase	\$ 1,894,000	6.71%	\$ 2,173,410	\$ 1,471,435	6.39%
At or for the year ended September 30, 1999:					
Advances from the FHLB of Atlanta	\$ 477,000	5.55%	\$ 852,000	\$ 473,849	5.25%
Securities sold under agreement to repurchase	\$ 790,474	5.47%	\$ 790,474	\$ 555,552	5.32%

GLOBAL AND INSTITUTIONAL

Business Overview

Our global and institutional business segment is comprised principally of the business activities of our international subsidiaries offering foreign investors online retail brokerage services and the business activities of TIR and VERSUS, which offer financial services to institutional investors.

We are actively pursuing a global expansion strategy that leverages our internationally recognized brand name, award-winning Web site design, and proprietary Stateless ArchitectureSM technology platform. On the retail side, our goal is to create a fully electronic cross-border trading network, linking the top financial markets globally and making electronic trading in foreign securities an affordable reality for the retail investor. We launched this trading network during fiscal 2000 with E*TRADE Sweden, allowing Swedish customers to buy U.S. equities in real-time, online. Through a fully electronic process, we seamlessly handle the execution, clearing and settlement of the transactions, while simultaneously processing the foreign exchange transactions.

With the acquisition of TIR in August 1999, we extended our business to include institutional investors. TIR is active in equity, fixed income, currency and derivatives markets in over 35 countries and holds seats on multiple stock exchanges around the world. TIR's management team is assisting in running selected segments of our international retail brokerage operations, given their existing clearing and operational infrastructure in both Europe and Asia. We are currently developing an electronic platform for the institutional investor, which will bring greater efficiencies in trading, order routing and management, and back office processing. With the acquisition of VERSUS in August 2000, we have expanded our institutional customer base and anticipate leveraging the VERSUS Network®, a proprietary electronic network that connects institutional clients and participating broker-dealers to the major Canadian Stock Exchanges and alternative liquidity pools. It also integrates with market data providers and

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back-office service providers to enhance the electronic trading environment. We will expand the VERSUS Network® by incorporating the technology into our global cross-border trading platform, enabling institutions and investment dealers worldwide to route orders globally through the VERSUS and E*TRADE networks.

Critical to our global strategy are our local operations in both the retail and institutional businesses. During fiscal 2000, we launched E*TRADE retail branded sites in Japan, Korea, Denmark and Norway. However, we terminated our relationship with CPR E*TRADE in France in September 2000 and are now evaluating new opportunities in the French market. To date, we operate nine non-U.S. Web sites globally through a combination of licensees, in which we have either a minority or majority ownership, and wholly-owned subsidiaries. At September 30, 2000, our wholly-owned subsidiaries include: E*TRADE U.K., E*TRADE Nordic AB, and E*TRADE NetBourse, acquired in the first quarter of fiscal 2000; VERSUS, acquired in August 2000; and E*TRADE South Africa, acquired in September 2000. In addition to our wholly-owned subsidiaries, we also hold a majority ownership in E*TRADE Germany AG, which increased to 100% in the first quarter of fiscal 2001. Our international Web sites are operated by the following entities: E*TRADE Australia (which also serves New Zealand), E*TRADE Canada, E*TRADE Denmark, E*TRADE Japan KK, E*TRADE Korea, E*TRADE Norway, E*TRADE South Africa, E*TRADE Sweden, and E*TRADE U.K. Moreover, E*TRADE has institutional offices in ten countries with trading capabilities in 38 markets.

Products and Services

Our global retail subsidiaries offer a variety of products and services including online stock and options trading as well as comprehensive market information provided by Reuters, Big Charts and local news vendors. In some cases, subsidiaries offer mutual funds, access to IPOs, and banking capabilities. During fiscal 2001, we intend to upgrade and improve the products and services we offer to clients through our international subsidiaries. A primary focus will continue to be rolling out cross-border trading, enabling foreign retail investors to have affordable access to U.S. equities online in real-time, and enabling U.S. retail investors to access several large overseas markets.

We are also developing a Web-based product that will offer institutional clients an online trading and administration solution. The platform, which we expect to launch in the second quarter of fiscal 2001, will provide institutional customers with direct access to international exchanges and basket trading. Moreover, the platform will offer our institutional clients real-time, online access to statements and electronic settlement capabilities.

Customers and Markets

As the sophistication of investors around the globe grows, our intention is to provide our investors with the content and tools to enable trading in multi-markets and multi-products from a single-access electronic gateway. On the retail side, our focus during fiscal 2001 will be to enable U.S. retail investors to access several large overseas markets through the development of a global cross-border trading network. We anticipate providing such access to foreign markets to all other customers around the globe, including providing overseas customers with access to U.S. markets, including our proprietary products. For our institutional customers, we are developing a fully-electronic network to allow more efficient access to global exchanges (as discussed above in Products and Services).

Operations

Clearing

The institutional side of our business currently outsources the majority of the clearing of its transactions to third parties around the world. During fiscal 2001, we intend to explore extending the self-clearing operations within the domestic retail business to our institutional business to take advantage of the efficiencies of self-clearing. In addition, we expect to gain further efficiencies from cross-border retail trading, where we anticipate that operations in each country will leverage the self-clearing infrastructures of operations in other countries that have a retail client base.

Lending and Borrowing Activities

Margin Lending. As in our domestic retail operations, we make loans to customers collateralized by customer securities in other markets around the world. In the U.S., margin lending by E*TRADE Securities is subject to the

margin rules of the Board of Governors of the Federal Reserve System, NASDR margin requirements and our internal policies, which are more stringent than the Federal Reserve and NASDR requirements. In overseas markets the rules regarding margin lending vary significantly and are generally not as well defined as the rules within the U.S. We intend to adopt internal rules similar to those followed in the U.S. where those rules are more stringent than local rules. By permitting customers to purchase securities on margin, we take the risk of a market decline that could reduce the value of the collateral held by us to below the customers' indebtedness before the collateral can be sold, which could result in losses to us. Under applicable overseas regulatory rules, in the event of a decline in the market value of the securities in a margin account, we are generally obligated to require the customer to deposit additional securities or cash in the account so that at all times the customer's equity in the account is at least a fixed percentage (25% in respect of NASDR regulations) of the value of the securities in the account. Our current internal requirement, however, is that the customer's equity not fall below 30% (5% higher than the NASDR regulatory minimum). In the event a customer's equity falls below such percentage, the customer will be required to increase the account's equity to a percentage at least five percentage points higher. Margin lending to customers constitutes the major portion of the basis on which our net capital requirements are determined. To the extent these activities expand, our net capital requirements around the world will increase. See "Item 7. Risk factors—We may be fined or forced out of business if we do not maintain the net capital levels required by regulators" and "Item 7. Risk factors—As a significant portion of our revenues come from online investing services, any downturn in the securities industry could significantly harm our business."

Securities Lending and Borrowing. Similar to the U.S., and subject to the local regulatory environment, we may borrow securities both to cover short sales and to complete customer transactions in the event a customer fails to deliver securities by the required settlement date. We collateralize such borrowings by depositing cash or securities with the lender and receive a rebate (in the case of cash collateral) or pay a fee calculated to yield a negotiated rate of return. When lending securities, we receive cash or securities and generally pay a rebate (in the case of cash collateral) to the other party in the transaction. Securities lending and borrowing transactions are executed pursuant to written agreements with counterparties that require that the securities borrowed be "marked-to-market" on a daily basis and that excess collateral be refunded or that additional collateral be furnished in the event of changes in the market value of the securities. The securities usually are "marked-to-market" on a daily basis through the facilities of the various international clearing organizations.

In our institutional business, we provide a number of services to a variety of clients. This mix of institutional customers includes large pension plans and insurance groups who control billions of dollars in assets which are available for securities lending and hedge funds that are large borrowers of securities. During fiscal 2001, we intend to explore the establishment of an international agency stock lending business to take advantage of our presence in both the institutional and retail global markets.

Order Processing

In most international markets, there are specific or implicit rules to ensure that customers obtain the best price. There are many factors that need to be taken into account when assessing best price, such as order size and liquidity of the stock. In each location we have established the necessary order-routing and management systems, seeking to ensure the best possible service to our customer in this respect. We anticipate that during fiscal 2001 we will be able to enhance this process further by the consolidation of the global cross-border retail flow and the institutional order flow for the benefit of both the retail and institutional client base. The technology to achieve this will be developed by combining the resources of our retail and institutional businesses with those of VERSUS, acquired in August 2000. See "Item 7. Risk factors—We could be subject to customer litigation and our reputation could be materially harmed if our ability to correctly process customer transactions is slowed or interrupted."

The market for online investing services in the U.S. and overseas particularly over the Internet, is rapidly evolving and intensely competitive, and we expect competition to continue to intensify in the future. See "Item 7. Risk factors—Our business will suffer if we cannot effectively compete."

The securities industry in the U.S. and overseas is subject to extensive regulation. See "Item 7. Risk factors—Our ability to attract customers and our profitability may suffer if changes in government regulation favor our competition or restrict our business practices" and "Item 7. Risk factors—We may be fined or forced out of business if we do not maintain the net capital levels required by regulators."

ASSET GATHERING AND OTHER

Business Overview

Our asset gathering and other business segment is comprised primarily of the business activities of our mutual fund operations, BSG, and corporate operations.

Mutual Funds

In November 1997, we established a Mutual Fund Center, which now features more than 5,000 mutual funds, approximately 1,100 of which are available without transaction fees or loads. The center also offers several services free of charge, such as a state-of-the-art proprietary screening tool, and a wide spectrum of research, including risk measures, portfolio information, historical charts and online prospectuses. Mutual fund orders received by 4:00 p.m. EST result in purchases at the net asset value of the fund as of the day of order. We have eight proprietary mutual funds, four of which were launched in fiscal 2000, including the e-Commerce Index Fund and the Premier Money Market fund.

Additionally, we have expanded the scope of the mutual funds group to encompass a broader range of investment vehicles, enabling us to provide a more diverse portfolio of product offerings to new and existing customers. Through our acquisition of eInvesting in July 2000, individual investors, as well as financial advisors and corporations offering portfolios to their employees, will be able to set up dollar-denominated, personalized portfolios via the Internet. Also, through the acquisition of (PrivateAccounts) in October 2000, we expect to further expand our product portfolio to offer separate account management services for those investors who are looking for private management of their money. We continue to expand our broad base of products and services to attract and retain all types of investors, from active investors to those who invest with a long-term, buy and hold strategy.

Business Solutions Group

In fiscal 1998, we acquired OptionsLink, formerly a division of Hambrecht & Quist LLC, and privately-held ShareData, Inc. ("ShareData").

OptionsLink was an all-electronic Web-based and interactive voice response inquiry and order entry system for employee stock option and stock purchase plan services for corporate stock plan participants. ShareData was a supplier of stock plan knowledge-based software and Full Service Stock Plan Administration ("FSSPA") consulting services for pre-IPO and public companies. The products and services provided by these companies were combined and are now part of the corporate financial services offered by BSG. We believe that this service is the only one that offers a full spectrum of fully integrated electronic stock plan management services, including plan administration, compliance, employee communication, and online transaction capabilities. BSG represents an important potential growth segment for us and provides an opportunity to diversify our revenue stream while facilitating our cross-sell strategy. We currently offer products and services to over 3,300 corporations with online reach to over 1.4 million employees of those companies. Currently, initiatives to increase the scope of the BSG relationships include cross-selling various E*TRADE products such as employee banking services provided by the Bank, ATM services by placing ATMs at company locations where we have existing relationships, and an online 401(k) product.

Corporate Operations

Included in the asset gathering and other segment are the activities generated by our corporate operations. Corporate activities include the management of corporate held investments, participation in two venture capital funds (E*TRADE eCommerce Fund I and E*TRADE eCommerce Fund II), and the management of corporate borrowing activities. Corporate operations also encompass technology development, systems maintenance and operations, and general and administrative costs benefiting E*TRADE as a whole.

Growth Strategy

The formation of the asset gathering business has enhanced our ability to focus on several key objectives, including targeting a more affluent customer base through new programs, increasing our "share-of-wallet" of existing customers, and expanding the channels of distribution through which we provide services. We intend to continue to roll out new products and services to achieve these objectives, including focusing on retirement/401(k) programs, college savings plans, delivery of electronic advice, and tiered product offerings.

Our business strategy includes expanding our product mix to include targeted and high value products and services, providing E*TRADE customers with a more personalized, integrated customer solution in meeting individual financial objectives. In the mutual fund and investment product business, we are executing on this strategy by continuing to enhance and market the mutual fund supermarket, while rolling out additional proprietary funds. Following our joint venture with Ernst and Young, LLP in September 2000, we are developing an electronic advice product that will provide customers with personalized financial advice based on their specific financial goals, and will provide recommendations on mutual funds that may help customers achieve their objectives. Additionally, as we roll out investment products from our acquisitions of eInvesting and PrivateAccounts, we will be able to provide new and differentiated products for our customer base. Some of the new products will also be offered for financial advisors as we target the intermediary channel.

BSG will continue to focus on the Business-to-Business-to-Consumer strategy in providing products and services to corporations for end-use by their employees. We will also focus on cross-selling additional E*TRADE products to our corporate customers, and in turn, their employees. Among the products that we intend to cross-sell include an online 401(k) product and corporate banking.

Through our high net worth initiatives, we intend to provide different levels of products and services to different tiers of customers, thereby encouraging customers to consolidate their assets at E*TRADE to receive premium services.

Additionally, we expect our co-branded product initiatives to provide a range of online brokerage and banking services to companies that do not have an online presence. These initiatives target a company's employees by providing links at the company's Web site that send the employees to the co-branded products and services.

See "Item 7. Risk factors—We could lose customers and have difficulty attracting new customers if we are unable to quickly introduce new products and services that satisfy changing customer needs" and "Item 7. Risk factors—Any failure to maintain our relationships with strategic partners or to make effective investments could harm our business."

Customers and Markets

The asset gathering business targets many of the same customers and markets as our domestic retail brokerage, banking, and global and institutional businesses. In addition, through our high net worth initiatives, we are executing upon our strategy to increase our customer and asset base, specifically targeting more established online investors by providing additional value to those customers who seek a breadth of product offerings.

In addition to the direct retail customer base, BSG provides products and services directly to both public and private companies with stock purchase and stock option plans. Clients of BSG range in size and industry focus, from small pre-IPO clients to large public companies. As we expand the scope of our products and advice offerings, we expect the employees of these companies—the end-customer for E*TRADE—to benefit from the full array of products and services.

Operations

To the extent that products and services within the asset gathering business are extensions of our domestic retail brokerage, banking, and global and institutional businesses, revenue streams and operations replicate those business lines. However, there are some aspects of the business that are unique to the asset gathering group.

The mutual fund business derives revenues through a number of channels, including management fees from our proprietary funds, fee-sharing arrangements with third-party funds sold through the mutual fund supermarket, 12b-1 fees (administrative fees charged by funds), sales commissions paid by third-party load funds and transactions fees charged to investors on funds without fee-sharing agreements.

E*TRADE Asset Management, a subsidiary of E*TRADE, is the investment advisor of all of our proprietary funds. Barclay's Global Fund Advisors is the investment subadvisor of three of these funds. The other funds are set up in a structure wherein the specific E*TRADE fund invests all of its assets into a portfolio advised by Barclay's Global Fund Advisors. This portfolio always has the same investment objective as the E*TRADE Fund. This is commonly called a "master/feeder" structure.

BSG, in providing Business-to-Business ("B2B") products, generates revenue through a number of sources including:

- *Equity Edge®*—A world class stock plan administration software that is marketed to corporate clients from which we derive license and maintenance fees.
- *OptionsLink®*—Provides transaction and recordkeeping capabilities to corporate clients while enabling employees the power to conduct stock transactions and invest online when and how it's convenient for them.
- *Equity Resource®*—A complete, fully integrated stock plan outsourcing solution. Services include stock plan administration and consulting, comprehensive and convenient customer support, product training and educational seminars.
- *Emerging Companies Program*—Takes small, pre-IPO firms into the future with administrative assistance and stock plan account management up to and through a public offering.
- *Executive Services*—Provides a suite of financial tools and services tailored to fit the needs of corporate officers and other high-net-worth individuals. E*TRADE's Executive Services offers an array of services tailored to the needs of these individuals.

BSG distributes its product and services to corporations through a nationwide direct sales force and third-party partnerships. As we deepen our presence in the B2B areas with additional products like our 401(k) and employee banking offerings, we expect to be able to provide new services and capture additional revenues.

Many of our new initiatives, including the investing products, have not been fully introduced into the marketplace and thus, any related revenues are not currently significant to our consolidated results. See "Item 7. Risk factors—We could lose customers and have difficulty attracting new customers if we are unable to quickly introduce new products and services that satisfy changing customer needs."

STRATEGIC RELATIONSHIPS

Benefiting each of our business segments, we pursue strategic relationships to increase our access to online consumers, to build brand name recognition and to expand the products and services we provide to our online customers. We have established a number of strategic relationships, both domestic and international, including online and Internet service providers and software and information service providers. See "Item 7. Risk factors—Any failure to maintain our relationships with strategic partners or to make effective investments could harm our business."

Core Business Expansion

We have secured or are actively pursuing alliances with (i) Internet access and service providers, (ii) Internet content providers, (iii) online and offline affinity programs, and (iv) electronic commerce companies. These alliances are intended to increase our core customer base, transaction volume and operational efficiency and to further enhance our brand name recognition.

New Account Acquisition

We have developed strategic alliances in key channels in order to expand new account acquisition. These channels include proprietary online services, Internet service providers, popular destination and financial content Web sites, airlines, hotels and financial products. Key alliances include:

Internet

- *America Online*. Since 1998, we have enjoyed a successful partnership with AOL, the nation's largest provider of Internet service and content. Overwhelming response to the "Get 6 Free Months of AOL" offer has increased exposure and expanded our commitment to AOL.
- *Yahoo!* For the past three years, we have designed various marketing and promotional programs designed to build the E*TRADE brand and generate new accounts.

Airlines

- *Microsoft*. Our exposure on Microsoft Money Central, the Microsoft Brokerage Center and other areas of MSN has resulted in very efficient new account acquisition. We are also the exclusive sponsor of Microsoft Money 2000, recently ranked as the #1 Personal Financial Management Software by PC Magazine and CNET.
- *United Airlines*. Our very first airline partner continues to be a successful source of new accounts. United's Mileage Plus customers can earn miles at tiered levels based upon the size of their initial deposit. Miles can also be earned by customers who refer friends who open E*TRADE accounts.
- *Delta Airlines ("DAL")*. The DAL partnership successfully kicked off in February 2000 with tiered mileage and refer-a-friend offers presented to Delta Skymiles customers.
- *Northwest Airlines ("NWA")*. Our alliance with NWA was launched in July 2000 with tiered mileage and refer-a-friend offers and is expected to deliver high-value customers.
- *Trans World Airlines ("TWA")*. E*TRADE's alliance with TWA is expected to begin in November 2000 with tiered mileage offers mailed and emailed to their customer base.

Hotels

- *Hilton HHonors.* We have entered into a co-marketing agreement with Hilton HHonors, to offer HHonors Bonus points to members who open accounts with us.
- *Marriott.* Tiered points offers presented to the Marriott Rewards customer base has become an efficient new account driver.

Others

- *Intuit.* Our alliance with Intuit began in 1998 with a new account message and offer in each of 3,000,000 Turbo-Tax software packages. In 1999, we offered a custom version of its popular software to everyone who opened a new E*TRADE IRA account. In 2000, our partnership continues with both offers presented to Turbo-Tax customers.

MARKETING

Our marketing strategy is based on an integrated marketing model that employs a mix of communications media. The goals of our marketing programs are to increase our brand name recognition, attract new customers, and to increase the value of existing customers. We pursue these goals through advertising, marketing on our Web site and other online opportunities, direct one-on-one marketing, affinity marketing programs, public relations, and co-marketing programs. All communications with the public by our U.S. broker-dealer subsidiaries, including E*TRADE Securities, are regulated by the NASDR.

Our advertising builds awareness of and preference for E*TRADE, positioning E*TRADE as a better way of handling securities transactions, accessing financial and market data, and managing individual investor portfolios. We use promotionally-oriented Direct Response TV which has proven to be an efficient way to generate accounts. In addition to television, we use print advertising in a broad range of financial and business publications. Advertising directs prospects to call a 1-800 number or to go to www.etrade.com. Through the E*TRADE Web site, prospects can get detailed information on our services, use an interactive demonstration, play the E*TRADE Game, request additional information, and complete an account application online.

In fiscal 2000 we transitioned from the "Telebank" brand to "E*TRADE Bank." We believe that linking our high-value integrated financial products, superior customer service and "anytime, anywhere, anyway" convenience to the well-known "E*TRADE" brand will enable us to attract a growing number of customers. We also believe that building low-cost and convenient delivery channels for our products – including the online and wireless platforms—will resonate with consumers increasingly attracted to alternative channels for the delivery of their financial services. In pursuing our strategy this year, we also increased our marketing expenditures significantly to implement a targeted, national advertising campaign and marketing initiative. Our marketing plan targets customers in all 50 states who value the convenience and premium rates of our high-value products. The three main initiatives of our marketing plan are national advertising through out-of-home, print, radio and online media; marketing alliances with

popular Web sites such as Yahoo! and E-Loan; and affinity partnerships with national organizations such as Sam's Club.

Public Relations

Our external corporate communications team is chartered with protecting, promoting and strengthening our corporate reputation and brand. Through proactive outreach to local and national broadcast/print media, the external team communicates our value proposition and corporate strategy to a broad consumer audience. As a result, the Company has received extensive coverage from major media outlets and publications, including *BusinessWeek*, *The New York Times*, *The Wall Street Journal*, *Time*, *CNN*, *CNBC* and many more. The team is also responsible for the strategic placement of executive speaking opportunities.

TECHNOLOGY DEVELOPMENT

Investment

We have made significant investments in our technology over the last three years. Investments have been made in all areas of technology including development, operations, transaction capacity, and our data center facilities. As the business and markets have grown, we have made the necessary technological investments to continue our technology leadership in the online financial services business. Technology development expenses were \$142.9 million, \$79.9 million and \$36.2 million in fiscal 2000, 1999 and 1998 respectively. In addition, costs of \$61.5 million, \$12.8 million and \$10.2 million, in fiscal 2000, 1999 and 1998, respectively, were capitalized to internally developed software.

We have established technology centers in both Rancho Cordova, California and Alpharetta, Georgia which support our U.S. domestic operations. These facilities support systems, network services, trading, customer service, transaction redundancy and provide backup between the two locations, thereby providing an operational system in the event of a service interruption at either facility. In April 2000, we opened our new Regional Operations Center ("ROC") in Alpharetta. This state of the art data center facility has 50,000 square feet of raised floor and allows us exceptional levels of redundancy and expansion capacity. As a result of our acquisition of ETFC, we also support a data center in Arlington, Virginia.

In addition, we have recently opened our new European Regional Operations Center ("EROC") in London, UK. This technology center was designed to host and manage the information technology ("IT") infrastructure for E*TRADE retail branded Web sites in Europe, the Middle East and Africa ("EMEA"). EROC will administer and monitor all Web pages, managing content provision and third party transactions involving the E*TRADE Web interface throughout the EMEA region.

U.S. Domestic Retail Technology

Transaction-Enabling Technology

Our proprietary transaction-enabling technology engine automates traditionally labor-intensive transactions. Because it was custom-tailored for electronic marketplace use, our engine provides customers with efficient service and has the added advantage of being scalable and

adaptable as usage increases and service offerings are expanded. Beyond these features, the multi-tiered design of our engine and related software allows for rapid expansion of network and computing capacity without interrupting service or requiring replacement of existing hardware or software.

Our transaction-enabling technology engine includes a wide variety of functions and services that allow customers to open and monitor investment accounts and to place orders for equity, option, mutual fund and fixed income transactions. Our core technology is based on our proprietary Stateless Architecture®. The architecture provides the key drivers of our techno-business strategy (i.e., reliability, scalability, reusability and security). The primary components include a graphical user interface, the session manager, the transaction process monitor, the data manager and the transaction processor. See "Item 7. Risk factors—We could be subject to customer litigation and our reputation could be materially harmed if our ability to correctly process customer transactions is slowed or interrupted" and "Item 7. Risk factors—Our business depends on our ability to protect our intellectual property."

- *Graphical User Interface.* Our graphical user interface, or GUI, environment is based on Netscape Communications Corporation's ("Netscape") secure enterprise server and currently can be accessed by individuals utilizing Netscape Navigator or Microsoft Internet Explorer. Our GUI connects to the session manager server through a group of Sun Microsystems, Inc.'s ("Sun") servers. These "Web servers" provide for load balancing using Resonate software and offer immediate scalability. Access is restricted through the use of secured network servers and routers.
- *The Session Manager.* The session manager's primary function is to maintain session and state and provide a consistent, reliable user experience. The session manager is based on the Netscape Application Server product and runs on a uniquely configured group of Sun servers. The servers are redundant and configured dynamically so that even if a server has a problem, it does not impact the user. By deploying dynamic load balancing capabilities, the servers dynamically re-allocate load if a server becomes non-operational. If a server is added, it will also dynamically allocate load, so additional capacity may be added without scheduling a system outage.
- *The Transaction Process Monitor.* The transaction process monitor provides transaction delivery and establishes the business logic by which a transaction is or is not executed. Based on BEA Systems, Inc.'s ("BEA") Tuxedo product, the monitor accepts a transaction from the session manager and evaluates it using business logic written in Java reusable code objects, stored at the Tuxedo services layer. The transaction is tagged, monitored and accepted or rejected at this layer. If accepted, it is then passed along to the data manager and, if appropriate, the automated transaction processing layer.
- *The Data Manager.* Storing and retrieving content and information for the Internet and Interactive Voice Response ("IVR") system interfaces is the role of the data manager. Based on Oracle Corporation's ("Oracle") data technology, content is received from our content provider partners, stored in uniquely designed databases and caching servers and passed on to our users. Our data servers are based on Sun technology and are secure and redundant, providing rapid, reliable, safe information access and retrieval.
- *The Trade Processor.* The core of our trading engine is the automated processor, designed to provide the highest degree of automation for all our transactions. The automated processor is designed to rapidly read data, process transactions and transmit information to multiple locations. Because of this, we process over 95% of our transactions without any manual intervention. Dual facilities that run independently share load balancing and provide redundancy and backup, as well as scalability. The proprietary nature of the system, along with user ID and password protection at the application level, provide security for the automated processor. Internet access to the processor is through our Web site, which restricts access through the use of secured network servers and routers.

Banking Technology

Our core banking system is a Unix-based, client server and relational database product operating in a high availability environment. This system manages all the core banking interfaces with the Federal Reserve for automated clearing house processing, a third party ATM/Debit card processor for real-time communication, and the voice response unit system, which enables customers to access their accounts via the telephone. The system also supports an interface for customer account access through Yahoo!, and interfaces to the Internet banking platform and an on-line bill-pay provider. Banking operations are also supported by a number of custom applications which allow for efficient customer fulfillment, service, and reporting.

The Bank Web environment is based on an NT operating system, supports online applications processes, and provides Web applications and tools such as the ATM locator, alerts, and rate calculators. The Bank's Internet banking platform is provided by S1 Corporation, which also hosts the Bank's Internet applications on their site in Georgia. The Bank's Web site is an NT based, hosted application that provides the user interface and functionality

to support all Internet-based banking operations including bill payment, account transfers, transaction reporting, and account statements.

Global Technology

Having evolved our domestic Stateless Architecture® into a high availability, high scalability architecture for international use, E*TRADE International launched services in four new countries during fiscal 2000: E*TRADE Japan, Korea, Norway and Denmark. Labeled IIP, for International Investment Product (patent pending), the U.S. architecture was modified to provide for multi-currency and multi-language support. Prior to a launch in a new country, IIP is customized for local regulatory, cultural and language services. In addition, services common in the target country are identified and engineered into the IIP platform.

The front-end systems, engineered on SUN platforms, supporting content, information and portfolios for each country, are centrally located for regional support. During mid-year, E*TRADE International opened the EROC in London, UK with the supporting Operational Control Center and staff located in Dublin, Ireland. The EROC supports the E*TRADE Sweden and Norway front-end systems and provides operational support for E*TRADE UK, Denmark and South Africa. E*TRADE Australia, Japan and Canada's front-end systems are hosted in the E*TRADE U.S. Regional Operation Centers. We plan to open an Asian data center in fiscal 2001 to support E*TRADE Asian and Pacific Rim countries.

Transaction execution, clearing and settlement, and customer books and records maintenance, are functions provided by the back-office systems within each country. Transaction orders are passed from the front-end systems via global networks to the respective country back-office systems for execution and processing.

European Regional Operations Center (EROC)

EROC's centralized technology brings '24 by 7' dedicated technical support to ensure Web site availability and performance of all E*TRADE Internet sites in the EMEA area. The EROC is a key component of E*TRADE's fully electronic global cross border trading network, providing the hub through which all European cross border communications move. The network, which is inherently scalable and cost-efficient, is ultimately expected to link twenty of the top international equities markets.

EROC's multi-tiered system, which is engineered for fault-tolerance and high-scalability, manages session and state for large volume transactions. All information services, quotes and content are provided within this infrastructure, with trade orders and functionality being passed to back-office trading systems in each country through well-defined interfaces. Customer books and records are also maintained by the back office to ensure country privacy laws are adhered to. The EROC architecture allows for flexibility in additions and upgrades to hardware and software components enabling the addition of new distribution channels such as personal digital assistants, interactive TV and mobile phones with minimal redesign.

Based in London, the EROC currently supports E*TRADE Sweden and Norway while operations in the UK, Denmark and South Africa will migrate their technology shortly. As new E*TRADE sites are launched in Germany, Israel and elsewhere in the EMEA region, their Web technology will also be managed by EROC.

Security

A significant risk to online commerce and communication is the insecure transmission of confidential information over public networks. See "Item 7. Special Investment Considerations—Our business could suffer if we cannot protect the confidentiality of customer information transmitted over public networks."

We use a combination of proprietary and industry standard security measures throughout our global technology operations and networks to protect customers' accounts. Customers are assigned unique account numbers, user identifications and trading passwords that must be used each time they log on to the system. We rely on encryption and authentication technology, including public key cryptography technology licensed from RSA Data Security, Inc. and secure sockets layer technology, to provide the security and authentication necessary to effect the secure exchange and storage of information. Touch-tone telephone transactions are secured through a personal identification number, the same technology used in automated teller machines. A second level of password protection is used prior to order placement. We also have an agreement to provide digital certification and authentication services for electronic commerce through our alliance with VeriSign, Inc. Additionally, we utilize

intrusion detection systems to be alerted to unauthorized access, centralized and automated access control management to limit access to customer data, firewalls and other network device controls, cryptographic access authentication by employees, and audit and logging to monitor systems and conformance to policies.

CUSTOMER SERVICE

In an era in which consumers demand efficient, personalized and high-quality service, we are focused on providing an electronic self-service model complemented by a human touch. During fiscal 2000, we built on our commitment to offer a two-track approach that empowers the customer with advanced tools to manage investment decisions, while still providing personalized assistance from customer service associates. Customer service is provided through the Help Center, our 24-hour electronic resource, and through live agents. Our customer service associates help customers who prefer to speak to an agent, handle product and service inquiries and address all brokerage and technical questions. Our current policy specifies that customer service associates have or must obtain the appropriate securities broker's license. See "Item 7. Risk factors—Our ability to process securities transaction orders during systems failures or degradation depends on our having a sufficient number of qualified customer service personnel." Key service features and tools include the following:

- **24x7x366 Live Agent Customer Service**—In August 1999, we expanded our offering to include 24x7x366 live agent customer service, allowing customers to contact us for quality support when *they* need support, not only when the securities markets are open.
- **Customer Information Systems**—We have invested in new systems and processes to better leverage customer information in order to provide a better overall customer experience. In late fiscal 2000, we will begin to provide significantly enhanced desktop tools, advanced routing of incoming inquiries, and personalized interactions based on customer preference and need. We will also launch instant messaging and Web collaboration to our customers to provide an alternative channel for communication.
- **TriLingual Live Agent Support**—In the fall of 2000 we will be introducing live agent support for our customers who speak Cantonese, Mandarin and/or English.
- **Customer Service Live Forums**—These online town hall sessions allow hundreds of customers to be serviced simultaneously via interactive sessions on our Web site. We host both general and topical sessions.

- *The Learning Center*—The Learning Center provides self-directed investors with information on all of our products and services.
- *The Tour*—This online tour of our products and services allows customers to learn about us at their own pace in a self-directed environment.
- *The Knowledge Center*—Launched in late fiscal 1999, the Knowledge Center provides self-directed investors with valuable general investing information on subjects, such as stocks, bonds, options, mutual funds, and market centers.
- *Ask E*TRADE*—In late fiscal 1999, we launched Ask E*TRADE, allowing customers to more easily find answers to their investing questions. Powered by the Ask Jeeves search engine technology, Ask E*TRADE is a powerful natural language tool that allows users to simply input their question, in either complete sentences or key words. Ask E*TRADE then provides links to the content in the Learning Center that corresponds to the question input.
- *Getting Started*—We have also launched a Getting Started feature to provide new and potential customers with information in three areas: opening an account, funding an account, and making the first trade. Questions in these areas represent a significant percentage of inquiries from customers who have had accounts less than 90 days.
- *Proactive Service Notifications*—Customers submitting a service request receive two important services: customized information regarding the request, including specific identification of the type of request submitted, the specific timeline involved in responding to the request, an ID number for the customer's reference and an e-mail sent to the customer once the service request is completed, providing specific information. This service notification is intended to make customers understand and feel comfortable

with their electronic service experience by keeping them informed throughout the process, and by providing assurance that their request will be carried out accurately and in a timely manner.

COMPETITION

Major Competitors

The market for electronic financial services over the Internet is new, rapidly evolving and intensely competitive. We expect competition to continue and intensify in the future. As we continue to diversify our services beyond online domestic retail brokerage offerings to include banking, global cross-border trading, mutual fund offerings, and institutional investing, the number of competitors in these varied market spaces will also increase. We face direct competition from full commission brokerage firms, discount brokerage firms, online brokerage firms, and both pure-play Internet banks as well as traditional "brick & mortar" commercial banks providing touch-tone telephone or online banking services. In addition, we compete with mutual fund companies, which provide money market funds, cash management accounts and/or electronic bill pay/bill presentment services. As we continue our global expansion, we anticipate that there will be one or two large specialist players who will follow us in the retail cross-border trading area. In addition, there will be regional competition from specialists with a pan-regional focus in Europe and Asia.

Factors Affecting Competition

We plan to be the first broker providing a truly online electronic cross-border trading product to our retail customers around the world, establishing us as the market leader in this area. We believe that the first to market advantage coupled with our brand recognition, commitment to providing superior content, tools that assist in investment decision-making, and our proprietary technology, the scalability of which has already been proven within the U.S., will make it more costly for others to enter the market. Further, though the development of Electronic Communications Networks will provide us with the benefit of lower access costs to global markets, it should also be recognized that such developments would lower the barriers to entry of global trading and could provide large domestic competitors in some markets with immediate access to cross-border markets. See "Item 7. Risk factors—Our business will suffer if we cannot effectively compete", "Item 7. Risk factors—Our inability to expand our technology could seriously harm our business", and "Item 7. Risk factors—If our international efforts are not successful, our business growth will be harmed and our resources will not have been used efficiently."

REGULATION

Our business is subject to stringent regulation by U.S. Federal and state regulatory agencies and securities exchanges and by various non-U.S. governmental agencies or regulatory bodies, securities exchanges, and central banks, each of which have been charged with the protection of the financial markets and the interests of those participating in those markets. These regulatory agencies in the United States include, among others, the SEC, the NASDR, the New York Stock Exchange, the FDIC, the Municipal Securities Rulemaking Board, and the OTS. In other areas of the world, these regulators include the Financial Services Authority, the Securities and Futures Authority, the Bermuda Monetary Authority, and the Office of Superintendent of Financial Institutions in Canada, among many others. Additional legislation and regulations and changes in rules may directly affect our manner of operation and profitability.

E*TRADE Securities, Inc. and certain of our other subsidiaries are registered as broker-dealers with the SEC and as such are subject to regulation by the SEC and by self-regulatory organizations, such as the NASDR and the securities exchanges of which each is a member.

Similarly, E*TRADE and ETFC, as savings and loan holding companies, and the Bank, as a federally chartered savings bank, are subject to extensive regulation, supervision and examination by the OTS, and in the case of the Bank, the FDIC. Such regulation covers all aspects of the banking business, including lending practices, safeguarding deposits, capital structure, record keeping, and conduct and qualifications of personnel.

The SEC, NASDR, OTS and various other regulatory agencies have stringent rules with respect to the maintenance of specific levels of net capital by securities broker-dealers and regulatory capital by banks. For example, our broker-dealer entities are subject to Rule 15c3-1 under the Securities Exchange Act of 1934 (the "Exchange Act") which is designed to measure the general financial condition and liquidity of a broker-dealer. Net

capital is the net worth of a broker or dealer (assets minus liabilities), less deductions for certain types of assets. If a firm fails to maintain the required net capital it may be subject to suspension or revocation of registration by the SEC and suspension or expulsion by the NASDR, and could ultimately lead to the firm's liquidation.

Similarly, banks, such as the Bank, are subject to various regulatory capital requirements administered by the federal banking agencies. Failure to meet minimum capital requirements can initiate certain mandatory—and possibly additional discretionary—actions by regulators that, if undertaken, could have a direct material effect on a bank's operations and financial statements. For more information about capital requirement and other risks relating to the regulation of our business, see "Item 8. Consolidated Financial Statements and Supplementary Data" and all risks disclosed in "Item 7. Risk factors—Risks Relating to the Regulation of Our Business."

ASSOCIATES

At September 30, 2000, we had 3,778 associates. None of our associates are subject to collective bargaining agreements or represented by a union. We consider our relations with our associates to be good. See "Item 7. Risk factors—Our inability to retain and hire skilled personnel and senior management could seriously harm our business."

EXECUTIVE OFFICERS OF THE REGISTRANT

In addition to the chief executive officer who is also a director of the Company, the following executive officers are not directors and serve at the discretion of the board of directors:

Name	Age	Position
Jerry D. Gramaglia	45	President and Chief Operating Officer
Leonard C. Purkis	52	Chief Financial Officer
Judy Balint	47	Chief International Officer
Thomas A. Bevilacqua	44	Chief Strategic Investment Officer
Mitchell H. Caplan	43	Chief Banking Officer
Connie M. Dotson	51	Chief Service Quality Officer
Amy J. Errett	42	Chief Asset Gathering Officer
Pamela S. Kramer	40	Chief Strategy and Content Development Officer
Joshua Levine	46	Chief Technology Officer
R. Jarrett Lilien	38	Chief Brokerage Officer
Dennis L. Lundien	59	Chief Internal Audit and Privacy Officer
G. Michael Sievert	31	Chief Sales and Marketing Officer
Theodore J. Theophilos	47	Chief Legal Affairs Officer and Corporate Secretary
Charles W. Thomson	59	Chief People and Culture Officer
Brigitte VanBaelen	31	Chief Community Relations Officer and Assistant Corporate Secretary

Jerry D. Gramaglia became the president and chief operating officer of E*TRADE Group, Inc. in May 2000. Prior to joining the Company in June 1998 as chief sales and marketing officer, Mr. Gramaglia was vice president of marketing for Sprint Corporation's consumer division from 1997 to 1998, partner at Fremlink Communications from 1996 to 1997, and senior vice president of marketing for Taco Bell Corporation, a division of Pepsico from 1994 to 1996. He has also held a general management and marketing positions for major global companies, including Procter & Gamble and Nestle Corporation. Mr. Gramaglia earned a Bachelor's degree in Economics from Denison University.

Leonard C. Purkis is the chief financial officer of E*TRADE Group, Inc. Mr. Purkis previously served as chief financial officer of Iomega Corporation from 1995 to 1998. Prior to joining Iomega, he served in numerous senior level domestic and international finance positions for General Electric Co. and its subsidiaries, culminating his career there as senior vice president, finance, for GE Capital Fleet Services. A native of Cardiff, Wales,

Mr. Purkis is a graduate of the Institute of Chartered Accountants in England and Wales, and began his career as an audit manager at Coopers & Lybrand.

Judy Balint is the chief international officer of E*TRADE Group, Inc. From March 1997 to June 1998, Ms. Balint served as our senior vice president, global marketing and strategic business development. Prior to joining E*TRADE, Ms. Balint was senior vice president and corporate director of marketing for National Processing, Inc., consultants in transaction technology. Ms. Balint has held a variety of senior executive positions for DHL, Federal Express, and CME-KHBB, a global advertising network of the former Saatchi & Saatchi Group. She earned a Bachelor's degree in Journalism from the University of Wisconsin, Madison and an MBA in international business from the Monterey Institute of International Studies in Monterey, California.

Thomas A. Bevilacqua is the chief strategic investment officer of E*TRADE Group, Inc. Mr. Bevilacqua also serves as the managing general partner of two venture capital funds associated with the Company. Prior to joining E*TRADE in March 1999, Mr. Bevilacqua was a partner at Brobeck, Phleger & Harrison LLP, where he was also a member of the Executive Committee and co-head of the firm's Information Technology Practice Group and internal Venture Investment Fund. He also has been a partner with the law firm of Orrick, Herrington & Sutcliffe, where he began as an associate. Mr. Bevilacqua earned a Bachelor's degree in Business Administration from the University of California, Berkeley, and a

Juris Doctor from the University of California, San Francisco.

Mitchell H. Caplan is the chief banking officer of E*TRADE Group, Inc. Mr. Caplan is also currently the chairman of the board, president and chief executive officer of ETFC and the Bank, and is the vice president and a director of E*TRADE Capital Markets, Inc. Prior to the acquisition of ETFC, Mr. Caplan served as vice chairman of the board of directors, president and chief executive officer of Telebank Financial Corporation, and Telebank, a federally chartered savings bank, renamed E*TRADE Bank. Prior to joining ETFC, Mr. Caplan was a partner in the law firm of Danziger & Caplan from 1990 through 1993. From 1985 through 1990, he represented and advised private and public commercial institutions as an associate of the law firm of Shearman & Sterling. Mr. Caplan holds a Juris Doctor and an MBA from Emory University and a Bachelor's degree in History from Brandeis University.

Connie M. Dotson is the chief service quality officer of E*TRADE Group, Inc. Ms. Dotson joined E*TRADE in 1996 as our customer service manager and was named vice president in 1997. Prior to joining E*TRADE, Ms. Dotson served as senior vice president for CableData Operations, U.S. Computer Services/CableData, Inc., where she was responsible for the planning, organization and control of all CableData operational and support departments including customer service, systems support, new business conversions, training and field services.

Amy J. Errett is the chief asset gathering officer of E*TRADE Group, Inc. Ms. Errett joined E*TRADE in April 2000 as our first chief asset gathering officer. Ms. Errett was formerly the founder, chairman and CEO of the Spectrem Group and a senior vice president at Bankers Trust Company. Ms. Errett has an MBA in Finance from the Wharton School at the University of Pennsylvania and a Bachelor's degree in Liberal Arts from the University of Connecticut.

Pamela S. Kramer is the chief strategy and content development officer of E*TRADE Group, Inc. Ms. Kramer was appointed chief content development officer for E*TRADE in January 2000. Prior to this role, she served as E*TRADE's vice president, Digital Financial Media, focusing on initiatives to deliver the world's first global electronic financial network. Ms. Kramer joined E*TRADE in September 1995 to drive the design and development of our first commercial Web site. Ms. Kramer previously held marketing positions at Storm Technology, the University of Rochester Simon School, and Salomon Brothers Inc. She was also a co-founder of CyberPuppy Software, an award-winning educational software company. Ms. Kramer holds a Master's degree in East Asian studies from Cornell University and a Bachelor's degree in English literature from the University of Buffalo in New York. < /p>

Joshua Levine is the chief technology officer of E*TRADE Group, Inc. Prior to joining E*TRADE in October 1999, Mr. Levine was the managing director and global head of equities technology for Deutsche Bank. At Deutsche Bank, Mr. Levine also managed and directed the acquisition of staff and technologies for two major acquisitions, NatWest Markets and Bankers Trust. From 1985 to 1997, Mr. Levine was with Morgan Stanley, ultimately as a managing director and chief technology officer, and a senior member of the IT operating committee. Prior to that, Mr. Levine worked at IBM as a consultant and sold computer timesharing. He is co-author of "Application Systems in APL" published by Prentice-Hall 1985.

R. Jarrett Lilien is the chief brokerage officer of E*TRADE Group, Inc. Prior to joining E*TRADE, Mr. Lilien spent ten years as the chief executive officer of TIR (Holdings, Limited) which E*TRADE acquired in August 1999. Prior to TIR, Mr. Lilien held positions at Paine Webber and Autranet, a division of Donaldson, Lufkin & Jenrette, Inc. Mr. Lilien holds a Bachelor's degree in Economics from the University of Vermont.

Dennis L. Lundien is the chief internal audit and privacy officer of E*TRADE Group, Inc. Prior to this new role, Mr. Lundien served as vice president for E*TRADE Ventures. Before joining E*TRADE, Mr. Lundien spent 27 years at Intel Corporation, where he obtained experience in systems operations, development and implementation; the development of policies and procedures; risk assessment and risk management; and treasury management and accounting. Mr. Lundien holds a Bachelor's degree in Accounting from Sacramento State College.

G. Michael Sievert is the chief sales and marketing officer of E*TRADE Group, Inc. Mr. Sievert joined E*TRADE Group, Inc. in 1998, following a career in marketing and brand management at several major companies. Most recently, Mr. Sievert managed brand and product marketing for the worldwide IBM PC business. Prior to his tenure at IBM, Mr. Sievert managed new product marketing for Procter and Gamble. Mr. Sievert earned a Bachelor's degree in Economics from the Wharton School at the University of Pennsylvania.

Theodore J. Theophilos is the chief legal affairs officer of E*TRADE Group, Inc., as well as the Company's corporate secretary. Mr. Theophilos joined E*TRADE in December 1999. Formerly, Mr. Theophilos was the executive vice president of corporate development and legal affairs at True North Communications, Inc., where he was responsible for corporate development and strategic planning. He supervised all legal affairs for the company and its major affiliates, Foote, Cone & Belding Worldwide and Bozell Worldwide. Mr. Theophilos previously served as senior vice president and general counsel of the A.C. Nielsen Company, and was a senior partner in the New York office of law firm Sidley & Austin where he practiced for 16 years. He earned his Juris Doctor from the University of Chicago, as well as a Bachelor's degree and Master's degree from Northwestern University.

Charles W. Thomson is the chief people and culture officer of E*TRADE Group, Inc. Mr. Thomson previously headed the personnel division of FedEx Corporation. Prior to FedEx, Mr. Thomson held senior human resources positions at major air transport companies, including United Airlines, Frontier Airlines, and Flying Tiger. Mr. Thomson earned a Master's degree and Juris Doctor from Northwestern University, and received his Bachelor's degree from the University of Michigan.

Brigitte VanBaelen is the chief community relations officer of E*TRADE Group, Inc., and the assistant corporate secretary. Ms. VanBaelen has responsibility for managing E*TRADE's community outreach efforts, which includes community relations activities and the Company's philanthropic program. Since joining E*TRADE in August 1996, Ms. VanBaelen has held various management positions in marketing and executive services. Previously, Ms. VanBaelen was the director of global marketing for the A.C. Nielsen Company where she focused on integrating local marketing efforts into one global strategy. Ms. VanBaelen earned a degree in communications and public relations from the COOVI University in Brussels, Belgium.

ITEM 2. PROPERTIES

Our corporate headquarters are located in Menlo Park, California. Our domestic retail brokerage business leases facilities in Menlo Park

and surrounding cities in California, Rancho Cordova, California, and Alpharetta, Georgia. Our global and institutional business leases facilities in New York, Canada, South Africa, Australia, Southeast Asia, and Europe. Our banking business owns a building in Arlington, Virginia, and leases a facility in Portland, Oregon. Our asset gathering and other operating segment leases facilities in San Francisco and surrounding cities in California. The leases expire at various dates through 2025.

ITEM 3. LEGAL AND ADMINISTRATIVE PROCEEDINGS

On November 21, 1997, a putative class action was filed in the Superior Court of California, County of Santa Clara, by Larry R. Cooper on behalf of himself and other similarly situated individuals. The action alleges, among other things, that our advertising, other communications and business practices regarding our commission rates and our ability to timely execute and confirm transactions through our online brokerage services were false and deceptive. The action seeks injunctive relief enjoining the purported deceptive and unfair practices alleged in the action and also seeks unspecified compensatory and punitive damages, as well as attorney fees. On June 1, 1999, the Court entered an order denying plaintiffs' motion for class certification. On January 25, 2000, the court ordered

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plaintiffs to submit all claims seeking monetary relief to arbitration and stayed all other claims pending the outcome of arbitration. A motion to modify that order was denied on July 13, 2000. We are unable to predict the ultimate outcome of this proceeding.

On February 11, 1999, a putative class action was filed in the Supreme Court of New York, County of New York, by Evan Berger, on behalf of himself and other similarly situated individuals. The action alleges, among other things, that our advertising, other communications and business practices regarding our ability to timely execute and confirm transactions through our online brokerage services were false and deceptive. Plaintiff seeks unspecified damages based on causes of action for breach of contract and violation of New York consumer protection statutes. By a Decision and Order, entered March 28, 2000, the Court ordered plaintiff to proceed to arbitration on his breach of contract claim and granted our motion to dismiss plaintiff's consumer protection claims. Although plaintiff has not filed for arbitration to date, we are unable to predict the ultimate outcome of this proceeding.

On March 1, 1999, a putative class action was filed in the Court of Common Pleas, Cuyahoga County, Ohio, by Truc Q. Hoang. The Hoang complaint seeks unspecified damages and injunctive relief arising out of, among other things, plaintiff's alleged problems accessing her account and placing orders. Plaintiff alleges causes of action for breach of contract, breach of fiduciary duty, unjust enrichment, fraud, unfair and deceptive trade practices, negligence/intentional tort. On September 1, 1999, the Court of Common Pleas denied our motion to compel arbitration and we appealed. By a Journal Entry and Opinion, dated March 16, 2000, the Court of Appeals reversed the Court of Common Pleas' decision and remanded this case to the Court of Common Pleas on the grounds that the Court of Common Pleas' resolution of our motion to compel arbitration could not be determined until it first determined whether this case should be certified as a class action. On June 16, 2000, we filed a "Motion to Dismiss for Lack of Subject Matter Jurisdiction" to which we anticipate plaintiff will be responding in the near future. On September 29, 2000, Plaintiff filed her First Amended Complaint, and Motion for Class Certification. We are unable to predict at this time, the ultimate outcome of this proceeding.

On March 10, 1999, a putative class action was filed in the Superior Court of California, County of Santa Clara, by Raj Chadha. The Chadha complaint seeks unspecified damages and injunctive relief arising out of, among other things, February 3, 4, and 5, 1999, system interruptions. Plaintiff brings causes of action for breach of fiduciary duty, violations of the Consumer Legal Remedies Act, and violations of the California Unfair Business Practices Act. On July 29, 1999, the Court granted our petition to compel arbitration and stayed all further proceedings. We are unable to predict the ultimate outcome of this proceeding.

On March 11, 1999, a putative class action was filed in the Superior Court of California, County of Santa Clara, by Elie Wurtman. The Wurtman complaint seeks unspecified damages and injunctive relief arising out of, among other things, plaintiff's alleged problems accessing her account and placing orders. The complaint also makes allegations regarding access problems relating to our customers residing or traveling outside of the United States. Plaintiff brings causes of action for negligence and violations of the Consumer Legal Remedies Act and California Unfair Business Practices Act. On September 23, 1999, the Superior Court denied our motion to compel arbitration. We filed an appeal in October 1999, and all briefing and arguments on that appeal have now been completed. We are unable to predict the ultimate outcome of this proceeding.

On April 14, 1999, a putative class action was filed in the Superior Court of California, County of Los Angeles, by Matthew J. Rosenberg. Plaintiff seeks injunctive relief based on alleged violations of the California Unfair Business Practices Act regarding the extent to which shares in IPOs were made available to our customers. On October 6, 1999, the Superior Court dismissed plaintiff's class action claims with prejudice but granted plaintiff leave to amend his claim for injunctive relief. Plaintiff filed an amended complaint on October 26, 1999, and we subsequently filed a petition to compel arbitration that was granted on December 29, 1999. On February 29, 2000, plaintiff filed a notice of appeal, and the Court of Appeal for the State of California, Second Appellate District, dismissed plaintiff's appeal on July 20, 2000. We are unable to predict the ultimate outcome of this proceeding.

We believe the foregoing claims are without merit and intend to defend against them vigorously. An unfavorable outcome in any matters which are not covered by insurance could have a material adverse effect on our business, financial condition and results of operations. In addition, even if the ultimate outcomes are resolved in our favor, the defense of such litigation could entail considerable cost and the diversion of efforts of management, either of which could have a material adverse effect on our results of operation.

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From time to time, we have been threatened with, or named as a defendant in, lawsuits, arbitrations and administrative claims. Compliance and trading problems that are reported to regulators such as the SEC or the NASDR by dissatisfied customers or others are investigated by such regulators, and may, if pursued, result in formal arbitration claims being filed against us by customers and/or disciplinary action being taken against us by regulators. Any such claims or disciplinary actions that are decided against us could have a material adverse effect on our business, financial condition and results of operations. We are also subject to periodic regulatory audits and inspections.

The securities industry is subject to extensive regulation under federal, state and applicable international laws. As a result, we are required to comply with many complex laws and rules and our ability to so comply is dependent in large part upon the establishment and maintenance of a qualified compliance system. We are aware of several instances of our noncompliance with applicable regulations. In particular, in fiscal 1997, our failure to timely renew our broker-dealer registration in Ohio resulted in a \$4.3 million pre-tax charge against earnings.

We maintain insurance in such amounts and with such coverages, deductibles and policy limits as management believes are reasonable and prudent. The principal risks that we insure against are comprehensive general liability, commercial property damage, hardware/software damage, directors and officers, Fidelity (crime) Bond, and errors and omissions liability. We believe that such insurance coverage is adequate for the purpose of our business.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED SHAREOWNER MATTERS

Price Range of Common Stock

The Company's common stock has been traded on the NASDAQ National Market under the symbol EGRP since the Company's initial public offering on August 16, 1996. The following table shows the closing high and low sale prices of the Company's common stock as reported by the NASDAQ National Market for the periods indicated.

	High	Low
Fiscal 1999:		
First Quarter	\$ 16.25	\$ 2.50
Second Quarter	\$ 33.22	\$ 12.74
Third Quarter	\$ 72.25	\$ 29.38
Fourth Quarter	\$ 42.63	\$ 21.31
Fiscal 2000:		
First Quarter	\$ 39.19	\$ 22.19
Second Quarter	\$ 32.63	\$ 19.94
Third Quarter	\$ 27.44	\$ 13.94
Fourth Quarter	\$ 19.75	\$ 13.94

The closing sale price of the Company's common stock as reported by the NASDAQ National Market on November 6, 2000 was \$14.688 per share. As of that date there were 2,118 holders of record of the Company's common stock.

Dividends

The Company has never declared or paid cash dividends on its capital stock. TIR (Holdings) Limited ("TIR"), which was acquired in August 1999, and accounted for as a pooling of interests, issued 3,000,000, 8% cumulative redeemable preference shares, \$1 par, in April 1996, and paid dividends totaling \$222,000 and \$240,000 in fiscal 1999 and 1998, respectively. E*TRADE Financial Corporation ("ETFC"), formerly Telebank Financial Corporation, which was acquired in January 2000, and accounted for as a pooling of interests, issued a special dividend in the amount of 251,948 shares of common stock in fiscal 1998. In connection with the special dividend, ETFC recorded a \$1.7 million nonrecurring, non-cash charge related to the additional preferred stock dividend payable in common stock, which was based on the fair market value of the common stock at the time the dividend was paid. The total preferred stock dividend recorded in fiscal 1998 was \$2.1 million. The Company currently intends to retain all of its earnings, if any, for use in its business and does not anticipate paying any cash dividends in the foreseeable future. The payment of any future dividends will be at the discretion of the Company's board of directors and will depend upon a number of factors, including future earnings, the success of the Company's business activities, regulatory capital requirements, the general financial condition and future prospects of the Company, general business conditions and such other factors as the board of directors may deem relevant.

Recent Sales of Unregistered Securities

On May 5, 2000, the Company acquired Card Capture Services, Inc. ("CCS"), now E*TRADE Access, Inc. ("E*TRADE Access") and registered on a Form S-3 registration statement all but 251,004 shares of the Company's common stock issued in connection with the acquisition. The 251,004 unregistered shares were placed in escrow for a minimum of one calendar year from the date of acquisition, as security against any disputed claims. No underwriters were involved and there were no underwriting discounts or commissions. The securities were issued in reliance upon the exemption from registration provided under Section 4(2) of the Securities Act based on the fact that the common stock was sold by the issuer in a sale not involving a public offering.

On June 30, September 14, September 29 and October 25, 2000 the Company issued 169,025 shares, 168,593 shares, 3,774 shares and 348,190 shares, respectively, of unregistered common stock in connection with the cashless exercises of certain warrants to purchase shares of common stock, the obligations under which were

assumed in connection with the Company's acquisition of Telebank Financial Corporation ("Telebank"), now E*TRADE Financial Corporation ("ETFC"). No underwriters were involved and there were no underwriting discounts or commissions. The warrants were originally issued in reliance upon the exemption from registration provided under Section 4(2) of the Securities Act based on the fact that warrants were sold by the original issuer in a sale not involving a public offering.

On July 31, 2000, the Company entered into an agreement whereby the Company issued 230,447 shares of its common stock in connection with the acquisition of Electronic Investing Corporation ("eInvesting"). The consideration for such issuance consisted of all the issued and outstanding capital stock of eInvesting. No underwriters were involved and there were no underwriting discounts or commissions. The securities were issued in reliance upon the exemption from registration provided under Section 4(2) of the Securities Act based on the fact that the common stock was sold in a sale not involving a public offering. In addition, if eInvesting achieves certain operating milestones, its shareowners will be eligible to be issued up to an additional 255,000 shares of the Company's common stock.

On October 31, 2000, the Company acquired all of the issued and outstanding common stock of PrivateAccounts, Inc. ("PrivateAccounts"). The Company issued approximately 618,000 shares of E*TRADE common stock in connection with this acquisition. The Company expects to issue an additional 618,000 shares of E*TRADE common stock if PrivateAccounts achieves certain milestones and up to an additional \$22.0 million of Company common stock and, if necessary, cash consideration if certain asset targets are exceeded. No underwriters were involved in the transaction, and there were no underwriting discounts or commissions. The securities were issued in reliance upon the exemption from registration provided under Section 4(2) of the Securities Act based on the fact that the common stock was sold in a sale not involving a public offering.

On August 28, 2000, the Company issued 4,806 shares of unregistered common stock in connection with a consultant stock option exercise, which obligation had been assumed in connection with the Company's acquisition of E*TRADE Access. No underwriters were involved and there were no underwriting discounts or commissions. The securities were issued in reliance upon the exemption from registration provided under Rule 701 of the General Regulations under the Securities Act of 1933.

ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA

Consolidated Statement Of Operations Data*:	Years Ended September 30,				
	2000	1999	1998	1997	1996
	(in thousands, except per share amounts)				
Gross revenues	\$ 1,973,183	\$ 889,683	\$ 482,244	\$ 316,132	\$ 198,824
Net revenues	\$ 1,368,318	\$ 671,448	\$ 361,005	\$ 254,022	\$ 160,639
Operating income (loss)	\$ (80,326)	\$ (149,193)	\$ (7,661)	\$ 28,979	\$ 6,312
Gain on sale of investments	\$ 211,149	\$ 54,093	\$ —	\$ —	\$ —
Income (loss) before cumulative effect of accounting change and extraordinary loss**	\$ 19,152	\$ (54,315)	\$ (402)	\$ 18,311	\$ 4,700
Net income (loss)	\$ 19,152	\$ (56,769)	\$ (402)	\$ 18,311	\$ 4,700
Income (loss) per share before cumulative effect of accounting change and extraordinary loss**:					
Basic	\$ 0.06	\$ (0.20)	\$ 0.00	\$ 0.12	\$ 0.05
Diluted	\$ 0.06	\$ (0.20)	\$ 0.00	\$ 0.11	\$ 0.03
Income (loss) per share:					
Basic	\$ 0.06	\$ (0.21)	\$ (0.01)	\$ 0.12	\$ 0.05
Diluted	\$ 0.06	\$ (0.21)	\$ (0.01)	\$ 0.11	\$ 0.03
Shares used in computation of per share data:					
Basic	301,926	272,832	195,051	147,168	92,797
Diluted	319,336	272,832	195,051	167,818	134,781

Consolidated Balance Sheet Data*:	September 30,				
	2000	1999	1998	1997	1996
	(in thousands)				
Cash and equivalents	\$ 175,443	\$ 157,705	\$ 76,409	\$ 144,752	\$ 46,237
Brokerage receivables—net	\$ 6,542,508	\$ 2,982,076	\$ 1,451,468	\$ 877,004	\$ 279,388
Mortgage-backed securities	\$ 4,188,553	\$ 1,426,053	\$ 1,012,163	\$ 319,203	\$ 184,743
Loans receivable—net	\$ 4,172,754	\$ 2,154,509	\$ 904,854	\$ 540,704	\$ 351,821
Total assets	\$ 17,317,437	\$ 8,032,174	\$ 4,448,140	\$ 2,295,804	\$ 1,076,194
Convertible subordinated notes and capital lease liability	\$ 676,903	\$ —	\$ —	\$ —	\$ —
Mandatorily redeemable preferred securities	\$ 31,531	\$ 30,584	\$ 38,385	\$ 42,186	\$ 19,586
Shareowners' equity	\$ 1,856,833	\$ 1,451,795	\$ 853,059	\$ 354,550	\$ 117,979

- * All prior year amounts presented have been restated to reflect the acquisitions of ETFC and VERSUS in fiscal 2000, which were accounted for as poolings of interests (see Note 3 to the Consolidated Financial Statements).
- ** The cumulative effect of change in accounting principle resulted from the implementation by ETFC of Statement of Position 98-5, *Reporting on the Cost of Start-Up Activities*, which requires that the cost of start-up activities be expensed as incurred rather than capitalized, with the initial application reported as the cumulative effect of a change in accounting principle. In June 1999, ETFC redeemed all of its outstanding debt. ETFC wrote off both the related premium and the remaining discount as an extraordinary loss on the early extinguishment of debt, totaling approximately \$2.0 million, net of tax.

The selected consolidated financial data should be read in conjunction with "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations", and "Item 8. Consolidated Financial Statements and Supplementary Data."

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Forward-Looking Statements

*Statements in this document, other than statements of historical information, are forward-looking statements that are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements, as well as other oral and written forward-looking statements made by or on behalf of E*TRADE Group, Inc. ("E*TRADE") from time to time, including statements contained in our filings with the Securities and Exchange Commission ("SEC") and our reports to shareowners, involve known and unknown risks and other factors which may cause our actual results in future periods to differ materially from those expressed in any forward-looking statements. Any such statement is qualified by reference to the risks and factors discussed below under the headings "Overview", "Liquidity and Capital Resources," and "Risk Factors," as well as in our filings with the Securities and Exchange Commission, which are available from the Securities and Exchange Commission or which may be obtained upon request from the Company. We caution that the risks and factors discussed below and in such filings are not exclusive. We do not undertake to update any forward-looking statement that may be made from time to time by or on behalf of E*TRADE.*

Overview

E*TRADE is a global leader in online personal financial services offering value-added investing, banking, research and educational tools, premium customer service and a proprietary Stateless Architecture[®] infrastructure to our customers through services provided by our wholly-owned subsidiaries, including but not limited to, E*TRADE Securities, Inc. ("E*TRADE Securities"), TIR (Holdings) Limited ("TIR"), E*TRADE Bank (the "Bank"), Card Capture Services Inc. ("CCS"), now E*TRADE Access Inc. ("E*TRADE Access"), VERSUS Technologies, Inc. ("VERSUS") and other international subsidiaries. Our business is discussed in greater detail in this Form 10-K in "Item 1. Business."

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During fiscal 2000, we expanded and diversified our business through several strategic acquisitions, domestically, as well as globally. Through our acquisitions of Telebanc Financial Corporation ("Telebanc"), now E*TRADE Financial Corporation ("ETFC"), the holding company of the Bank, in January 2000, and E*TRADE Access in May 2000, we began offering banking services during fiscal 2000, and during the fourth quarter, extended those services through our network of automated teller machines ("ATMs"). We have also positioned ourselves to grow internationally, increasing our institutional client base worldwide and enhancing our ability to conduct cross-border trading through the acquisitions of VERSUS in August 2000 and several other international affiliates throughout the year. In addition, we formed our asset gathering group during fiscal 2000, combining our mutual fund operations, Business Solutions Group ("BSG"), and corporate operations, while expanding our financial service portfolio through the acquisitions of Electronic Investing Corporation ("eInvesting") in July 2000 and PrivateAccounts, Inc. ("PrivateAccounts") in October 2000. Our acquisitions of ETFC and VERSUS have been accounted for as poolings of interests, and accordingly, our consolidated financial statements have been restated to give retroactive effect to these acquisitions. Our acquisitions of E*TRADE Access and our international affiliates have been accounted for under the purchase method, and accordingly, the operating results of these entities have been combined with those of the Company since the dates of acquisition.

We face a number of risks and challenges that could negatively impact our operations and financial results. The most significant of these risks and challenges relate to competition, security and confidentiality concerns, retaining key customers, retaining and hiring skilled personnel, potential technical problems processing customer transactions, market conditions, expansion efforts and governmental regulation.

Results of Operations

Key Performance Indicators

The following sets forth several key indicators which management utilizes in measuring our performance and in explaining the results of our operations for the comparative fiscal years presented (dollars in thousands except cost per new account and average commission per domestic transaction):

	Years Ended September 30,			Percentage Change	
	2000	1999	1998	2000 versus 1999	1999 versus 1998
Active domestic brokerage accounts	2,951,946	1,550,634	543,879	90%	185%
Active banking accounts	288,073	97,402	50,832	196%	92%
Active global and institutional accounts	75,416	16,759	6,955	350%	141%
Total active accounts at period end	3,315,435	1,664,795	601,666	99%	177%

Net new domestic brokerage accounts	1,401,312	1,006,755	318,150	39%	216%
Net new banking accounts	190,671	50,383	29,018	308%	74%
Net new global and institutional accounts	58,657	9,804	—	498%	—%
Total net new accounts	1,650,640	1,066,942	347,168	55%	207%
Cost per new account	\$ 263	\$ 245	\$ 219	7%	12%
Total assets in domestic brokerage accounts	\$ 59,901,277	\$ 28,445,369	\$ 11,175,291	111%	155%
Total deposits in banking accounts	4,630,068	2,095,584	1,142,385	121%	83%
Total assets in global and institutional accounts	1,348,672	306,556	—	340%	—%
Total assets/deposits in customer accounts	\$ 65,880,017	\$ 30,847,509	\$ 12,317,676	114%	150%
Total domestic brokerage transactions	42,315,785	17,257,878	6,960,145	145%	148%
Daily average domestic brokerage transactions	167,256	68,484	27,620	144%	148%
Average commission per domestic transaction	\$ 15.52	\$ 18.35	\$ 19.53	(15)%	(6)%

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The following table sets forth the components of both gross and net revenues and percentage change information related to certain items on our Consolidated Statements of Operations for the periods indicated (dollars in thousands):

	Years Ended September 30,			Percentage Change	
				2000 versus 1999	1999 versus 1998
	2000	1999	1998		
Transaction Revenues:					
Commissions	\$ 656,725	\$316,656	\$136,265	107%	132%
Order flow	82,353	39,174	25,832	110%	52%
Total transaction revenues	739,078	355,830	162,097	108%	120%
Interest Income:					
Brokerage-related	463,590	176,479	86,013	163%	105%
Banking-related	496,768	192,595	100,110	158%	92%
Total interest income	960,358	369,074	186,123	160%	98%
Global and institutional	166,061	124,233	105,851	34%	17%
Other	107,686	40,546	28,173	166%	44%
Gross revenues	1,973,183	889,683	482,244	122%	84%
Interest Expense:					
Brokerage-related	222,552	72,789	40,029	206%	82%
Banking-related	378,310	142,663	80,305	165%	78%
Total interest expense	600,862	215,452	120,334	179%	79%
Provision for loan losses	4,003	2,783	905	44%	208%
Net revenues	\$1,368,318	\$671,448	\$361,005	104%	86%

Fiscal Years Ended September 30, 2000, 1999 and 1998

Revenues

Gross revenues increased 122% from fiscal 1999 to fiscal 2000 and 84% from fiscal 1998 to fiscal 1999. Net revenues increased 104% from fiscal 1999 to fiscal 2000 and 86% from fiscal 1998 to fiscal 1999. The increases in fiscal 2000 and 1999 are mainly due to growth in our diversified and global revenue streams, improvements in our cross-selling ability across business segments, and sustained growth in customer transaction volumes, net new active bank and brokerage customer accounts and total assets/deposits in customer accounts. Gross revenues consist principally of commission revenues from domestic retail brokerage transactions, payments for order flow, interest income, institutional transaction execution fees, license and royalty revenues, and to a lesser degree, revenue from services and gains on the sale of loans and securities.

Transaction Revenues

Transaction revenues increased 108% from fiscal 1999 to fiscal 2000 and 120% from fiscal 1998 to fiscal 1999. The increases in transaction revenues for fiscal 2000 and 1999 are due to increases in commission revenues from domestic retail brokerage transactions and payments for order flow. Growth in transaction revenues during the past two fiscal years reflects an increase in the level of online trading volumes in U.S.

financial markets. Furthermore, sustained growth in new customer accounts coupled with our Power E*TRADE[®] program, which extends special initiatives to participating, highly active customers who remained active, despite declining volumes in the market during the third and fourth quarters of fiscal 2000, and the implementation of our Customer Relationship Management ("CRM") technology, which has enabled us to identify and attract higher quality accounts, contributed to the growth in transaction revenues. Market conditions in fiscal 2000 coupled with our efforts to diversify revenue streams during the year have resulted in a reduction in transaction revenues as a percentage of gross revenues. Transaction revenues as a percentage of gross revenues have decreased to 37% in fiscal 2000 from 40% in fiscal 1999, which increased from 34% in fiscal 1998.

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Commission revenues increased 107% from fiscal 1999 to fiscal 2000 and 132% from fiscal 1998 to fiscal 1999. The increases in fiscal 2000 and 1999 are due to the increase in the number of active domestic brokerage accounts, net new domestic brokerage accounts and total domestic brokerage transactions. Active domestic brokerage accounts increased 90% from fiscal 1999 to fiscal 2000 and 185% from fiscal 1998 to fiscal 1999. Net new domestic brokerage accounts increased 39% from fiscal 1999 to fiscal 2000 and 216% from fiscal 1998 to fiscal 1999. Daily average domestic brokerage transactions increased 144% from fiscal 1999 to fiscal 2000 and 148% from fiscal 1998 to fiscal 1999. The average commission per domestic transaction decreased to \$15.52 in fiscal 2000 from \$18.35 in fiscal 1999, which decreased from \$19.53 in fiscal 1998. The decline in average commission per domestic transaction is a result of promotional activities, changes in the mix of revenue generating transactions and the August 1999 implementation of the Power E*TRADE program, a component of which provides reduced commissions for active traders. Commission revenues as a percentage of gross revenues are expected to decrease as we continue to execute on cross-selling initiatives across business lines, leveraging our diversified business model.

Revenue from order flow is comprised of rebate income from various market makers and market centers for processing transactions through them. We use other broker-dealers to execute our customers' orders and, in recent years, have derived a significant portion of our revenues from these broker-dealers for such order flow. This practice of receiving payment for order flow is widespread in the securities industry. Under applicable SEC regulations, receipt of these payments requires disclosure of such payments by us to our customers. Payments for order flow as a percentage of transaction revenues were 11% in fiscal 2000 and 1999, down from 16% in fiscal 1998. The decreases in payments for order flow in fiscal 2000 and 1999 are due to changes in the order flow mix, a decrease in the average shares per equity transaction, and the continued impact of the SEC's order handling rules, which reduced the bid/ask spread, thereby reducing market maker margins and limiting their ability to pay for order flow. Also contributing to the decline from fiscal 1998 was the loss of Roundtable earnings, which ended when Roundtable was reorganized as Knight/Trimark, Inc. and went public in July 1998. Until its initial public offering, Knight/Trimark would allocate a portion of its earnings to its owners, including the Company, based on the percentage its owners contributed to Knight/Trimark's total order flow. The Company previously recorded the amounts it received under this allocation as payment for order flow revenue. There can be no assurance that we will be able to continue our present relationships and terms for such payments for order flow. In addition, there can be no assurance that payments for order flow will continue to be permitted by the SEC, the National Association of Securities Dealers Regulation, Inc. ("NASDR") or other regulatory agencies, courts or governmental units. Loss of any or all of these revenues could have a material adverse effect on our business, financial condition and operating results. See "Item 7. Risk factors—Loss or reductions in revenue from order flow rebates could harm our business."

Interest Income and Expense

Interest income from brokerage-related activities is comprised of interest earned by our brokerage subsidiaries on credit extended to customers to finance their purchases of securities on margin and fees on customer assets invested in money market accounts. Interest expense from brokerage-related activities is comprised of interest paid to customers on certain credit balances, interest paid to banks and interest paid to other broker-dealers through our brokerage subsidiary's stock loan program. Interest income from banking-related activities reflects interest earned on assets, consisting primarily of loans receivable and mortgage-backed securities. Interest expense from banking-related activities is comprised of interest-bearing banking liabilities that include customer deposits, advances from the Federal Home Loan Bank of Atlanta ("FHLB") and other borrowings.

Brokerage interest income increased 163% from fiscal 1999 to fiscal 2000 and 105% from fiscal 1998 to fiscal 1999. Increases in brokerage interest income in fiscal 2000 and 1999 primarily reflect the overall increase in average customer margin balances and average customer money market fund balances. Assets in domestic brokerage accounts totaled \$59,901 million in fiscal 2000, an increase of 111% from \$28,445 million in fiscal 1999, which was an increase of 155% from \$11,175 million in fiscal 1998. Increases in brokerage interest expense in fiscal 2000 and 1999 are mainly due to an overall increase in average customer credit balances and average stock loan balances.

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The following table sets forth the increases in average customer margin balances, average customer money market fund balances, average customer credit balances and average stock loan balances for the years indicated (dollars in millions):

	Years Ended September 30,			Percentage Change	
				2000	1999
	2000	1999	1998	versus 1999	versus 1998
Average customer margin balances	\$ 4,379	\$ 1,853	\$ 925	136%	100%
Average customer money market fund balances	\$ 6,793	\$ 3,207	\$ 1,396	112%	130%
Average customer credit balances	\$ (1,397)	\$ (493)	\$ (244)	183%	102%
Average stock loan balances	\$ (3,597)	\$ (1,098)	\$ (683)	228%	61%

Banking interest income increased 158% from fiscal 1999 to fiscal 2000 and 92% from fiscal 1998 to fiscal 1999. Increases in banking interest income in the past two years reflect an increase in the average interest-earning banking asset balances, average interest yield, active banking accounts, net new banking accounts and total deposits in banking accounts. Average interest-earning banking assets increased 134% from fiscal 1999 to fiscal 2000 and 103% from fiscal 1998 to fiscal 1999. The average yield on interest-earning banking assets increased to 7.73% in fiscal 2000 from 7.01% in fiscal 1999, which decreased from 7.28% in fiscal 1998. Active banking accounts increased 196% from fiscal 1999 to fiscal 2000 and 92% from fiscal 1998 to fiscal 1999. Net new banking accounts increased 308% from fiscal 1999 to fiscal 2000 and 74% from fiscal 1998 to fiscal 1999. Total deposits in banking accounts increased 121% from fiscal 1999 to fiscal 2000 and 83% from fiscal 1998 to 1999. Banking interest expense increased 165% from fiscal 1999 to fiscal 2000 and 78% from fiscal 1998 to fiscal 1999. The increase in banking interest expense in fiscal 2000 reflects an increase in the average interest-bearing banking liabilities coupled with an increase in the average cost of the borrowings. The increase in banking interest expense in fiscal 1999 reflects an increase in the average interest-bearing banking liabilities offset by a decrease in the average cost of the borrowings. Average interest-bearing banking liabilities increased 140% from fiscal 1999 to fiscal 2000 and 92% from fiscal 1998 to fiscal 1999. The average cost increased to 6.29% in fiscal 2000 from 5.69% in fiscal 1999, which decreased from 6.08% in fiscal 1998.

The following table presents average balance data and income and expense data for our banking operations and the related interest yields and rates for the three years ended September 30, 2000, 1999 and 1998. The table also presents information with respect to net interest margin, an indicator of profitability. Another indicator of profitability is net interest spread, which is the difference between the weighted average yield earned on interest-earning banking assets and weighted average rate paid on interest-bearing banking liabilities. Interest income includes the incremental tax benefit of tax exempt income.

	Fiscal 2000			Fiscal 1999			Fiscal 1998		
	Average Balance	Interest Inc./Exp.	Average Yield/Cost	Average Balance	Interest Inc./Exp.	Average Yield/Cost	Average Balance	Interest Inc./Exp.	Average Yield/Cost
(dollars in thousands)									
Interest-earning banking assets:									
Loans receivable, net	\$ 3,165,908	\$ 252,982	7.99%	\$ 1,288,221	\$ 97,427	7.56%	\$ 663,913	\$ 51,166	7.71%
Interest bearing deposits	59,708	3,466	5.81%	27,624	1,307	4.73%	8,339	499	5.98%
Mortgage-backed and related available-for-sale securities	2,884,474	217,448	7.54%	1,184,003	77,493	6.55%	492,077	34,474	7.01%
Available-for-sale investment securities	228,007	16,125	7.15%	211,342	13,233	6.43%	157,381	10,072	6.40%
Investment in FHLB stock	62,511	4,847	7.75%	25,001	1,876	7.50%	11,651	870	7.47%
Trading securities	26,210	1,900	7.25%	15,001	1,104	7.36%	19,760	1,477	7.47%
Total interest-earning banking assets	6,426,818	\$ 496,768	7.73%	2,751,192	\$ 192,440	7.01%	1,353,121	\$ 98,558	7.28%
Non-interest-earning banking assets	206,554			107,025			52,841		
Total banking assets	\$ 6,633,372			\$ 2,858,217			\$ 1,405,962		
Interest-bearing banking liabilities:									
Retail deposits	\$ 3,228,692	\$ 197,748	6.12%	\$ 1,390,957	\$ 79,404	5.71%	\$ 753,352	\$ 45,016	5.98%
Brokered callable certificates of deposit	88,601	5,825	6.56%	67,071	4,449	6.63%	54,491	3,638	6.68%
FHLB advances	1,225,783	78,171	6.27%	473,849	25,809	5.37%	219,487	13,022	5.85%
Other borrowings	1,471,435	96,566	6.46%	549,090	30,184	5.42%	242,412	14,149	5.76%
Subordinated debt, net	—	—	—%	19,911	2,359	11.85%	29,880	3,526	11.80%

Total interest-bearing banking liabilities	6,014,511	\$ 378,310	6.29%	2,500,878	\$ 142,205	5.69%	1,299,662	\$ 79,351	6.08%
Non-interest-bearing banking liabilities	115,280			28,256			19,312		
Total banking liabilities	6,129,791			2,529,134			1,318,934		
Trust preferred securities	—			33,847			20,599		
Total banking shareowners' equity	503,581			295,236			66,429		
Total banking liabilities and shareowners' equity	\$ 6,633,372			\$ 2,858,217			\$ 1,405,962		
Excess of interest-earning banking assets over interest-bearing banking liabilities/net interest income	\$ 412,307	\$ 118,458		\$ 250,314	\$ 50,235		\$ 53,459	\$ 19,207	
Net interest spread			1.44%			1.32%			1.20%
Net interest margin (net yield on interest-earning banking assets)			1.85%			1.83%			1.42%
Ratio of interest-earning banking assets to interest-bearing banking liabilities			106.86%			110.01%			104.12%
Return on average total banking assets			(0.08)%			0.09%			0.10%
Return on average net banking assets			(1.10)%			0.79%			2.07%
Equity to total banking assets			7.59%			10.33%			4.72%

The following table allocates the period-to-period changes in our various categories of banking-related interest and expense between changes due to (1) changes in asset/liability volume, calculated by multiplying the change in average asset/liability volume of the related interest-earning banking asset or interest-bearing banking liability category by the prior year's interest rate, and (2) changes in interest rate, calculated by multiplying changes in interest rate by the prior year's asset/liability volume. Changes due to changes in rate-volume, which is calculated as the change in interest rate multiplied by changes in asset/liability volume, have been allocated proportionately between changes in asset/liability volume and changes in interest rate.

	Fiscal 2000 vs. Fiscal 1999			Fiscal 1999 vs. Fiscal 1998		
	Increase (Decrease) Due To			Increase (Decrease) Due To		
	Volume	Rate	Total	Volume	Rate	Total
(in thousands)						
Interest earning banking assets:						
Loans receivable, net	\$ 142,007	\$ 13,549	\$ 155,556	\$ 47,198	\$ (937)	\$ 46,261
Interest bearing deposits	1,518	641	2,159	888	(80)	808
Mortgage-backed and related available-for-sale securities	111,297	28,658	139,955	45,130	(2,111)	43,019
Available-for-sale investment securities	1,045	1,848	2,893	3,374	(213)	3,161

Investment in FHLB stock	2,814	157	2,971	1,002	4	1,006
Trading securities	825	(30)	795	(351)	(22)	(373)
Total interest-earning banking assets	259,506	44,823	304,329	97,241	(3,359)	93,882
Interest-bearing banking liabilities:						
Time deposits	106,509	11,836	118,345	36,421	(2,033)	34,388
Brokered callable certificates of deposit	1,428	(52)	1,376	834	(23)	811
FHLB advances	40,954	11,408	52,362	13,760	(973)	12,787
Other borrowings	50,703	15,679	66,382	16,808	(773)	16,035
Subordinated debt, net	(2,359)	—	(2,359)	(1,181)	14	(1,167)
Total interest-bearing banking liabilities	197,235	38,871	236,106	66,642	(3,788)	62,854
Change in net interest income	\$ 62,271	\$ 5,952	\$ 68,223	\$ 30,599	\$ 429	\$ 31,028

Global and Institutional

Global and institutional revenues increased 34% from fiscal 1999 to fiscal 2000 and 17% from fiscal 1998 to fiscal 1999. Global and institutional revenues are comprised primarily of revenues from TIR's and VERSUS' operations, as well as retail brokerage-related transaction revenue from our international subsidiaries. TIR's global and institutional revenues increased to \$130.6 million in fiscal 2000, up 22% from \$106.9 million for fiscal 1999, which was up 20% from \$88.8 million in fiscal 1998. VERSUS' global and institutional revenues increased to \$26.3 million in fiscal 2000, up 98% from \$13.3 million for fiscal 1999, which was up 32% from \$10.0 million in fiscal 1998. The overall increases in fiscal 2000 and 1999 are primarily attributable to strong market conditions in Asia and Europe and the emerging on-line brokerage market in Canada. The acquisition of several of our international affiliates in fiscal 2000 also resulted in increasing global and institutional revenues in fiscal 2000 as compared to fiscal 1999. TIR's revenues are largely comprised of commissions from institutional transaction executions. For fiscal 2000, approximately 72% of TIR's transactions were from outside the U.S. and approximately 73% were from cross-border transactions.

Other

Other revenues increased 166% from fiscal 1999 to fiscal 2000 and 44% from fiscal 1998 to fiscal 1999. For the past two years, other revenues increased primarily due to the growth of the Business Solutions Group revenue, mutual fund revenues, revenues from fees charged for advertising on our Web site, investment banking revenue, gains on the sale of banking-related loans and securities, and brokerage and banking-related fees for services. Furthermore, with the acquisition of E*TRADE Access in May 2000, accounted for under the purchase method, other revenues for the second half of fiscal 2000 include ATM transaction fees.

Provision for loan losses

The provision for loan losses recorded reflects increases in our allowance for loan losses based upon management's review and assessment of the risk in our loan portfolio, as well as the level of charge-offs as a portion of our allowance for loan losses. The provision for loan losses increased 44% from fiscal 1999 to fiscal 2000 and 208% from fiscal 1998 to fiscal 1999. The increases in the provision for loan losses in fiscal 2000 and 1999 primarily reflect the growth in our loan portfolio. As of September 30, 2000 and 1999, the total loan loss allowance was \$10.9 million, or 0.26% of total loans outstanding, and \$7.2 million, or 0.33% of total loans outstanding, respectively. As of September 30, 2000, the unallocated loan loss allowance was \$10.5 million, or 87% of total non-performing assets of \$12.1 million. At September 30, 1999, the unallocated loan loss allowance of \$6.7 million totaled 79% of total non-performing assets of \$8.5 million.

Operating Expenses

The following table sets forth the components of cost of services and operating expenses and percentage change information for the years ended September 30, 2000, 1999 and 1998 (dollars in thousands):

	Years Ended September 30,			Percentage Change	
	2000	1999	1998	2000 vs. 1999	1999 vs. 1998
Cost of services	\$515,571	\$302,342	\$151,329	71%	100%
Cost of services as a percentage of net revenues	38%	45%	42%		
Operating expenses:					
Selling and marketing	521,532	325,449	126,141	60%	158%

Technology development	142,914	79,935	36,203	79%	121%
General and administrative	209,436	102,826	51,346	104%	100%
Amortization of goodwill and other intangibles	22,764	2,915	2,480	681%	18%
Acquisition-related expenses	36,427	7,174	1,167	408%	515%
Total operating expenses	\$933,073	\$518,299	\$217,337	80%	138%

Cost of Services

Cost of services increased 71% from fiscal 1999 to fiscal 2000 and 100% from fiscal 1998 to fiscal 1999. Cost of services includes expenses related to our brokerage clearing operations, customer service activities, Web site content costs, systems maintenance, communication expenses and depreciation expense. The increases in cost of services in fiscal 2000 and 1999 reflect the overall increase in customer transactions processed by our brokerage and banking subsidiaries, a related increase in customer service inquiries, and operations and maintenance costs associated with our technology centers in Rancho Cordova, California and Alpharetta, Georgia. Cost of services as a percentage of net revenues was 38%, 45% and 42% in fiscal 2000, 1999 and 1998, respectively. The decrease in cost of services as a percentage of net revenues from fiscal 1999 to fiscal 2000 is primarily a result of leveraging our business model and gaining improved efficiencies in fiscal 2000. The increase in cost of services as a percentage of net revenues in fiscal 1999 compared to fiscal 1998 is primarily related to the introduction of 24x7x366 live agent customer service, the build-out of the technology operation infrastructure to support the growth of the global business, the added content to the Web site, and the promotional and pricing programs introduced in fiscal 1999.

Selling and Marketing

Selling and marketing increased 60% from fiscal 1999 to fiscal 2000 and 158% from fiscal 1998 to fiscal 1999. The increases in selling and marketing expenditures in fiscal 2000 and 1999 reflect expenditures for advertising placements, creative development and collateral materials resulting from a variety of advertising campaigns directed at building brand name recognition, growing the customer base and market share, and maintaining customer retention rates. Beginning in the fourth quarter of fiscal 1998, the Company significantly expanded its marketing efforts including the launch of Destination E*TRADE[®], expanded national television advertising and new strategic marketing alliances with key business partners, such as AOL and Yahoo! Selling and marketing expenditures in fiscal 2000 also reflect expenditures that resulted from our sponsorship of Super Bowl XXXIV. Marketing efforts focusing on our international and banking businesses are expected to increase as we expand our advertising efforts for these segments through fiscal 2001. Our cost per new account totaled \$263 in

fiscal 2000, an increase of 7% from \$245 in fiscal 1999, which was an increase of 12% from \$219 in fiscal 1998. These increases were primarily the result of increased marketing spending in the past three years.

Technology Development

Technology development increased 79% from fiscal 1999 to fiscal 2000 and 121% from fiscal 1998 to fiscal 1999. The increased level of expense for technology development in the past two years was incurred to enhance our existing product offerings, including maintenance of our Web site and development of our CRM technology prior to achievement of technological feasibility, reflecting our continuing commitment to invest in new products and technologies. The rate of growth of technology development costs in fiscal 2000 as compared to fiscal 1999 has decreased, primarily due to an increase in capitalizable development costs for certain internally developed software which reached technological feasibility during fiscal 2000, as well as a reduction in the use of outside consultants as we refocused our efforts on fewer, but more beneficial projects.

General and Administrative

General and administrative expenses increased 104% from fiscal 1999 to fiscal 2000 and 100% from fiscal 1998 to fiscal 1999. General and administrative expenses increased over the past two years as a result of personnel additions and the development of administrative functions resulting from our overall growth and increased business activities.

Amortization of Goodwill and Other Intangibles

Amortization of goodwill and other intangibles was \$22.8 million, \$2.9 million and \$2.5 million in fiscal 2000, 1999, and 1998, respectively. The significant increase in the amortization of goodwill and other intangibles primarily consists of the amortization of goodwill related to the acquisitions of several of our international affiliates and E*TRADE Access during fiscal 2000, that were accounted for under the purchase method. Goodwill is amortized over 5 to 20 years. Other intangibles are not significant.

Acquisition-Related Expenses

Acquisition-related expenses were \$36.4 million, \$7.2 million and \$1.2 million in fiscal 2000, 1999 and 1998, respectively, and primarily represent transaction costs associated with acquisitions accounted for as poolings of interests. Acquisition-related expenses in fiscal 2000 primarily relate to transaction costs associated with the acquisitions of ETFC and VERSUS. In fiscal 1999, acquisition-related expenses were incurred primarily in connection with the acquisitions of TIR, ClearStation and ETFC. In fiscal 1998, we recognized transaction costs in association with the acquisition of ShareData.

Non-Operating Income (Expenses)

Corporate interest income was \$17.2 million, \$20.7 million and \$11.2 million in fiscal 2000, 1999 and 1998, respectively. Corporate interest income primarily relates to interest income earned on corporate investment balances.

Corporate interest expense was \$29.5 million, \$0.1 million and \$0 in fiscal 2000, 1999 and 1998, respectively. Corporate interest expense in fiscal 2000 primarily relates to interest expense resulting from the issuance of \$650 million in convertible subordinated notes during the second

quarter of fiscal 2000. In fiscal 1999 and 1998, corporate interest expense was not significant.

Realized gains on sale of investments were \$211.1 million, \$54.1 million and \$0 in fiscal 2000, 1999 and 1998, respectively. In fiscal 2000, we continued to liquidate portions of our investment portfolio, recognizing realized gains as a result of these liquidations. Included in realized gains on sale of investments in fiscal 2000 is \$77.5 million on the sale of a portion of our equity holdings in E*TRADE Japan KK following their initial public offering and realized gains of \$132.3 million on the sale of other publicly-traded equities. E*TRADE Japan KK is accounted for on the equity method. In addition, we have made strategic investments in other non-public entities, several of which have subsequently gone public. These investments have been classified as available-for-sale under the provisions of Statement of Financial Accounting Standard ("SFAS") No. 115, *Accounting for Certain Investments in Debt and Equity Securities*.

Equity in income (losses) of investments was \$(11.5) million, \$(8.8) million and \$0.5 million in fiscal 2000, 1999 and 1998, respectively, which resulted from our minority ownership in investments that are accounted for under the equity method. These investments primarily include E*TRADE Japan KK and E*OFFERING. We expect that these companies will continue to invest in the development of their products and services and may incur operating losses which will result in future charges to reflect our proportionate share of those losses. The initial public offering of E*TRADE Japan KK in September 2000 will not have a significant, ongoing effect on our operations as we will continue to account for our remaining 32% interest in E*TRADE Japan KK under the equity method. The acquisition of E*OFFERING by Wit Capital Group, Inc., renamed Wit Soundview Group, Inc., in October 2000 is not expected to have a material effect on equity in income (losses) of investments.

In fiscal 2000, we recorded unrealized losses on our participation in the E*TRADE eCommerce Fund I and Fund II L.P., representing market decreases on public investments held by the funds offset in part by increases in the estimated value of the non-public investments. The funds were formed in the first quarter and third quarter of fiscal 2000, respectively.

Income Tax Expense (Benefit)

Income tax expense (benefit) represents the expense for federal and state income taxes at an effective tax rate of 81.8%, (37.5)% and 66.2% for fiscal 2000, 1999 and 1998, respectively. The rate for fiscal 2000 reflects an increase in non-deductible acquisition-related expenses combined with the amortization of goodwill and differences between our statutory and foreign effective tax rate. These increases are primarily due to business acquisitions during fiscal 2000. The rate for fiscal 1999 reflects the impact of non-deductible acquisition-related expenses and amortization of goodwill arising from acquisitions.

Minority Interest in Subsidiaries

Minority interest in subsidiaries decreased 108% from fiscal 1999 to fiscal 2000 and increased 61% from fiscal 1998 to fiscal 1999. Minority interest in subsidiaries results primarily from ETFC's interest payments to subsidiary trusts which have issued Company-obligated mandatorily redeemable capital securities and which hold junior subordinated debentures of ETFC. Also included in minority interest in subsidiaries for the second half of fiscal 2000 is the net loss attributed to minority interests in two of our international affiliates.

Cumulative Effect of Change in Accounting Principle

The cumulative effect of change in accounting principle resulted from the implementation by ETFC of Statement of Position 98-5, *Reporting on the Cost of Start-Up Activities*, which requires that the cost of start-up activities be expensed as incurred rather than capitalized, with the initial application reported as the cumulative effect of a change in accounting principle.

Extraordinary Loss on Early Extinguishment of Subordinated Debt

In June 1999, ETFC redeemed all of its outstanding debt. ETFC wrote off both the related premium and the remaining discount as an extraordinary loss on the early extinguishment of debt, totaling approximately \$2.0 million, net of tax.

Variability of Results

We expect to experience fluctuations in future quarterly operating results that may be caused by many factors, including the following: the timing of introductions or enhancements to online investing and banking services and products by us or our competitors; market acceptance of online investing and banking services and products; the pace of development of the market for online commerce; changes in trading volume in securities markets; trends in the securities and banking markets; domestic and international regulation of the brokerage and banking industries; changes in interest rates; changes in pricing policies by us or our competitors; changes in strategy; the success of or costs associated with acquisitions, joint ventures or other strategic relationships; changes in key personnel; seasonal trends; the extent of international expansion; the mix of international and domestic revenues; changes in the level of operating expenses to support projected growth; and general economic conditions.

Because of the foregoing factors, in addition to other factors that affect our operating results and financial position, investors should not consider past financial performance or management's expectations a reliable indicator

of future performance, and should not use historical trends to anticipate results or trends in future periods. In that regard, results of operations and financial condition could be adversely affected by a number of factors in addition to those discussed above, including overall economic conditions. Furthermore, our stock price is subject to volatility. Any of the factors discussed above could have an adverse effect on our stock price. In addition, our stock price could be adversely affected if our revenues or earnings in any quarter fail to meet the investment community's expectations, or if there are broader, negative market trends. We do not undertake an obligation to update our forward-looking statements or Risk factors to reflect future events or circumstances. See "Item 7. Risk factors—Risks related to owning our stock."

Liquidity and Capital Resources

Liquidity represents our ability to raise capital to fund operations, support asset growth, and meet obligations, including deposit withdrawals,

maturing liabilities, and other payment obligations, to maintain reserve requirements and to otherwise meet our ongoing obligations. We have historically met our liquidity needs primarily through investing and financing activities, consisting principally of equity and debt offerings, increases in core deposit accounts, other borrowings, and, sales of loans or securities. We believe that we will be able to renew or replace our funding sources at then-existing market rates, which may be higher or lower than current rates. Pursuant to applicable Office of Thrift Supervision ("OTS") regulations, the Bank is required to maintain an average liquidity ratio of 4.0% of certain borrowings and its deposits, which it met during fiscal 2000, 1999 and 1998.

In July 1998, we entered into an agreement to issue and sell 62.6 million shares of our common stock to SOFTBANK Holdings, Inc. for an aggregate purchase price of \$400.0 million. This investment represents a minority interest ownership of approximately 20% of our Company as of September 30, 2000.

In March 1999, our wholly-owned subsidiary, VERSUS, raised aggregate net proceeds of \$30.7 million in an initial public offering in Canada. These proceeds have been reflected in our consolidated financial statements.

In April 1999, our wholly-owned subsidiary, ETFC, raised aggregate net proceeds of \$395.9 million in a public offering. These proceeds have been reflected in our consolidated financial statements.

We have financing facilities totaling \$400 million to meet the needs of E*TRADE Securities. These facilities, if used, would be collateralized by customer securities. There were no borrowings outstanding under these lines on September 30, 2000. We also have a short term line of credit for up to \$50 million, collateralized by marketable securities owned by us, of which \$22.2 million was outstanding as of September 30, 2000. In addition, we have entered into numerous agreements with other broker-dealers to provide financing under our stock loan program.

On February 7, 2000, we completed a Rule 144A offering of \$500 million convertible subordinated notes due February 2007. On March 17, 2000, the initial purchasers exercised an option to purchase an additional \$150 million of notes. The notes are convertible, at the option of the holder, into a total of 27,542,373 shares of our common stock at a conversion price of \$23.60 per share. The notes bear interest at 6%, payable semiannually, and are non-callable for three years and may then be called by us at a premium, which declines over time. The holders have the right to require redemption at a premium in the event of a change in control or other defined redemption event. We used \$145.0 million of the \$631.3 million in net proceeds to pay the outstanding balance on a \$150 million line of credit, which was subsequently dissolved in February 2000.

In our banking operations, we seek to maintain a stable funding source for future periods in part by attracting core deposit accounts, which are accounts that tend to be relatively stable even in a changing interest rate environment. Typically, time deposit accounts and accounts that maintain a relatively high balance provide a relatively stable source of funding. At September 30, 2000, our average retail banking account balance was approximately \$16,000, and our banking customers maintained an average of 1.84 accounts. Savings and transactional deposits increased from \$353.8 million in fiscal 1999 to \$533.5 million in fiscal 2000, an increase of 51%. Retail certificates of deposit increased from \$1,742 million in fiscal 1999 to \$4,097 million in fiscal 2000, an increase of 135%. Callable certificates of deposit increased from \$67.1 million in fiscal 1999 to \$91.7 million in fiscal 2000, an increase of 37%.

We also rely on borrowed funds in our banking operations, such as FHLB advances and securities sold under agreements to repurchase, to provide liquidity. Total banking-related borrowings increased 179% from \$1,268 million in fiscal 1999 to \$3,531 million in fiscal 2000. At September 30, 2000, ETFC had approximately \$4.2 billion in additional borrowing capacity.

In fiscal 1999, we paid off our \$31.0 million face amount of subordinated debentures, recording an extraordinary loss on the early extinguishment of debt of \$2.0 million.

We currently anticipate that our available cash resources, credit facilities, and liquid portfolio of equity securities, along with the convertible subordinated debt offering described above, will be sufficient to meet our presently anticipated working capital and capital expenditure requirements for at least the next 12 months. However, we may need to raise additional funds in order to support more rapid expansion, develop new or enhanced services and products, respond to competitive pressures, acquire complementary businesses or technologies or take advantage of unanticipated opportunities. Our future liquidity and capital requirements will depend upon numerous factors, including costs and timing of expansion of technology development efforts and the success of such efforts, the success of our existing and new service offerings and competing technological and market developments. Our forecast of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement that involves risks and uncertainties, and actual results could vary. If additional funds are raised through the issuance of equity securities, the percentage ownership of the shareowners in our company will be reduced, shareowners may experience additional dilution in net book value per share or such equity securities may have rights, preferences or privileges senior to those of the holders of our common stock. There can be no assurance that additional financing will be available when needed on terms favorable to our Company, if at all. See "Item 7. Risk factors—We may need additional funds in the future which may not be available and which may result in dilution of the value of our common stock."

If adequate funds are not available on acceptable terms, we may be unable to develop or enhance our services and products, take advantage of future opportunities or respond to competitive pressures, any of which could have a material adverse effect on our business, financial condition and operating results. See "Item 7. Risk factors—We could lose customers and have difficulty attracting new customers if we are unable to quickly introduce new products and services that satisfy changing customer needs."

Cash used in operating activities, net of effects from acquisitions and net of the effects of realized gains on the sale of available-for-sale securities of \$220.1 million, was \$332.6 million in fiscal 2000. Cash used in operating activities resulted primarily from an increase in brokerage-related assets in excess of liabilities, net of effects from acquisitions, of \$413.3 million, an increase in other assets of \$93.0 million, offset by an increase in accounts payable, accrued and other liabilities of \$260.3 million. Cash provided by operating activities, net of effects from acquisitions, was \$23.8 million in fiscal 1999. Cash provided by operating activities resulted primarily from an increase in brokerage-related liabilities in excess of assets of \$66.1 million, an increase in banking-related liabilities in excess of assets of \$164.1 million, and an increase in accounts payable, accrued and other liabilities of \$86.9 million, offset by an increase in other assets of \$44.4 million and a net loss of \$56.8 million. Cash provided by operating activities, net of effects from acquisitions, was \$48.0 million in fiscal 1998. Cash provided by operating activities resulted primarily from a decrease in banking-related assets over liabilities of \$102.4 million and an increase in accounts payable, accrued and other liabilities of \$40.8 million, offset by an increase in other assets of \$28.1 million and an increase in brokerage-related assets in excess of liabilities of \$73.5 million.

Cash used in investing activities was \$5,132.5 million, \$1,942.5 million and \$1,357.2 million in fiscal 2000, 1999 and 1998, respectively. Cash used in investing activities resulted primarily from an excess of purchases of investments over the net sale/maturity of investments, purchases of property and equipment, an increase in loans held for investment, and an increase in restricted deposits in fiscal 2000. During fiscal 2000, the Company's mix of fixed rate to adjustable rate loan products shifted towards a greater percentage of adjustable rate loans. The shift from purchasing fixed to adjustable rate loans reflects our response to uncertainties surrounding rising interest rates during fiscal 2000.

Cash provided by financing activities was \$5,482.9 million, \$2,000.0 million and \$1,240.9 million in fiscal 2000, 1999 and 1998, respectively. Cash provided by financing activities primarily resulted from increased banking deposits, net advances from the FHLB of Atlanta and increases in securities sold under agreements to repurchase and, in fiscal 2000, proceeds from convertible subordinated notes.

We expect to incur approximately \$158 million of capital expenditures for the 12 months ending September 30, 2001.

Regulatory Capital Requirements

The SEC, NASDR, OTS and various other regulatory agencies have stringent rules with respect to the maintenance of specific levels of net capital by securities broker-dealers and regulatory capital by banks. Net capital is the net worth of a broker or dealer (assets minus liabilities), less deductions for certain types of assets. Minimum net capital requirements for our broker-dealer subsidiaries as of September 30, 2000 were fully met.

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The Bank is subject to various regulatory capital requirements administered by the federal banking agencies. Quantitative measures established by regulation to ensure capital adequacy require the Bank to maintain minimum amounts and ratios of total and Tier I capital to risk-weighted assets and of Tier I capital to average assets. To be categorized as well capitalized the Bank must maintain minimum total risk-based, Tier I risk-based and Tier I leverage ratios. As of September 30, 2000, the Bank was in compliance with all of its regulatory capital requirements and its capital ratios exceeded the ratios for "well capitalized" institutions under OTS regulations.

Recent Accounting Pronouncements

In June 1998, the Financial Accounting Standards Board ("FASB") issued SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*. The new standard requires companies to record derivatives on the balance sheet as assets or liabilities, measured at fair value. Derivatives that are not designated as part of a hedging relationship must be adjusted to fair value through income. If the derivative is a hedge, depending on the nature of the hedge, the effective portion of the hedge's change in fair value is either (1) offset against the change in fair value of the hedged asset, liability or firm commitment through income or (2) held in equity until the hedged item is recognized in income. The ineffective portion of a hedge's change in fair value is immediately recognized in income. We adopted SFAS No. 133, as amended, on October 1, 2000. The adoption of SFAS No. 133 will result in an \$82,500 charge, net of tax, from a cumulative effect of a change in accounting principle, and a \$6.2 million decrease, net of tax, in shareowners' equity in our financial statements for the quarter ending December 31, 2000.

In September 2000, the FASB issued SFAS No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*. SFAS No. 140 replaces SFAS No. 125, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*. It revises the standards for accounting for securitizations and other transfers of financial assets and collateral and requires certain disclosures, but it carries over most of SFAS No. 125's provisions without reconsideration. SFAS No. 140 is effective for transactions after March 31, 2001. We are currently evaluating the impact of SFAS No. 140 to our consolidated financial statements.

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RISK FACTORS

RISKS RELATING TO THE NATURE OF THE ONLINE FINANCIAL SERVICES BUSINESS

Our business will suffer if we cannot effectively compete

The market for financial services over the Internet is new, rapidly evolving and intensely competitive. We expect competition to continue and intensify in the future. We face direct competition from financial institutions, brokerage firms, banks, mutual fund companies, Internet portals and other organizations. These competitors include, among others:

- American Express;
- America Online, Inc.;
- Ameritrade, Inc.;
- Bank of America;
- Charles Schwab & Co., Inc.;
- Chase Manhattan Corp.;
- Citigroup, Inc.;
- Datek Online Holdings Corporation;
- DLJdirect;
- Fidelity Investments;
- FleetBoston Financial;
- Intuit Inc.;
- Merrill Lynch, Pierce, Fenner & Smith Incorporated;
- Microsoft Money;
- Morgan Stanley Dean Witter;
- National Discount Brokers;
- Net.B@nk, Inc.;
- PaineWebber Incorporated;
- Salomon Smith Barney, Inc. (which is owned by Citigroup);

- TD Waterhouse Securities, Inc.;
- Wells Fargo & Company;
- WingspanBank.com;
- Yahoo! Inc.

Many of our competitors have longer operating histories and significantly greater financial, technical, marketing and other resources than we do. In addition, many of our competitors offer a wider range of services and financial products than we do, and thus may be able to respond more quickly to new or changing opportunities, technologies and customer requirements. Many of our competitors also have greater name recognition and larger customer bases that could be leveraged, thereby gaining market share from us. Such competitors may conduct more extensive promotional activities and offer better terms and lower prices to customers than we do, possibly even sparking a price war in the online financial services industry. Moreover, certain competitors have established cooperative relationships among themselves or with third parties to enhance their services and products. It is possible that new competitors or alliances among existing competitors may significantly reduce our market share.

General financial success within the financial services industry over the past several years has strengthened existing competitors. We believe that such success will continue to attract new competitors, such as software development companies, insurance companies and others, as such companies expand their product lines. Commercial banks and other financial institutions have become more competitive with our brokerage operations by offering their customers certain corporate and individual financial services traditionally provided by securities firms. The current trend toward consolidation in the commercial banking industry could further increase competition in all aspects of our business. Commercial banks generally are expanding their securities and financial services activities. While we cannot predict the type and extent of competitive services that commercial banks and other financial institutions ultimately may offer, we may be adversely affected by such competition. To the extent our competitors are able to attract and retain customers, our business or ability to grow could be adversely affected.

There can be no assurance that we will be able to compete effectively with current or future competitors or that such competition will not have a material adverse effect on our business, financial condition and operating results.

Our computer security could be breached, which could significantly damage our reputation and deter customers from using our securities trading, investing and banking services

Because we rely heavily on electronic communications and secure transaction processing in our securities, banking and ATM businesses, we must protect our computer systems and network from physical break-ins, security breaches and other disruptions caused by unauthorized access. The open nature of the Internet makes protecting against these threats more difficult. Unauthorized access to our computers could jeopardize the security of information stored in and transmitted through our computer systems and network, which could adversely affect our ability to retain or attract customers, damage our reputation and subject us to litigation. We have in the past, and could in the future, be subject to denial of service, vandalism and other attacks on our systems by Internet hackers. In addition, we must guard against damage by persons with authorized access to our computer systems. Although we intend to continue to implement security technology and establish operational procedures to prevent break-ins, damage and failures, these security measures may be unable to prevent future attacks from disrupting operations. Our insurance coverage may be insufficient to cover losses that may result from such events.

Our business could suffer if we cannot protect the confidentiality of customer information transmitted over public networks

A significant requirement of online commerce for financial services is the secure transmission of confidential information over public networks. We rely on encryption and authentication technology, including cryptography technology licensed from RSA Data Security, Inc., to provide secure transmission of confidential information. Advances in computer and decryption capabilities or other developments could result in a compromise of the methods we use to protect customer transaction data. If any such compromise were to occur, it could materially harm our customers' confidence in our ability to protect information which could seriously harm our business.

Our inability to retain key customers could reduce our profitability

A significant portion of our transaction revenue is derived from sales to our Power E*TRADE customers. Market conditions over which we have no control could significantly reduce the transaction volume generated by our Power E*TRADE customers and result in a material adverse impact to our operating results.

Our inability to retain and hire skilled personnel and senior management could seriously harm our business

We expect staffing levels to increase substantially in the future. In particular, we have hired and intend to hire a significant number of additional skilled personnel, including persons with experience in the computer, brokerage and banking industries, and persons with Series 7 or other broker-dealer licenses. As the number of accounts and transaction volume increase, the shortage of qualified and, in some cases, licensed personnel could cause a backlog in the handling of banking transactions or the processing of brokerage orders that need review, and could have a material adverse effect on our business, financial condition and operating results. Competition for such personnel is intense, and there can be no assurance that we will be able to retain or hire technical persons or licensed representatives in the future.

In addition, our future success depends to a significant degree on the skills, experience and efforts of our Chief Executive Officer, President, Chief Financial Officer, and other key management personnel. The loss of the services of any of these individuals could compromise our ability to effectively operate our business.

We could be subject to customer litigation and our reputation could be materially harmed if our ability to correctly process customer transactions is slowed or interrupted

We process customer transactions mostly through the Internet, online service providers, touch-tone telephones and our computer systems. Thus, we depend heavily on the integrity of the communications and computer systems supporting these transactions, including our internal software programs and computer systems. A degradation or interruption in the operation of these systems could subject us to significant customer

litigation and could materially harm our reputation. Our systems or any other systems in the transaction process could slow down significantly or fail for a variety of reasons including:

- undetected errors in software programs or computer systems;
- our inability to effectively resolve any error in our internal software programs or computer systems once they are detected; or
- heavy stress placed on systems in the transaction process during certain peak trading times.

If our systems or any other systems in the transaction process slow down or fail even for a short time, our customers could suffer delays in transaction processing, which could cause substantial customer losses and possibly subject us to claims for such losses or to litigation claiming fraud or negligence. The NASDR defines a "system failure" as (i) a shutdown of the Company's mission critical systems (defined as those necessary for the acceptance and execution of online securities orders) which causes the customer use of such systems to equal or exceed system capacity during regular market hours or (ii) a shutdown of any system application necessary for the acceptance and execution of online securities orders for a period of 15 continuous minutes that affects 25% or more of the customers on the system from effecting securities transactions during regular market hours. We have experienced such systems failures and degradation in the past, including failures during fiscal 2000 on January 25, 2000, March 2, 2000, and May 3, 2000, and also October 18, 2000, in the first quarter of fiscal 2001. System failures and degradations could occur with respect to U.S. markets or foreign markets where we must implement new transaction processing infrastructures. To promote customer satisfaction and protect our brand name, we have, on certain occasions, compensated customers for verifiable losses from such failures.

Our ability to process securities transaction orders during systems failures or degradation depends on our having a sufficient number of qualified customer service personnel

To date, during our systems failures, we were able to take orders by telephone; however, with respect to our brokerage transactions, only associates with securities brokers' licenses can accept telephone orders. An adequate number of such associates may not be available to take customer calls in the event of a future systems failure, and we may not be able to increase our customer service personnel and capabilities in a timely and cost-effective manner. Our inability to process customer orders by the telephone during systems failures or degradation could result in customer losses, harm to our reputation, loss of existing customers, difficulty attracting new customers and customer litigation.

Our inability to expand our technology could seriously harm our business

The rapid growth in the use of our services has occasionally strained our ability to adequately expand technologically. As we acquire new equipment and applications quickly, we sometimes have a short time to test and validate hardware and software, which could lead to performance problems if there are undetected hardware or software problems. In addition, we rely on a number of third parties to process our transactions, including online and Internet service providers, back office processing organizations, other service providers and market-makers, all of which will need to expand the scope of the operations they perform for us. Any backlog caused by a third party's inability to expand sufficiently to meet our needs could have a material adverse effect on our business, financial condition and operating results.

As a significant portion of our revenues come from online investing services, any downturn in the securities industry could significantly harm our business

A significant portion of our revenues in recent years has been from online investing services, and we expect this business to continue to account for a significant portion of our revenues in the foreseeable future. We, like other financial services firms, are directly affected by economic and political conditions, broad trends in business and finance and changes in volume and price levels of securities and futures transactions. The U.S. securities markets are characterized by considerable fluctuation and a downturn in these markets could adversely affect our operating results. Significant downturns in the U.S. securities markets occurred in October 1987 and October 1989. The U.S. securities markets have recently been more volatile than usual, and prices have moved mostly downward since March 2000. Consequently, transaction volume has decreased industry-wide and many broker-dealers, including E*TRADE, have been adversely affected. When transaction volume is low, our operating results may be adversely affected because overhead remains relatively fixed. Severe market fluctuations in the future could have a material adverse effect on our business, financial condition and operating results. Some of our competitors with more diverse product and service offerings might withstand such a downturn in the securities industry better than we would. See "Item 7. Risk Factors—Our business will suffer if we cannot effectively compete."

Our brokerage business, by its nature, is subject to various other risks, including customer default and employee misconduct and errors. We sometimes allow customers to purchase securities on margin, and we are therefore affected because we are subject to risks inherent in extending credit. This risk is especially great when the market is rapidly declining and the value of the collateral we hold could fall below the amount of a customer's indebtedness. Under specific regulatory guidelines, any time we borrow or lend securities, we must correspondingly disburse or receive cash deposits. If we fail to maintain adequate cash deposit levels at all times, we run the risk of loss if there are sharp changes in market values of many securities and parties to the borrowing and lending transactions fail to honor their commitments. Any such losses could have a material adverse effect on our business, financial condition and operating results.

Changes in interest rates may reduce the Bank's profitability

The results of operations for the Bank depend in large part upon the level of its net interest income, that is, the difference between interest income from interest-earning assets, such as loans and mortgage-backed securities, and interest expense on interest-bearing liabilities, such as deposits and borrowings. In addition, changes in market interest rates could reduce the value of the Bank's financial assets. Fixed-rate investments, mortgage-backed and related securities and mortgage loans generally decline in value as interest rates rise. Many factors cause changes in interest rates, including governmental monetary policies and domestic and international economic and political conditions.

The Bank attempts to mitigate this interest rate risk by using derivative contracts that are designed to offset, in whole or in part, the variability in value or cash flow of various assets or liabilities caused by changes in interest rates. There can be no assurances that these derivative contracts move either directionally or proportionately as intended. SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, which the Company adopted on October 1, 2000, requires that the hedge ineffectiveness, or the change in value of the hedged item versus the change in value of the hedging instruments, be recognized in earnings as of the reporting date. Our financial results may prove to be more volatile due to this new reporting requirement.

If we are unsuccessful in managing the effects of changes in interest rates, our financial condition and results of operations could suffer.

The increased risk of charge-offs due to the Bank's asset diversification could reduce our profitability

As the Bank diversifies its investment portfolio towards new higher yielding investment classes, we will have to manage assets that may carry a higher inherent risk of default than experienced with our existing portfolio. Consequently, the level of charge-offs associated with these assets may be higher than previously experienced. Though we believe that higher yields will compensate for potentially higher risk, if expectations of future charge-offs increase, a simultaneous increase in the amount of our loss reserves would be required. The increased level of charge-offs recorded to meet additional reserve requirements could negatively impact the results of our operations.

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We could lose customers and have difficulty attracting new customers if we are unable to quickly introduce new products and services that satisfy changing customer needs

Our future profitability depends significantly on our ability to develop and enhance our services and products. There are significant challenges to such development and enhancement, including technical risks. There can be no assurance that we will be successful in achieving any of the following:

- effectively using new technologies;
- adapting our services and products to meet emerging industry standards;
- developing, introducing and marketing service and product enhancements; or
- developing, introducing and marketing new services and products.

Additionally, these new services and products, if they are developed, may not adequately meet the requirements of the marketplace or achieve market acceptance. If we are unable to develop and introduce enhanced or new services and products quickly enough to respond to market or customer requirements, or if they do not achieve market acceptance, our business, financial condition and operating results will be materially adversely affected.

We could be subject to litigation and our reputation may be harmed if our Business Solutions Group products fail or produce inaccurate results

BSG provides products and services to assist companies to work effectively with their own professional legal, accounting and tax advisors to comply with the laws, regulations, and rules pertaining to equity compensation. While BSG has taken reasonable precautions to protect itself from liability exposure, product design limitations and/or potential human error while providing services which, by their nature, are highly technical and intricate, could result in significant accounting and tax reporting inaccuracies, which could subject BSG to customer litigation and damage our reputation.

Our results of operations depend heavily upon the growing acceptance of the Internet as a commercial marketplace for financial services

Because the electronic provision of financial services is currently the most significant part of our business, sales of most of our services and products will depend on consumers continuing to adopt the Internet as a method of doing business and, in particular, as a method of obtaining financial services. Several factors could adversely affect the acceptance and growth of online commerce. For example, there can be no assurance that the Internet infrastructure will continue to be able to support the demands placed on it by growing usage. In addition, the Internet could be adversely affected by the slow development or adoption of standards and protocols to handle increased Internet activity, or by increased governmental regulation. Moreover, critical Internet issues including security, reliability, cost, ease of use, accessibility and quality of service remain unresolved, which could negatively affect the growth of Internet use or commerce on the Internet.

Even if Internet commerce grows generally, the online market for financial services could grow more slowly or even shrink in size. Adoption of online commerce for financial services by individuals who have relied upon traditional means in the past will require such individuals to accept new and different methods of conducting business. Our Internet brokerage and banking services involve a new approach to securities trading and banking and they require extensive marketing and sales efforts to educate prospective customers regarding their uses and benefits. Consumers who trade with traditional brokerage firms, or even discount brokers, may be reluctant or slow to change to obtaining brokerage services over the Internet. Also, concerns about security and privacy on the Internet may hinder the growth of online investing and banking, which could have a material adverse effect on our business, financial condition and operating results.

If we are not able to effectively integrate and assimilate ETFC's operations with our own, the profitability of ETFC will be diminished

On January 12, 2000, we acquired ETFC. ETFC, through its subsidiary E*TRADE Bank, is a provider of Internet banking services. This represents a new line of business for us. No assurance can be given that we will be able to effectively manage ETFC's operations or integrate them with our own in order to realize synergies from the

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acquisition. The Bank holds a loan portfolio consisting primarily of one- to four-family residential loans. A critical component of the banking industry is the ability to accurately assess credit risk and establish corresponding loan loss reserves. We are dependent upon ETFC's management and employees to advise us in this area. In addition, we may experience difficulty in assimilating ETFC products and services with our own and we may not be able to integrate successfully the employees of ETFC into our organization. These difficulties may be exacerbated by the geographical distance between our various locations and ETFC's Virginia location. If we fail to successfully integrate ETFC's operations with our own, our operating results and business could be adversely affected.

If our international efforts are not successful, our business growth will be harmed and our resources will not have been used efficiently

One component of our strategy is a planned increase in efforts to attract more international customers. To date, we have limited experience in providing brokerage services internationally, and ETFC has had only limited experience providing banking services to customers outside the

United States. There can be no assurance that our international licensees or subsidiaries will be able to market our branded services and products successfully in international markets.

In order to expand our services globally, we must comply with the regulatory controls of each specific country in which we conduct business. Our international expansion could be limited by the compliance requirements of other regulatory jurisdictions. We intend to rely primarily on local third parties and our subsidiaries for regulatory compliance in foreign jurisdictions.

In addition, there are certain risks inherent in doing business in international markets, particularly in the heavily regulated brokerage and banking industries, such as:

- unexpected changes in regulatory requirements, tariffs and other trade barriers;
- difficulties in staffing and managing foreign operations;
- the level of investor interest in cross-border trading;
- authentication of online customers;
- increased regulation of the use of customer data;
- political instability;
- fluctuations in currency exchange rates;
- reduced protection for intellectual property rights in some countries;
- seasonal reductions in business activity during the summer months in Europe and certain other parts of the world;
- the level of adoption of the Internet in international markets; and
- potentially adverse tax consequences.

Any of the foregoing could adversely impact the success of our international operations. In addition, because some of these international markets are served through license arrangements with others, we rely upon these third parties for a variety of business and regulatory compliance matters. We have limited control over the management and direction of these third parties. We run the risk that their action or inaction could harm our operations and/or the goodwill associated with our brand name. Additionally, certain of our international licensees have the right to sell sub-licenses. Generally, we have less control over sub-licensees than we do over licensees. As a result, the risk to our operations and goodwill is higher.

Any failure to successfully integrate the companies that we acquire into our existing operations could harm our business

We recently acquired ETFC, TIR, CCS (now E*TRADE Access), eInvesting, PrivateAccounts, VERSUS and several of our international affiliates. We may also acquire other companies or technologies in the future, and we regularly evaluate such opportunities. Acquisitions entail numerous risks, including, but not limited to:

- difficulties in the assimilation of acquired operations and products;
- diversion of management's attention from other business concerns;
- amortization of acquired intangible assets, with the effect of reducing our reported earnings; and
- potential loss of key associates of acquired companies.

No assurance can be given as to our ability to integrate successfully any operations, technology, personnel, services or new businesses or products that might be acquired in the future. Failure to successfully assimilate acquired organizations could have a material adverse effect on our business, financial condition and operating results.

Any failure to maintain our relationships with strategic partners or to make effective investments could harm our business

We have established a number of strategic relationships with online and Internet service providers, as well as software and information service providers. There can be no assurance that any such relationships will be maintained, or that if they are maintained, they will be successful or profitable. Additionally, we may not be able to develop any new relationships of this type in the future.

We also make investments, either directly or through affiliated private investment funds, in equity securities of other companies without acquiring control of those companies. There may be no public market for the securities of the companies in which we invest. In order for us to realize a return on our investment, such companies must be sold or successfully complete a public offering of their securities. There can be no assurance that such companies will be acquired or complete a public offering or that such an acquisition or public offering will allow us to sell our securities at a profit, or at all.

Lack of capital for future acquisitions and pending legislation could impact the future profitability of E*TRADE Access

On May 5, 2000, we completed our acquisition of E*TRADE Access. A significant portion of E*TRADE Access' future growth will depend on its ability to raise capital to fund acquisitions. A lack of capital for additional acquisitions may limit the ability of the E*TRADE Access network of ATMs to grow, which may limit future revenue and earnings. In addition, federal and state legislation to regulate network and bank ATM transaction fees may be enacted in the future. Legislation reducing the fees that may be charged by ATM service providers could seriously impact the profitability of our ATM network.

Our business depends on our ability to protect our intellectual property

Our ability to compete effectively is dependent to a significant degree on our brand and proprietary technology. We rely primarily on copyright, trade secret and trademark law to protect our technology and our brand. Effective trademark protection may not be available for our trademarks. Although we have registered the trademark "E*TRADE" in the United States and certain other countries, and have certain other registered trademarks, there can be no assurance that we will be able to secure significant protection for these trademarks. Our competitors or others may adopt product or service names similar to "E*TRADE," thereby impeding our ability to build brand identity and possibly leading to customer confusion. Our inability to adequately protect the name "E*TRADE" could have a material adverse effect on our business, financial

condition and operating results. Despite any precautions we take, a third party may be able to copy or otherwise obtain and use our software or other proprietary information without authorization or to develop similar software independently. Policing unauthorized use of our technology is made especially difficult by the global nature of the Internet and difficulty in controlling the ultimate destination or security of software or other data transmitted on it. The laws of other countries may afford us little or no effective

protection for our intellectual property. There can be no assurance that the steps we take will prevent misappropriation of our technology or that agreements entered into for that purpose will be enforceable. In addition, litigation may be necessary in the future to:

- enforce our intellectual property rights;
- protect our trade secrets;
- determine the validity and scope of the proprietary rights of others; or
- defend against claims of infringement or invalidity.

Such litigation, whether successful or unsuccessful, could result in substantial costs and divert resources, either of which could have a material adverse effect on our business, financial condition and operating results.

We may face claims for infringement of third parties' proprietary rights and it could be costly and time-consuming to defend against such claims, even those without merit

We have received in the past, and may receive in the future, notices of claims of infringement of other parties' proprietary rights. There can be no assurance that claims for infringement or invalidity—or any indemnification claims based on such claims—will not be asserted or prosecuted against us. Any such claims, with or without merit, could be time consuming and costly to defend or litigate, divert our attention and resources or require us to enter into royalty or licensing agreements. There can be no assurance that such licenses would be available on reasonable terms, if at all.

RISKS RELATING TO THE REGULATION OF OUR BUSINESS

Our ability to attract customers and our profitability may suffer if changes in government regulation favor our competition or restrict our business practices

The securities industry in the United States is subject to extensive regulation under both federal and state laws. The banking industry in the United States is subject to extensive federal regulation. Broker-dealers are subject to regulations covering all aspects of the securities business, including:

- sales methods;
- trading practices among broker-dealers;
- execution of customers' orders;
- use and safekeeping of customers' funds and securities;
- capital structure;
- record keeping;
- advertising;
- conduct of directors, officers and employees; and
- supervision.

Because we are a self-clearing broker-dealer, we have to comply with many additional laws and rules. These include rules relating to possession and control of customer funds and securities, margin lending, and execution and settlement of transactions. Our ability to comply with these rules depends largely on the establishment and maintenance of a qualified compliance system.

Similarly, E*TRADE and ETFC, as savings and loan holding companies, and the Bank, as a federally chartered savings bank and subsidiary of ETFC, are subject to extensive regulation, supervision and examination by the OTS and, in the case of the Bank, the Federal Deposit Insurance Corporation ("FDIC"). Such regulation covers all aspects of the banking business, including lending practices, safeguarding deposits, capital structure, record keeping, and conduct and qualifications of personnel.

Because of our international presence, we are also subject to the regulatory controls of each specific country in which we conduct business.

Because we operate in an industry subject to extensive regulation, the competitive landscape in our industry can change significantly as a result of new regulation, changes in existing regulation, or changes in the interpretation or enforcement of existing laws and rules. For example, in November 1999, the Gramm-Leach-Bliley Act was enacted into law. This act reduces the legal barriers between banking, securities and insurance companies, and will make it easier for bank holding companies to compete directly with our securities business, as well as for our competitors in the securities business to diversify their revenues and attract additional customers through entry into the banking and insurance businesses. The Gramm-Leach-Bliley Act may have a material impact on the competitive landscape that we face.

There can be no assurance that federal, state or foreign agencies will not further regulate our business. We anticipate that we may be required to comply with record keeping, data processing and other regulatory requirements as a result of proposed federal legislation or otherwise. We may also be subject to additional regulation as the market for online commerce evolves. Because of the growth in the electronic commerce market, Congress has held hearings on whether to regulate providers of services and transactions in the electronic commerce market. As a result, federal or state authorities could enact laws, rules or regulations affecting our business or operations. We may also be subject to federal, state or foreign money transmitter laws and state and foreign sales or use tax laws. If such laws are enacted or deemed applicable to us, our business or operations could be rendered more costly or burdensome, less efficient or even impossible. Any of the foregoing could have a material adverse effect on our business, financial condition and operating results.

Our inability to comply with applicable securities and banking regulations could significantly harm our business

The SEC, the NASDR or other self-regulatory organizations and state securities commissions can censure, fine, issue cease-and-desist orders or suspend or expel a broker-dealer or any of its officers or employees. The OTS may take similar action with respect to our banking activities. Our ability to comply with all applicable laws and rules is largely dependent on our establishment and maintenance of a system to ensure such compliance, as well as our ability to attract and retain qualified compliance personnel. Our growth has placed considerable strain on our ability to ensure such compliance. We could be subject to disciplinary or other actions due to claimed noncompliance in the future, which could have a material adverse effect on our business, financial condition and operating results.

We may be fined or forced out of business if we do not maintain the net capital levels required by regulators

The SEC, NASDR, OTS and various other regulatory agencies have stringent rules with respect to the maintenance of specific levels of net capital by securities broker-dealers and regulatory capital by banks. Net capital is the net worth of a broker or dealer (assets minus liabilities), less deductions for certain types of assets. If a firm fails to maintain the required net capital it may be subject to suspension or revocation of registration by the SEC and suspension or expulsion by the NASDR, and could ultimately lead to the firm's liquidation. In the past, our broker-dealer subsidiaries have depended largely on capital contributions by us in order to comply with net capital requirements. If such net capital rules are changed or expanded, or if there is an unusually large charge against net capital, operations that require the intensive use of capital could be limited. Such operations may include investing activities, marketing and the financing of customer account balances. Also, our ability to withdraw capital from brokerage subsidiaries could be restricted, which in turn could limit our ability to pay dividends, repay debt and redeem or purchase shares of our outstanding stock. A large operating loss or charge against net capital could adversely affect our ability to expand or even maintain our present levels of business, which could have a material adverse effect on our business, financial condition and operating results.

The table below summarizes the minimum net capital requirements for our domestic broker-dealer subsidiaries as of September 30, 2000 (dollars in thousands):

	Required Net Capital	Net Capital	Excess Net Capital
E*TRADE Securities, Inc.	\$ 103,747	\$ 479,036	\$ 375,289
TIR Securities, Inc.	\$ 250	\$ 1,161	\$ 911
TIR Investor Select, Inc.	\$ 5	\$ 351	\$ 346
Marquette Securities, Inc.	\$ 250	\$ 536	\$ 286
E*TRADE Capital Markets, Inc.	\$ 113	\$ 21,774	\$ 21,661
VERSUS Brokerage Services (U.S.), Inc	\$ 100	\$ 233	\$ 133

Similarly, banks, such as the Bank, are subject to various regulatory capital requirements administered by the federal banking agencies. Failure to meet minimum capital requirements can initiate certain mandatory, and possibly additional discretionary, actions by regulators that, if undertaken, could have a direct material adverse effect on a bank's operations and financial statements. Under capital adequacy guidelines and the regulatory framework for prompt corrective action, a bank must meet specific capital guidelines that involve quantitative measures of a bank's assets, liabilities and certain off-balance-sheet items as calculated under regulatory accounting practices. A bank's capital amounts and classification are also subject to qualitative judgments by the regulators about the strength of components of the bank's capital, risk weightings of assets and off-balance-sheet transactions, and other factors.

Quantitative measures established by regulation to ensure capital adequacy require a bank to maintain minimum amounts and ratios of total and Tier 1 capital to risk-weighted assets and of Tier 1 capital to average assets. To be categorized as well capitalized, a bank must maintain minimum total risk-based, Tier 1 risk-based, and Tier 1 leverage ratios as set forth in the following table.

The table below summarizes the capital adequacy requirements for the Bank as of September 30, 2000 (dollars in thousands):

Actual	Required To Be Well Capitalized Under Prompt Corrective Action Provisions
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	Amount	Ratio	Amount	Ratio
Core Capital (to adjusted tangible assets)	\$ 582,058	6.5%	>\$449,843	>5.0%
Tier 1 Capital (to risk weighted assets)	\$ 582,058	16.8%	>\$207,890	>6.0%
Total Capital (to risk weighted assets)	\$ 592,597	17.1%	>\$346,483	>10.0%

Regulatory review of our advertising practices could hinder our ability to operate our business and result in fines and other penalties

We have initiated an aggressive marketing campaign designed to bring brand name recognition to E*TRADE and the Bank. All marketing activities by E*TRADE Securities are regulated by the NASDR, and all marketing materials must be reviewed by an E*TRADE Securities Series 24 licensed principal prior to release. The NASDR has in the past asked us to revise certain marketing materials. We are currently the subject of formal NASDR and SEC investigations into our advertising practices. At the same time, we voluntarily agreed to prefile all advertising ten days prior to first use for the NASDR's review and comment for the period beginning June 12, 2000 and ending on September 12, 2000. The NASDR can impose certain penalties for violations of its advertising regulations, including:

- censures or fines;
- suspension of all advertising;
- the issuance of cease-and-desist orders; or
- the suspension or expulsion of a broker-dealer or any of its officers or employees.

If we were to solicit orders from our customers or make investment recommendations, we would become subject to additional regulations that could be burdensome and subject us to fines and other penalties

We do not currently solicit orders from our customers or make investment recommendations. However, if we were to engage in such activities, we would become subject to additional rules and regulations governing, among other things, sales practices and the suitability of recommendations to customers. Compliance with these regulations could be burdensome, and, if we fail to comply, we could be subject to fines and other penalties. We have recently established a new company, eAdvisor, with Ernst & Young LLP that will provide financial advice for online investors.

Due to the increasing popularity of the Internet, laws and regulations may be passed dealing with issues such as user privacy, pricing, content and quality of products and services and those regulations could adversely affect the growth of the online financial services industry

As required by the Gramm-Leach-Bliley Act, the SEC and OTS have recently adopted regulations on financial privacy (to take effect in July 2001), that will require E*TRADE Securities and the Bank to notify consumers about the circumstances in which they may share consumers' personal information with unaffiliated third parties and to give consumers the right to prohibit such information sharing in specified circumstances. Although E*TRADE Securities and the Bank already provide such opt-out rights in our privacy policies, the regulations will require us to modify the text and the form of presentation of our privacy policies and to incur additional expense to ensure ongoing compliance with the regulations.

In addition, several recent reports have focused attention on the online brokerage industry. For example, the New York Attorney General investigated the online brokerage industry and issued a report in November 1999, citing consumer complaints about delays and technical difficulties in companies conducting online stock trading. SEC Commissioner Laura Unger also issued a report in November 1999 on issues raised by online brokerage, including suitability and marketing issues. Most recently, the United States General Accounting Office issued a report citing a need for better investor protection information on brokers' Web sites.

Increased attention focused upon these issues could adversely affect the growth of the online financial services industry, which could, in turn, decrease the demand for our services or could otherwise have a material adverse effect on our business, financial condition and operating results.

Due to our recent acquisition of ETFC, we are subject to regulations that could restrict our ability to take advantage of good business opportunities and that may be burdensome to comply with

Upon the completion of our acquisition of ETFC and its subsidiary, the Bank, on January 12, 2000, we became subject to regulation as a savings and loan holding company. As a result, we are required to file periodic reports with the OTS, and are subject to examination by the OTS. These obligations may be burdensome to comply with. Under financial modernization legislation recently enacted into law, our activities are restricted to activities that are financial in nature and certain real estate-related activities. We may also make merchant banking investments in companies whose activities are not financial in nature, if those investments are engaged in for the purpose of appreciation and ultimate resale of the investment, and we do not manage or operate the company. Such merchant banking investments may be subject to maximum holding periods and special recordkeeping and risk management requirements.

We believe that all of our existing activities and investments are permissible under the new legislation, but the OTS has not yet issued regulations or otherwise interpreted the new statute. Even if all of our existing activities and investments are permissible, under the new legislation we will be constrained in pursuing future new activities that are not financial in nature. We are also limited in our ability to invest in other savings and loan holding companies. These restrictions could prevent us from pursuing certain activities and transactions that could be beneficial to us.

In addition to regulation of us and ETFC as savings and loan holding companies, federal savings banks such as the Bank are subject to

extensive regulation of their activities and investments, their capitalization, their risk management policies and procedures, and their relationship with affiliated companies. In addition, as a condition to approving our acquisition of ETFC, the OTS imposed various notice and other requirements, primarily a requirement that the Bank obtain prior approval from the OTS of any future material changes to the Bank's business plan. These regulations and conditions, and our inexperience with them, could affect our ability to realize synergies

from the acquisition, and could negatively affect both us and the Bank following the acquisition and could also delay or prevent the development, introduction and marketing of new products and services.

Loss or reductions in revenue from order flow rebates could harm our business

Order flow revenue is comprised of rebate income from various market makers and market centers for processing transactions through them. Order flow revenue as a percentage of revenue has decreased over the past three years. There can be no assurance that payments for order flow will continue to be permitted by the SEC, the NASDR or other regulatory agencies, courts or governmental units. Loss of any or all of these revenues could have a material adverse effect on our business, financial condition and operating results.

We may incur costs to avoid investment company status and may suffer adverse consequences if we are deemed to be an investment company

We may incur significant costs to avoid investment company status and may suffer other adverse consequences if we are deemed to be an investment company under the Investment Company Act of 1940, which is commonly referred to as the "1940 Act".

A company may be deemed to be an investment company if it owns investment securities with a value exceeding 40% of its total assets, subject to certain exclusions. After giving effect to the sale of 6% convertible subordinated notes, we will have substantial short-term investments until the net proceeds from the sale can be deployed. In addition, we and our subsidiaries have made minority equity investments in other companies that may constitute investment securities under the 1940 Act. In particular, many of our publicly-traded equity investments, which are owned directly by us or through related venture funds, are deemed to be investment securities. Although our investment securities currently comprise less than 40% of our total assets, the value of these minority investments has fluctuated in the past, and substantial appreciation in some of these investments may, from time to time, cause the value of our investment securities to exceed 40% of our total assets. These factors may result in us being treated as an "investment company" under the 1940 Act.

We believe we are primarily engaged in a business other than investing, reinvesting, owning, holding, or trading securities for our account and, therefore, are not an investment company within the meaning of the 1940 Act. However, in the event that the 40% limit were to be exceeded (including through fluctuations in the value of our investment securities), we may need to reduce our investment securities as a percentage of our total assets. This reduction can be attempted in a number of ways, including the sale of investment securities and the acquisition of non-investment security assets, such as cash, cash equivalents and U.S. government securities. If we sell investment securities, we may sell them sooner than we intended. These sales may be at depressed prices and we may never realize anticipated benefits from, or may incur losses on, these investments. Some investments may not be sold due to normal contractual or legal restrictions or the inability to locate a suitable buyer. Moreover, we may incur tax liabilities if we sell these assets. We may also be unable to purchase additional investment securities that may be important to our operating strategy. If we decide to acquire non-investment security assets, we may not be able to identify and acquire suitable assets, and will likely realize a lower return on any such investments.

If we were deemed to be an investment company, we could become subject to substantial regulation under the 1940 Act with respect to our capital structure, management, operations, affiliate transactions and other matters. As a consequence, we could be barred from engaging in business or issuing our securities as we have in the past and might be subject to civil and criminal penalties for noncompliance. In addition, some of our contracts might be voidable, and a court-appointed receiver could take control of us and liquidate our business in certain circumstances.

RISKS RELATING TO OWNING OUR STOCK

Our historical quarterly results have fluctuated and do not reliably indicate future operating results

We do not believe that our historical operating results should be relied upon as an indication of our future operating results. We expect to experience large fluctuations in future quarterly operating results that may be caused by many factors, including the following:

- fluctuations in the fair market value of our equity investments in other companies, including through existing or future private investment funds managed by us;

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- fluctuations in interest rates, which will impact our investment and loan portfolios;
 - changes in trading volume in securities markets;
 - the success of, or costs associated with, acquisitions, joint ventures or other strategic relationships;
 - changes in key personnel;
 - seasonal trends;
 - customer acquisition costs, which may be affected by competitive conditions in the marketplace;

- the timing of introductions or enhancements to online financial services and products by us or our competitors;
- market acceptance of online financial services and products;
- domestic and international regulation of the brokerage, banking and Internet industries;
- accounting for derivative instruments and hedging activities;
- changes in domestic or international tax rates;
- changes in pricing policies by us or our competitors;
- fluctuation in foreign exchange rates; and
- changes in the level of operating expenses to support projected growth.

We have also experienced fluctuations in the average number of customer transactions per day. Thus, the rate of growth in customer transactions at any given time is not necessarily indicative of future transaction activity.

We have incurred losses and we cannot assure you that we will achieve profitability

We have a long history of incurring operating losses in each fiscal year and we may incur operating losses in the future. We incurred net losses of \$402,000 in fiscal 1998 and \$56.8 million in fiscal 1999. Although we have achieved profitability in fiscal 2000, that was due in part to sales of investment securities we cannot assure you that profitability will be sustained.

The market price of our common stock, like other technology stocks, may be highly volatile which could cause litigation against us and shareowner losses

The market price of our common stock has been, and is likely to continue to be, highly volatile and subject to wide fluctuations due to various factors, many of which may be beyond our control, including:

- quarterly variations in operating results;
- volatility in the stock market;
- volatility in the general economy;
- changes in interest rates;
- announcements of acquisitions, technological innovations or new software, services or products by us or our competitors; and
- changes in financial estimates and recommendations by securities analysts.

In addition, there have been large fluctuations in the prices and trading volumes of securities of many technology, Internet and financial services companies, often unrelated to the operating performance of such companies. In the past, volatility in the market price of a company's securities has often led to securities class action litigation. Such litigation could result in substantial costs to us and divert our attention and resources, which could have a material adverse effect on our business, financial condition and operating results.

We may need additional funds in the future which may not be available and which may result in dilution of the value of our common stock

In the future, we may need to raise additional funds for various purposes, including to expand our technology resources, to hire additional associates or to make acquisitions. Additional financing may not be available on favorable terms, if at all. If adequate funds are not available on acceptable terms, we may be unable to fund our business growth plans. In addition, if funds are available, the result of our issuing securities could dilute the value of shares of our common stock and cause the market price to fall.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

For quantitative and qualitative disclosures about market risk, we have evaluated such risk for our domestic retail brokerage, banking, global and institutional, and asset gathering and other segments separately. The following discussion about our market risk disclosures includes forward-looking statements. Actual results could differ materially from those projected in the forward-looking statements as a result of certain factors, including those set forth in the section entitled "Risk factors" and elsewhere in this filing.

Domestic Retail Brokerage, Global and Institutional, and Asset Gathering and Other

Our domestic retail brokerage, global and institutional, and asset gathering and other operations are exposed to market risk related to changes in interest rates, foreign currency exchange rates and equity security price risk. However, we do not believe any such exposures are material. To reduce certain risks, we utilize derivative financial instruments; however, we do not hold derivative financial instruments for speculative or trading purposes.

Interest Rate Sensitivity

During the quarter ended September 30, 2000, we had a variable rate bank line of credit. As of September 30, 2000, we had \$22.2 million

outstanding under this line. The line of credit and the monthly interest payment are subject to interest rate risk. If market interest rates were to increase immediately and uniformly by 100 basis points at September 30, 2000, the interest payments would increase by an immaterial amount.

A portion of our investment portfolio is comprised of corporate bonds and U.S. Government obligations. As of September 30, 2000, the fair value of our debt investments was \$313.7 million. If market interest rates were to increase immediately and uniformly by 100 basis points at September 30, 2000, the fair value of these debt investments would decrease by an immaterial amount.

Foreign Currency Exchange Risk

A portion of our operations consist of brokerage and investment services outside of the United States. As a result, our results of operations could be adversely affected by factors such as changes in foreign currency exchange rates or economic conditions in the foreign markets in which we provide our services. We are primarily exposed to changes in exchange rates on the Japanese yen, the British pound and the Euro. When the U.S. dollar strengthens against these currencies, the U.S. dollar value of non-U.S. dollar-based revenues decreases. When the U.S. dollar weakens against these currencies, the U.S. dollar value of non-U.S. dollar-based revenues increases. Correspondingly, the U.S. dollar value of non-U.S. dollar-based costs increases when the U.S. dollar weakens and decreases when the U.S. dollar strengthens. We are a net payer of British pounds and, as such, benefit from a stronger dollar, and are adversely affected by a weaker dollar relative to the British pound. However, we are a net receiver of currencies other than British pounds, and as such, benefit from a weaker dollar, and are adversely affected by a stronger dollar relative to these currencies. Accordingly, changes in exchange rates may adversely affect our consolidated sales and operating margins as expressed in U.S. dollars.

To mitigate the short-term effect of changes in currency exchange rates on our non-U.S. dollar-based revenues and operating expenses, we routinely hedge our material net non-U.S. dollar-based exposures by entering into foreign exchange forward and option contracts. Currently, hedges of transactions do not extend beyond twelve months and are immaterial. Given the short-term nature of our foreign exchange forward and option contracts, our exposure to risk associated with currency market movement on the instruments is not material.

Equity Price Risk

We have investments in publicly-traded equity securities which, in conjunction with cash provided from operations and financing arrangements, are utilized to meet forecasted liquidity needs. The fair value of these securities at September 30, 2000 was \$219.7 million. As a result of significant market volatility during the year ended September 30, 2000, the fair value of our equity portfolio was subjected to significant fluctuations. As we account for these securities as available-for-sale, unrealized gains and losses resulting from changes in the fair value of these securities are reflected as a change in shareowners' equity, and not reflected in the determination of operating results until the securities are sold. Depreciation in the market value of our portfolio impacts our financing strategies which could result in higher interest expense if alternative financing strategies are used. At September 30, 2000, unrealized gains on these securities were \$186.3 million.

Financial Instruments

For our working capital and reserves, which are required to be segregated under Federal or other regulations, we primarily invest in money market funds, resale agreements, certificates of deposit, and commercial paper. Money market funds do not have maturity dates and do not present a material market risk. The other financial instruments are fixed rate investments with short maturities and do not present a material interest rate risk.

Banking Operations

Interest Rate Sensitivity Management

We actively monitor the net interest rate sensitivity position of our banking business. Effective interest rate sensitivity management seeks to ensure that net interest income and the market value of equity are protected from the impact of changes in interest rates. The risk management function is responsible for measuring, monitoring and controlling market risk and communicating risk limits in connection with our asset/liability management activities and trading.

Our strategies are intended to stabilize our net interest margin and our exposure to market risk under a variety of changes in interest rates. By actively managing the maturities of our interest-sensitive assets and liabilities, we seek to maintain a relatively consistent net interest margin and mitigate much of the interest rate risk associated with such assets and liabilities.

We use a risk management process that allows risk-taking within specific limits. To this end, we have established an asset-liability committee and implemented a risk measurement guideline employing market value of equity and gap methodologies and other measures.

An asset-liability committee establishes the policies and guidelines for the management of our assets and liabilities. The committee's policy is directed toward reducing the variability of the market value of our equity under a wide range of interest rate environments. Fair value of equity represents the net fair value of our financial assets and liabilities, including off-balance sheet hedges. We monitor the sensitivity of changes in the fair value of equity with respect to various interest rate environments and report regularly to the asset-liability committee. Effective fair value management maximizes net interest income while constraining the changes in the fair value of equity with respect to changes in interest rates to acceptable levels. The model calculates a benchmark fair value of equity for current market conditions.

We use sensitivity analyses to evaluate the rate and extent of changes to the fair value of equity under various market environments. In preparing simulation analyses, we break down the aggregate investment portfolio into discrete product types that share similar properties, such as fixed or adjustable rate, similar coupon and similar age. Under this analysis, we calculate net present value of expected cashflows for interest sensitive assets and liabilities under various interest rate scenarios. In conducting this sensitivity analysis, the model considers all assets (including whole loan mortgages, mortgage-backed securities, mortgage derivatives and corporate bonds), liabilities and off-balance sheet hedges (including interest rate swaps, caps and options). The range of interest rate scenarios evaluated encompasses significant changes to current market conditions. By this process, we subject our interest rate sensitive assets and liabilities to substantial market stress and evaluate the fair

value of equity resulting from various market scenarios. The asset-liability committee reviews the results of these stress tests and establishes appropriate strategies to promote continued compliance with established guidelines.

Management measures the efficiency of its asset-liability management strategies by analyzing, on a quarterly basis, our theoretical fair value of equity and the expected effect of changes in interest rates. Our board of directors establishes limits within which such changes in the fair value of equity are to be maintained in the event of changes in interest rates.

We calculated a theoretical fair value of equity in response to a hypothetical change in market interest risk. At September 30, 2000 we computed our theoretical fair value of equity based on then existing interest rates and the attributes of our portfolio as described above. The model addresses our exposure to market sensitive non-trading financial instruments. The model excludes our trading portfolio, which, based on management's analysis, has an immaterial impact on our fair value of equity. A hypothetical instantaneous 100 basis point parallel increase in the yield curve would cause the net portfolio value to decrease by \$84.3 million.

Every method of market value sensitivity analysis contains inherent limitations and express and implied assumptions that can affect the resulting calculations. For example, each interest rate scenario reflects unique prepayment and repricing assumptions. In addition, this analysis offers a static view of assets, liabilities and hedges held as of September 30, 2000 and makes no assumptions regarding transactions we might enter into in response to changing market conditions.

Our primary interest risk is the exposure to increasing interest rates. We manage our exposure to increasing interest rates, principally changes in three-month LIBOR associated with the cost of our deposits and advances from the Federal Home Loan Bank of Atlanta, by entering into related interest rate swap and cap agreements. These instruments contain principally the same terms and notional balance as the related designated liabilities.

We employ various techniques to implement the asset-liability committee's strategies directed toward managing the variability of the fair value of equity by controlling the relative sensitivity of market value of interest-earning assets and interest-bearing liabilities. The sensitivity of changes in market value of assets and liabilities is affected by factors, including the level of interest rates, market expectations regarding future interest rates, projected related loan prepayments and the repricing characteristics of interest-bearing liabilities. We use hedging techniques to reduce the variability of fair value of equity and its overall interest rate risk exposure over a one- to seven-year period.

We also monitor our assets and liabilities by examining the extent to which such assets and liabilities are interest rate sensitive and by monitoring the interest rate sensitivity gap. An asset or liability is said to be interest rate sensitive within a specific period if it will mature or reprice within that period. The interest rate sensitivity gap is defined as the difference between the amount of interest-earning assets maturing or repricing within a specific time period and the amount of interest-bearing liabilities maturing or repricing within the same time period. A gap is considered positive when the amount of interest rate sensitive assets exceeds the amount of interest rate sensitive liabilities and is considered negative when the amount of interest rate sensitive liabilities exceeds the amount of interest rate sensitive assets. Generally, during a period of rising interest rates, a negative gap would adversely affect net interest income, while a positive gap would result in an increase in net interest income.

The following assumptions were used to prepare our gap table at September 30, 2000. Non-amortizing investment securities are shown in the period in which they contractually mature. Investment securities that contain embedded options such as puts or calls are shown in the period in which that security is currently expected to be put or called or to mature. The table assumes that fully indexed, adjustable-rate, residential mortgage loans and mortgage-backed securities prepay at an annual rate between 15% and 20%, based on estimated future prepayment rates for comparable market benchmark securities and the Bank's prepayment history. The table also assumes that fixed-rate, current-coupon residential loans and mortgage-backed securities prepay at an annual rate of between 8% and 12%. The above assumptions were adjusted up or down on a pool-by-pool basis to model the effects of product type, coupon rate, rate adjustment frequency, lifetime cap, net coupon reset margin and periodic rate caps upon prevailing annual prepayment rates. Time deposits are shown in the period in which they contractually mature, and savings deposits are shown to reprice immediately. The interest rate sensitivity of our assets and liabilities could vary substantially if different assumptions were used or if actual experience differs from the assumptions used.

The following table sets forth our gap at September 30, 2000.

	Balance at September 30, 2000	Percent of Total	Repricing Within 0-3 Months	Repricing Within 4-12 Months	Repricing Within 1-5 Years	Repricing in More Than 5 Years
(dollars in thousands)						
Interest-earning banking assets:						
Loans receivable, net	\$ 4,172,754	47.23%	\$ 304,173	\$ 800,392	\$ 1,939,083	\$1,129,106
Mortgage-backed securities, available-for-sale and trading	4,191,924	47.45	163,225	501,080	1,992,765	1,534,854
Investment securities, available-for-sale and FHLB stock	419,624	4.75	29,342	82,100	94,765	213,417
Federal funds sold and interest bearing deposits	50,790	0.57	—	10,158	40,632	—

Total interest-earning banking assets	8,835,092	100.00%	\$ 496,740	\$ 1,393,730	\$ 4,067,245	\$2,877,377
Non-interest-earning banking assets	180,639					
Total banking assets	\$ 9,015,731					
Interest-bearing banking liabilities:						
Savings deposits	\$ 533,546	6.46%	\$ —	\$ —	\$ 533,546	\$ —
Time deposits	4,188,255	50.75	591,097	2,396,876	1,117,883	82,399
FHLB advances	1,637,000	19.84	1,337,000	100,000	150,000	50,000
Other borrowings	1,894,000	22.95	1,894,000	—	—	—
Total interest-bearing banking liabilities	8,252,801	100.00%	\$ 3,822,097	\$ 2,496,876	\$ 1,801,429	\$ 132,399
Non-interest-bearing banking liabilities	62,748					
Total banking liabilities	\$ 8,315,549					
Periodic gap			\$ (3,325,357)	\$ (1,103,146)	\$ 2,265,816	\$2,744,978
Cumulative gap			\$ (3,325,357)	\$ (4,428,503)	\$ (2,162,687)	\$ 582,291
Cumulative gap to total assets			(36.9)%	(49.1)%	(24.0)%	6.5%
Cumulative gap to total assets hedge affected			1.1%	(12.8)%	(21.5)%	6.5%

Impact of Inflation and Changing Prices

The impact inflation has on the Bank is different from the impact on an industrial company because substantially all of our assets and liabilities are monetary in nature, and interest rates and inflation rates do not always move in concert. Our management believes that the impact of inflation on financial results depends upon our ability to manage interest rate sensitivity and, by such management, reduce the inflationary impact upon performance. The most direct impact of an extended period of inflation would be to increase interest rates and to place upward pressure on our operating expenses. The actual effect of inflation on our net interest income, however, would depend on the extent to which we were able to maintain a spread between the average yield on our interest-earning assets and the average cost of our interest-bearing liabilities, which would depend to a significant extent on our asset-liability sensitivity. As discussed above, we seek to manage the relationship between interest-sensitive assets and liabilities to protect against wide interest rate fluctuations, including those resulting from inflation. The effect of inflation on our results of operations for the past three years has been minimal.

ITEM 8. CONSOLIDATED FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Shareowners of
E*TRADE Group, Inc.:

We have audited the consolidated balance sheets of E*TRADE Group, Inc. and subsidiaries (the "Company") as of September 30, 2000 and 1999, and the related consolidated statements of operations, shareowners' equity, and cash flows for each of the three years in the period ended September 30, 2000. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the consolidated financial statements based on our audits. The consolidated financial statements give retroactive effect to the acquisition of E*TRADE Financial Corporation ("ETFC", formerly Telebank Financial Corporation) on January 12, 2000, which has been accounted for as a pooling of interests as described in Note 3 to the consolidated financial statements. We did not audit the balance sheets of ETFC as of September 30, 2000 and 1999, or the related statements of operations, shareowners' equity and cash flows of ETFC for the years ended September 30, 2000 and 1999 and the twelve months ended December 31, 1998, which statements reflect total assets of \$9,027,185,000 and \$3,981,244,000 as of September 30, 2000 and 1999, respectively, and net revenues of \$140,489,000, \$55,387,000 and \$25,933,000 for the years ended September 30, 2000 and 1999 and the twelve months ended December 31, 1998, respectively. Those statements were audited by other auditors whose report (which expresses an unqualified opinion and includes an explanatory paragraph concerning a change in ETFC's method of accounting for start up activities in 1999) has been furnished to us, and our opinion, insofar as it relates to the amounts included for ETFC is based solely on the report of such other auditors.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall consolidated financial statement presentation. We believe that our audits and the report of the other auditors provide a reasonable basis for our opinion.

In our opinion, based on our audits and the report of the other auditors, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of E*TRADE Group, Inc. and subsidiaries at September 30, 2000 and 1999, and the results of their operations and their cash flows for each of the three years in the period ended September 30, 2000 in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 3, the consolidated financial statements give retroactive effect to the acquisitions of ETFC and VERSUS Technologies, Inc., with and into E*TRADE Group, Inc. on January 12, 2000 and August 28, 2000 respectively, which have been accounted for as poolings of interests.

/s/Deloitte & Touche LLP

San Jose, California
October 19, 2000

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REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To the Board of Directors and Stockholder of
E*TRADE Financial Corporation and Subsidiaries:

We have audited the consolidated statements of financial condition of E*TRADE Financial Corporation (a Delaware corporation) and subsidiaries as of September 30, 2000 and 1999, and the related consolidated statements of operations and comprehensive loss, changes in stockholder's equity and cash flows for the years ended September 30, 2000 and 1999 and the year ended December 31, 1998 (not separately presented herein). These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of E*TRADE Financial Corporation and subsidiaries as of September 30, 2000 and 1999, and the results of their operations and their cash flows for the years ended September 30, 2000 and 1999 and the year ended December 31, 1998, in conformity with accounting principles generally accepted in the United States.

As explained in the financial statements, effective January 1, 1999, E*TRADE Financial Corporation and subsidiaries changed its method of accounting for start-up activities in accordance with Statement of Position 98-5, *Reporting on the Costs of Start-up Activities*.

/s/ Arthur Andersen LLP

Vienna, Virginia
October 13, 2000

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E*TRADE GROUP, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(in thousands, except share amounts)

	September 30,	
	2000	1999
ASSETS		
Cash and equivalents	\$ 175,443	\$ 157,705
Cash and investments required to be segregated under Federal or other regulations	125,862	122,412
Brokerage receivables—net	6,542,508	2,982,076
Mortgage-backed securities	4,188,553	1,426,053
Loans receivable—net	4,172,754	2,154,509
Investments	985,218	828,829
Property and equipment—net	334,262	181,675
Goodwill and other intangibles	484,166	18,554
Other assets	308,671	160,361
Total assets	\$ 17,317,437	\$ 8,032,174
LIABILITIES AND SHAREOWNERS' EQUITY		
Liabilities:		
Brokerage payables	\$ 6,055,530	\$ 2,911,678
Banking deposits	4,721,801	2,162,682
Borrowings by bank subsidiary	3,531,000	1,267,474
Convertible subordinated notes	650,000	—
Accounts payable, accrued and other liabilities	470,742	207,961
Total liabilities	15,429,073	6,549,795
Company-obligated mandatorily redeemable preferred capital securities of subsidiary trusts holding solely junior subordinated debentures of the Company and other mandatorily redeemable preferred securities (redemption value \$32,400)		
	31,531	30,584
Commitments and contingencies		
Shareowners' equity:		
Preferred stock, shares authorized: 1,000,000; issued and outstanding: none at September 30, 2000 and 1999	—	—
Shares exchangeable into common stock, \$.01 par value, shares authorized: 10,644,223; issued and outstanding: 5,619,543 at September 30, 2000 and 8,709,280 at September 30, 1999	56	87
Common stock, \$.01 par value, shares authorized: 600,000,000; issued and outstanding: 304,504,764 at September 30 2000 and 275,145,791 at September 30, 1999	3,045	2,751
Additional paid-in capital	1,814,581	1,320,338
Unearned ESOP shares	(1,560)	(2,122)
Shareowners' notes receivable	(19,103)	(1,092)
Accumulated deficit	(6,908)	(26,060)
Accumulated other comprehensive income	66,722	157,893
Total shareowners' equity	1,856,833	1,451,795
Total liabilities and shareowners' equity	\$ 17,317,437	\$ 8,032,174

See notes to consolidated financial statements

E*TRADE GROUP, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share amounts)

	Years Ended September 30,		
	2000	1999	1998
Revenues:			
Transaction revenues	\$ 739,078	\$ 355,830	\$ 162,097
Interest income	960,358	369,074	186,123
Global and institutional	166,061	124,233	105,851
Other	107,686	40,546	28,173
Gross revenues	1,973,183	889,683	482,244
Interest expense	(600,862)	(215,452)	(120,334)
Provision for loan losses	(4,003)	(2,783)	(905)
Net revenues	1,368,318	671,448	361,005
Cost of services	515,571	302,342	151,329
Operating expenses:			
Selling and marketing	521,532	325,449	126,141
Technology development	142,914	79,935	36,203
General and administrative	209,436	102,826	51,346
Amortization of goodwill and other intangibles	22,764	2,915	2,480
Acquisition-related expenses	36,427	7,174	1,167
Total operating expenses	933,073	518,299	217,337
Total cost of services and operating expenses	1,448,644	820,641	368,666
Operating loss	(80,326)	(149,193)	(7,661)
Non-operating income (expense):			
Corporate interest income	17,220	20,675	11,236
Corporate interest expense	(29,535)	(71)	(21)
Gain on sale of investments	211,149	54,093	—
Equity in income (losses) of investments	(11,513)	(8,838)	531
Unrealized loss on venture funds	(736)	—	—
Other	(1,810)	(72)	(1,242)
Total non-operating income	184,775	65,787	10,504
Pre-tax income (loss)	104,449	(83,406)	2,843
Income tax expense (benefit)	85,478	(31,288)	1,883
Minority interest in subsidiaries	(181)	2,197	1,362
Income (loss) before cumulative effect of accounting change and extraordinary loss	19,152	(54,315)	(402)
Cumulative effect of accounting change, net of tax	—	(469)	—
Extraordinary loss on early extinguishment of subordinated debt, net of tax	—	(1,985)	—
Net income (loss)	\$ 19,152	\$ (56,769)	\$ (402)
Income (loss) per share before cumulative effect of accounting change and extraordinary loss (See Note 17):			
Basic	\$ 0.06	\$ (0.20)	\$ (0.00)

Diluted	\$ 0.06	\$ (0.20)	\$ (0.00)
Income (loss) per share (See Note 17):			
Basic	\$ 0.06	\$ (0.21)	\$ (0.01)
Diluted	\$ 0.06	\$ (0.21)	\$ (0.01)
Shares used in computation of per share data (See Note 17):			
Basic	301,926	272,832	195,051
Diluted	319,336	272,832	195,051

See notes to consolidated financial statements

E*TRADE GROUP, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF SHAREOWNERS' EQUITY
(in thousands)

	Preferred Stock		Shares Exchangeable into Common Stock		Common Stock		Additional Paid-in Capital	Unearned ESOP Shares	Shareowners' Notes Receivable	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Income (Loss)	Total Shareowners' Equity
	Shares	Amount	Shares	Amount	Shares	Amount						
Balance, September 30, 1997	29,900	\$ 15,281	4,684	\$ 47	173,315	\$ 1,733	\$ 300,458	\$ —	\$ —	\$ 34,340	\$ 2,691	\$ 354,550
Net loss										(402)		(402)
Net appreciation of available-for-sale securities											23,517	23,517
Less realized gain											(1,341)	(1,341)
Unrealized gain on available-for-sale securities											22,176	22,176
Foreign currency translation											(622)	(622)
Tax expense on other comprehensive income items											(10,511)	(10,511)
Total comprehensive income												10,641
Issuance of common stock, net of issuance costs					74,584	747	468,759					469,506
Exercise of stock options, including tax benefit					3,642	36	14,500					14,536
Associate Stock Purchase Plan					416	4	1,190					1,194
Conversion of ETFC's preferred stock to common stock	(29,900)	(15,281)			5,039	50	15,231					—
Unearned ESOP shares					(327)	(3)	3	(2,578)				(2,578)
Dividends-TIR / ETFC					210	2	1,737			(2,352)		(613)
Issuance of warrants for common stock							4,721					4,721
Other stock transactions			(5)		(5)		1,102					1,102
Balance, September 30, 1998	—	—	4,679	47	256,874	2,569	807,701	(2,578)	—	31,586	13,734	853,059
Net loss										(56,769)	—	(56,769)
Net appreciation of available-for-sale securities											292,467	292,467
Less realized gain											(50,723)	(50,723)

Unrealized gain on available-for-sale securities										241,744		241,744
Foreign currency translation										1,984		1,984
Tax expense on other comprehensive income items										(99,569)		(99,569)
Total comprehensive income												87,390
Adjustment for ETFC earnings										(655)		(655)
Issuance of common stock in public offering-ETFC / VERSUS	3,196	32	8,257	83	426,487							426,602
Options issued to consultants					2,200							2,200
Exercise of stock options, including tax benefit	21		7,999	79	69,926			(1,092)				68,913
Exercise of warrants, including tax benefit	813	8	1,057	11	1,157							1,176
Associate Stock Purchase Plan			390	4	2,401							2,405
Release of unearned ESOP shares			14		2,386	456						2,842
Buyback of trust preferred securities					(410)							(410)
Cash dividends-TIR										(222)		(222)
Issuance of common stock for the acquisition of Confluent			314	3	7,418							7,421
Other stock transactions			241	2	1,072							1,074
Balance, September 30, 1999	—	—	8,709	87	275,146	2,751	1,320,338	(2,122)	(1,092)	(26,060)	157,893	1,451,795

See notes to consolidated financial statements

E*TRADE GROUP, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF SHAREOWNERS' EQUITY (Continued)
(in thousands)

	Preferred Stock		Shares Exchangeable into Common Stock		Common Stock		Additional Paid-in Capital	Unearned ESOP Shares	Shareowners' Notes Receivable	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Income	Total Shareowners' Equity
	Shares	Amount	Shares	Amount	Shares	Amount						
Net income										19,152		19,152
Net appreciation of available-for-sale securities											61,275	61,275
Less realized gain										(134,012)		(134,012)
Unrealized loss on available-for-sale securities											(72,737)	(72,737)
Foreign currency translation										(927)		(927)
Tax benefit on other comprehensive income items										(17,507)		(17,507)
Total comprehensive loss												(72,019)
Compensation expense on options							4,903					4,903
Exercise of stock options, including tax benefit			65		9,682	97	67,157		(19,103)			48,151
Associate Stock Purchase Plan					590	6	4,878					4,884
Release of unearned ESOP shares					348	4	(868)	562				(302)

Repayment of shareowners' notes receivable						1,092					1,092
Issuance of common stock, net of issuance costs—VERSUS	497	5				2,538					2,543
Issuance of common stock for purchase acquisitions.	83	1	15,005	150	415,635						415,786
Conversion of Exchangeable Shares of EGI Canada Corporation to common stock	(3,734)	(37)	3,734	37							—
Balance, September 30, 2000	— \$	—	5,620 \$	56	304,505 \$	3,045	\$ 1,814,581	\$ (1,560)	\$ (19,103)	\$ (6,908)	66,722 \$ 1,856,833

See notes to consolidated financial statements

E*TRADE GROUP, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Years Ended September 30,		
	2000	1999	1998
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income (loss)	\$ 19,152	\$ (56,769)	\$ (402)
Adjustments to reconcile net income(loss) to net cash provided by (used in) operating activities:			
Minority interest and equity in income/loss of subsidiaries and investments	13,388	6,899	4,939
Depreciation, amortization and discount accretion	97,638	34,307	15,873
Net realized gains on available-for-sale securities, loans held-for-sale and trading securities	(219,274)	(54,730)	(4,105)
Provision for loan losses	4,003	2,783	905
Deferred income taxes	54,964	(38,785)	352
Other	6,200	3,654	(4,090)
Net effect of changes in brokerage-related assets and liabilities:			
Cash and investments required to be segregated under Federal or other regulations	42,470	(110,365)	5,012
Brokerage receivables	(3,562,795)	(1,530,608)	(574,464)
Brokerage payables	3,107,026	1,574,869	495,942
Net effect of changes in banking-related assets and liabilities:			
Cash and investments required to be segregated under Federal or other regulations	(2,481)	1,400	(2,323)
Proceeds from sales, repayments and maturities of loans held for sale	141,207	129,189	69,762
Purchases of loans held for sale	(128,607)	(69,274)	(2,297)
Proceeds from sales, repayments and maturities of trading securities	1,599,539	1,286,852	616,110
Purchases of trading securities	(1,565,989)	(1,268,736)	(623,913)
Interest credited to deposits	(140,845)	84,666	45,023
Other changes-net:			
Other assets	(61,333)	(44,372)	(28,076)
Accrued interest receivable	(23,894)	(14,149)	(7,089)
Accounts payable, accrued and other liabilities, net of business acquisitions	199,249	86,937	40,835
Net cash provided by (used in) operating activities	(138,692)	23,768	47,994
CASH FLOWS FROM INVESTING ACTIVITIES:			
Cash acquired (used) in business acquisitions, net	(32,490)	—	6,847
Net increase in loans receivable, net of loans received in business acquisition	(2,047,022)	(1,421,628)	(281,603)
Restricted deposits	(72,689)	—	—

Purchase of mortgage-backed securities, available-for-sale securities, and other investments, net of securities received in business acquisition	(10,180,722)	(5,680,123)	(4,557,430)
Proceeds from sales, maturities of and principal payments on mortgage-backed securities, available-for-sale securities, and other investments	7,343,076	5,299,483	3,517,799
Purchases of property and equipment, net of property and equipment received in business acquisition	(184,449)	(154,073)	(39,572)
Other	(11,302)	13,874	(3,287)
Net cash used in investing activities	(5,185,598)	(1,942,467)	(1,357,246)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Net increase in banking deposits, net of deposits received in business acquisition	2,418,274	1,003,756	335,136
Advances from the Federal Home Loan Bank of Atlanta	4,704,500	2,706,510	1,201,577
Payments on advances from the Federal Home Loan Bank of Atlanta	(3,544,500)	(2,437,510)	(929,077)
Net increase in securities sold under agreements to repurchase	1,103,525	310,732	124,526
Net proceeds from convertible subordinated notes	631,312	—	—
Proceeds from bank loans and lines of credit, net of transaction costs	177,037	—	—
Payments on bank loans and lines of credit	(154,802)	—	—
Net increase/(decrease) in other borrowed funds, net of borrowings received in business acquisition	(5,150)	(29,792)	241
Proceeds from issuance of trust preferred securities	—	(4,696)	25,813
Proceeds from issuance of common and preferred stock, and from associate stock transactions	20,117	455,282	481,348
Other	(8,285)	(4,287)	1,345
Net cash provided by financing activities	5,342,028	1,999,995	1,240,909
INCREASE (DECREASE) IN CASH AND EQUIVALENTS:	17,738	81,296	(68,343)
CASH AND EQUIVALENTS-Beginning of period	157,705	76,409	144,752
CASH AND EQUIVALENTS-End of period	\$ 175,443	\$ 157,705	\$ 76,409
SUPPLEMENTAL DISCLOSURES:			
Cash paid for interest	\$ 608,232	\$ 208,439	\$ 112,694
Cash paid for income taxes	\$ 4,037	\$ 763	\$ 1,664
Non-cash investing and financing activities:			
Tax benefit on exercise of stock options and warrants	\$ 32,276	\$ 47,007	\$ 9,430
Acquisitions, net of cash acquired:			
Common stock issued and options assumed	\$ 416,715	\$ —	\$ —
Cash paid, less acquired	32,497	7,421	22,300
Liabilities assumed	23,867	—	315,400
Carrying value of joint-venture investments	6,058	—	—
Fair value of assets acquired including goodwill	\$ 479,137	\$ 7,421	\$ 337,700

See notes to consolidated financial statements

E*TRADE GROUP, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. ORGANIZATION AND BASIS OF PRESENTATION

The consolidated financial statements include E*TRADE Group, Inc. ("Parent"), a financial services holding company, and its subsidiaries (collectively, the "Company"), including but not limited to E*TRADE Securities, Inc. ("E*TRADE Securities"), a securities broker-dealer, TIR (Holdings) Limited ("TIR"), a provider of global securities brokerage and other related services to institutional clients, E*TRADE Financial Corporation ("ETFC"), a provider of financial services, VERSUS Technologies, Inc. ("VERSUS"), a Canadian-based provider of electronic securities

trading services for institutional and retail investors and owner of the E*TRADE Canada license, and E*TRADE Access, Inc. ("E*TRADE Access"), an independent network of centrally-managed automated teller machines ("ATMs") in the United States. The consolidated financial statements of the Company have been prepared to give retroactive effect to the acquisitions of ETFC in January 2000 and VERSUS in August 2000, which have been accounted for as poolings of interests (see Note 3). The primary business of ETFC is conducted by E*TRADE Bank (the "Bank") and E*TRADE Capital Markets, Inc. ("ETCM"). The Bank is a federally chartered savings bank that provides deposit accounts insured by the Federal Deposit Insurance Corporation ("FDIC") to customers nationwide. ETCM is a funds manager and registered broker-dealer.

The consolidated financial statements of the Company include the accounts of the Parent, and its majority owned subsidiaries, which are consolidated. Intercompany accounts and transactions are eliminated in consolidation. Other subsidiaries and affiliates in which there is at least a 20% ownership are generally accounted for by the equity method; those in which there is a less than 20% ownership are generally carried at cost.

The preparation of the Company's consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and related notes for the periods presented. Actual results could differ from management's estimates. Material estimates for which a change is reasonably possible in the near-term relate to the determination of the allowance for loan losses, the fair value of investments and available-for-sale mortgage-backed securities, loans receivable held for sale, trading securities and the valuation of real estate acquired in connection with foreclosures and mortgage servicing rights. In addition, the regulatory agencies that supervise the financial services industry periodically review the Bank's allowance for losses on loans. This review, which is an integral part of their examination process, may result in additions or deductions to the allowance for loan losses based on judgments with regard to available information provided at the time of their examinations.

Certain items in these consolidated financial statements have been reclassified to conform to the current period presentation.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Transaction Revenues—The Company derives transaction revenues from commissions related to domestic retail customer broker-dealer transactions in equity and debt securities, options and, to a lesser extent, payments from other broker-dealers for order flow. Securities transactions are recorded on a trade date basis and are executed by independent broker-dealers.

Interest Income and Expense—Interest income is primarily comprised of: interest earned by the Company's broker-dealer operations on credit extended to its customers to finance their purchases of securities on margin; fees on customer assets invested in money market accounts; interest earned by the Company's banking operations on purchased pools of one- to four-family first lien mortgages and mortgage-related securities; and interest earned on investment securities and other interest-earning assets. Interest expense primarily represents: interest paid to customers for their brokerage cash balances and banking deposits; interest paid on borrowed funds; and interest paid to other broker-dealers through the Company's stock loan program. Interest income and expense arising from the Company's brokerage and banking operations are reported as components of net revenues. Corporate interest income and expense are included in non-operating income.

Global and Institutional Revenues—Global and institutional revenues consist principally of commission revenues from TIR and VERSUS for institutional transaction execution, commission revenues from international subsidiaries for retail customer broker-dealer transactions in equity and debt securities, options and, payments from

other broker-dealers for order flow. TIR provides certain institutional customers with market research and other information under arrangements whereby TIR receives minimum annual commissions. Direct costs arising from these arrangements are expensed as the commissions are received, in proportion to the expected cost of the total arrangement. As a result, costs may be deferred or accrued, as appropriate, to properly match expenses at the time revenue is earned. At September 30, 2000 and 1999, costs of \$14.1 million and \$7.2 million, respectively, were deferred and costs of \$6.9 million and \$12.3 million, respectively, were accrued for these arrangements.

Other Revenues—Other revenues primarily consist of investment banking revenues, software licensing and maintenance fee revenues, brokerage and banking-related fees for services, revenues from advertising on the Company's Web site, mutual fund fees, ATM transaction fees and the gains or losses from the sale of trading securities. Included in other revenues are gains on the sale of banking-related loans and securities, an investment in the London Stock Exchange, and a seat on the Hong Kong Stock Exchange totaling \$11.9 million, \$6.3 million and \$5.6 million, in fiscal 2000, 1999 and 1998, respectively.

Advertising Costs—Advertising production costs are expensed when the initial advertisement is run. Costs of communicating advertising are expensed as the services are received. The Company incurred \$149.4 million, \$124.2 million and \$26.9 million in advertising expense in fiscal 2000, 1999 and 1998, respectively.

Technology Development Costs—Technology development costs are charged to operations as incurred. Technology development costs include costs incurred in the development and enhancement of software used in connection with services provided by the Company that do not otherwise qualify for capitalization treatment as internally developed software costs in accordance with Statement of Position ("SOP") 98-1, *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use*. In accordance with SOP 98-1, the cost of internally developed software is capitalized and included in property and equipment at the point at which the conceptual formulation, design and testing of possible software project alternatives have been completed and management authorizes and commits to funding the project. Pilot projects and projects where expected future economic benefits are less than probable, are not capitalized. Internally developed software costs include the cost of software tools and licenses used in the development of the Company's systems, as well as payroll and consulting costs. Capitalized costs were \$61.5 million, \$12.8 million and \$10.2 million in fiscal 2000, 1999 and 1998, respectively.

Completed projects are transferred to property and equipment at cost and are amortized on a straight-line basis over their estimated useful lives, generally two to three years. Amortization expense was \$7.8 million, \$7.1 million and \$1.7 million in fiscal 2000, 1999 and 1998, respectively.

Stock-Based Compensation—The Company accounts for associate stock-based compensation using the intrinsic value method of accounting prescribed in Accounting Principles Board Opinion ("APB") No. 25, *Accounting for Stock Issued to Employees*. The Company provides pro forma disclosures of net income (loss) and income (loss) per share as required under Statement of Financial Accounting Standard ("SFAS") No. 123,

Changes in Accounting Principle—In April 1998, the American Institute of Certified Public Accountants issued SOP 98-5, *Reporting on the Cost of Start-up Activities*. The statement requires that the cost of start-up activities be expensed as incurred rather than capitalized, with initial application reported as the cumulative effect of a change in accounting principle, as described in APB No. 20, *Accounting Changes*. ETFC implemented SOP 98-5 in fiscal 1999 and, as a result, recognized \$469,000 of previously capitalized start-up costs, net of tax, as a cumulative effect of a change in accounting principle. These costs related primarily to the establishment of TeleBanc Insurance Services.

Earnings Per Share—Basic earnings per share ("EPS") is computed by dividing net income by the weighted average common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock.

Cash Equivalents—For purposes of reporting cash flows, the Company considers all highly liquid investments with original maturities of three months or less (except for amounts required to be segregated under Federal or other regulations) to be cash equivalents. Cash and equivalents are composed of interest-bearing and non-interest-bearing deposits, certificates of deposit, commercial paper, funds due from banks, and Federal funds.

Cash and Investments Required to be Segregated Under Federal or Other Regulations—Cash and investments required to be segregated under Federal or other regulations consist primarily of government backed securities purchased under agreements to resell ("Resale Agreements"). Resale Agreements are accounted for as collateralized financing transactions and are recorded at their contractual amounts, which approximate fair value. Included in cash and investments required to be segregated under Federal or other regulations is \$2.5 million and \$1.0 million at September 30, 2000 and 1999, respectively, which the Company is required to maintain in an overnight balance in its account with the Federal Reserve Bank of Richmond.

Loans Receivable-Net—Loans receivable-net consist of mortgages that management has the intent and ability to hold for the foreseeable future or until maturity or pay-off. These loans are carried at amortized cost adjusted for charge-offs, the allowance for loan losses, any deferred fees or costs on purchased or originated loans and unamortized premiums or discounts on purchased loans. Also included in loans receivable-net are loans receivable held for sale. Loans receivable held for sale are mortgages acquired by the Company and intended for sale in the secondary market and are carried at lower of cost or estimated market value in the aggregate. The market value of these mortgage loans is determined by obtaining market quotes for loans with similar characteristics.

Certain loans have been purchased by the Company with an expectation that not all contractual payments of the loan will be collected. Discounts attributable to credit issues are tracked separately, netted against the loan balance, and are not included as a component of allowance for loan losses. Discounts are accreted on a level yield basis only to the extent they are expected to be realized.

According to SFAS No. 114, *Accounting by Creditors for Impairment of a Loan*, a loan is considered impaired when, based upon current information and events, it is probable that a creditor will be unable to collect all amounts due according to the contractual terms of the loan agreement. The term "all amounts due" includes both the contractual interest and principal payments of a loan as scheduled in the loan agreement. The Company has determined that once a loan becomes ninety or more days past due, collection of all amounts due is no longer probable; therefore, the loan is considered impaired. The amount of impairment is measured based upon the fair value of the underlying collateral and is reflected through the creation of a valuation allowance.

The loan portfolio is reviewed by the Company's management to set provisions for estimated losses on loans, which are charged to earnings in the current period. The allowance for loan losses represents management's estimate of losses that have occurred as of the respective reporting date. In determining the level of the allowance, the Company has established both specific and general allowances. The amount of specific reserves is determined through a loan-by-loan analysis of non-performing loans and larger dollar non-single-family mortgage loans. The general allowance is computed based on an assessment of performing loans and is evaluated collectively. Each month, the performing loan portfolio is stratified by asset type (one- to four-family, commercial, consumer, etc.) and a range of expected loss ratios is applied to each type of loan. Expected loss ratios range between 0.15% and 3.0% depending upon asset type, loan-to-value ratio and current market and economic conditions. The expected loss ratios are based on historical loss experience adjusted to reflect industry loss experience. The increase in the allowance for loan losses reflects the significant increase in the loan portfolio, from \$2,184 million at September 30, 1999 to \$4,226 million at September 30, 2000, and the fact that the Bank purchases, rather than originates in house, the majority of its loans. Even though the Company's historic charge-offs are minimal, \$253,000 and \$458,000 in fiscal 2000 and 1999, respectively, we believe the allowance for loan losses, \$10.9 million (0.26% of total loans) and \$7.2 million (0.33% of total loans) at September 30, 2000 and 1999, respectively, is an appropriate estimate of the losses inherent in the loan portfolio.

Loan and Commitment Fees, Discounts and Premiums—Loan fees and certain direct loan acquisition costs are deferred and the net fee or cost recognized into interest income using the interest method over the contractual life of the loans. Premiums and discounts on loans receivable are amortized or accreted, respectively, into income using the interest method over the remaining period to contractual maturity and adjusted for anticipated prepayments. Premiums and discounts on loans held for sale are recognized as part of the loss or gain upon sale and not amortized or accreted, respectively.

Non-performing Assets—Non-performing assets consist of loans for which interest is no longer being accrued, troubled loans that have been restructured in order to increase the opportunity to collect amounts due on the loan and real estate acquired in settlement of loans. Interest previously accrued but not collected on non-accrual loans is reversed against current income when a loan is placed on non-accrual status. Accretion of deferred fees is discontinued for non-accrual loans. All loans at least ninety days past due, as well as other loans considered

uncollectible, are placed on non-accrual status. Payments received on non-accrual loans are recognized as interest income or applied to principal when it is doubtful that full payment will be collected.

Investments—The Company generally classifies its debt, mortgage-backed securities and marketable equity securities in one of three

categories: held-to-maturity, available-for-sale, or trading. During 2000 and 1999, the Company held no investments or mortgage-backed securities that it classified as held-to-maturity.

Available-for-sale securities represent a portfolio of equity securities, commercial paper, municipal bonds, certificates of deposit, corporate bonds, U.S. Government obligations, asset-backed securities and money market funds. Unrealized gains and losses, net of tax, are computed on the basis of average cost and are included in other comprehensive income. Realized gains and losses and declines in fair value judged to be other than temporary are included in revenues for securities purchased and sold as a component of the Company's banking operations; other amounts are included in non-operating income (expense). The cost of securities sold is based on the average cost method and interest earned is included in interest income or non-operating income.

Trading securities are bought and held principally for the purpose of selling them in the near term. Securities purchased for trading are carried at market value. Realized and unrealized gains and losses on securities classified as trading are included in other revenues and are derived using the specific identification method for determining the cost of the security sold.

Property and Equipment—Property and equipment are carried at cost and are depreciated on a straight-line basis over their estimated useful lives, generally two to seven years. Leasehold improvements are stated at cost and are amortized over the lesser of their estimated useful lives or lease terms.

Goodwill and Other Intangibles—Goodwill and other intangibles, comprised primarily of goodwill, represents the excess of purchase price over the fair value of net assets acquired resulting from acquisitions made by the Company. Goodwill is being amortized using the straight-line method based on an estimated useful life of five to twenty years. Other intangibles are amortized using the straight-line method based on an estimated useful life of two to seven years.

Other Assets—Other assets primarily include premiums paid on interest rate caps, real estate acquired through foreclosure, Federal Home Loan Bank ("FHLB") stock, and prepaid assets. Included in other assets is \$71.9 million in restricted deposits related to an operating lease.

Real estate properties acquired through foreclosure and held for sale ("REO") are recorded at fair value less estimated selling costs at acquisition. Fair value is determined by appraisal or other appropriate valuation method. Losses estimated at the time of acquisition are charged to the allowance for loan losses. Management performs periodic valuations and establishes an allowance for losses through a charge to income if the carrying value of a property exceeds its estimated fair value less selling costs. REO was \$850,000 and \$539,000 at September 30, 2000 and 1999, respectively.

Foreign Currency Translation—Assets and liabilities of wholly and majority owned subsidiaries outside of the United States are translated into U.S. dollars using the exchange rate in effect at each period end. Revenues and expenses are translated at the average exchange rate during the period. The effects of foreign currency translation adjustments arising from differences in exchange rates from period to period are deferred and included in other comprehensive income as the functional currency of our subsidiaries is their local currency. Currency transaction gains or losses, derived on monetary assets and liabilities stated in a currency other than the functional currency, are recognized in current operations and have not been significant to the Company's operating results in any period.

Impairment of Long-Lived Assets—In the event that facts and circumstances indicate that the carrying value of a long-lived asset, including associated intangibles, may be impaired, an evaluation of recoverability is performed by comparing the estimated future undiscounted cash flows associated with the asset to the asset's carrying amount to determine if a write-down to market value or discounted cash flow is required. No such write-downs were made for the years ended September 30, 2000, 1999 or 1998.

Financial Instruments With Off-Balance-Sheet Credit Risk—The Company uses interest rate swaps, caps, floors and futures in the management of its interest-rate risk. The Company is generally exposed to rising interest rates because of the nature of the repricing of rate-sensitive assets as compared with rate-sensitive liabilities. These instruments are used primarily to hedge specific assets and liabilities. For interest rate swaps, the net interest

received or paid is treated as an adjustment to the interest income or expense related to the hedged assets or obligations in the period in which such amounts are due.

In order to be eligible for hedge accounting treatment, high correlation must be probable at the inception of the hedge transaction and must be maintained throughout the hedge period. Premiums and fees associated with interest rate caps are amortized to interest income or expense on a straight-line basis over the lives of the contracts. For instruments that are not designated or do not qualify as hedges, realized and unrealized gains and losses are recognized in the statement of operations as gain or loss on trading securities in the period during which they are incurred.

The Company uses forward foreign exchange contracts and purchases foreign currency option contracts that are designated to reduce a portion of its exposure to foreign currency risk from operational exposures resulting from changes in foreign currency exchange rates. Such exposures result from the portion of the Company's operations that are denominated in currencies other than the functional currency of the legal entity. Hedging activity related to foreign currency risk has not resulted in a material impact to the Company's operations to date.

Comprehensive Income—The Company's comprehensive income is comprised of net income, foreign currency cumulative translation adjustments, and unrealized gains and losses on available-for-sale investments, net of related taxes. Comprehensive income is reflected in the consolidated statements of shareholders' equity.

Segment Information—In fiscal 1999, the Company adopted SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*. Under SFAS No. 131, the Company is required to use the management approach to reporting its segments. The management approach designates the internal organization that is used by management for making operating decisions and assessing performance as the source of the Company's segments. The adoption of SFAS No. 131 had no impact on the Company's net income (loss), balance sheet, or shareholders' equity. The accounting policies of the segments are the same as those described elsewhere in Note 2. (See Note 23, "Segment and Geographic Information")

New Accounting Standards—In June 1998, the Financial Accounting Standards Board ("FASB") issued SFAS No. 133, *Accounting for*

Derivative Instruments and Hedging Activities. The new standard requires companies to record derivatives on the balance sheet as assets or liabilities, measured at fair value. Gains or losses resulting from changes in the values of those derivatives will be reported in the statement of operations or as a deferred item, depending on the use of the derivatives and whether they qualify for hedge accounting. The key criterion for hedge accounting is that the derivative must be highly effective in achieving offsetting changes in fair value or cash flows of the hedged items during the term of the hedge. The Company adopted SFAS No. 133, as amended, on October 1, 2000. The adoption of SFAS No. 133 will result in an \$82,500 charge, net of tax, from a cumulative effect of a change in accounting principle, and a \$6.2 million decrease, net of tax, in shareowners' equity in the Company's financial statements for the quarter ending December 31, 2000.

In September 2000, the FASB issued SFAS No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*. SFAS No. 140 replaces SFAS No. 125, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*. It revises the standards for accounting for securitizations and other transfers of financial assets and collateral and requires certain disclosures, but it carries over most of SFAS No. 125's provisions without reconsideration. SFAS No. 140 is effective for transactions after March 31, 2001. The Company is currently evaluating the impact of SFAS No. 140 to our consolidated financial statements.

3. BUSINESS COMBINATIONS

Poolings of Interests

VERSUS

On August 28, 2000, the Company completed the acquisition of VERSUS, a Canadian-based provider of electronic securities trading services for institutional and retail investors and owner of the E*TRADE Canada license, in a share exchange. Prior to the acquisition, VERSUS had been a strategic partner of E*TRADE, holding the rights to the E*TRADE Canada license since 1997. Through the acquisition of VERSUS, the Company will increase its retail and institutional client base and be able to incorporate the technology underlying the VERSUS Network, a scalable proprietary electronic trading platform, into its global cross-border trading platform. Each

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VERSUS shareowner received approximately .725 shares of E*TRADE common stock or .725 shares of EGI Canada Corporation that are exchangeable on a one-for-one basis for common stock of E*TRADE (the "Exchangeable Shares" see Note 16). Options held by VERSUS employees were assumed by E*TRADE and, upon exercise, are convertible into approximately .725 shares of E*TRADE common stock. In total, 10,644,223 Exchangeable Shares were authorized for issuance in an exchange valued at approximately \$173.9 million. The acquisition was accounted for as a pooling of interests, and accordingly, the historical consolidated financial statements of the Company have been restated to include the financial position, results of operations, and cash flows of VERSUS for all periods presented. No significant adjustments were made to conform the consolidated financial statements of VERSUS from accounting principles generally accepted in Canada to accounting principles generally accepted in the United States of America or to conform the accounting policies of the entities. All intercompany transactions related to the licensing arrangement between E*TRADE and VERSUS and the prior investment in VERSUS by E*TRADE have been eliminated in all periods presented.

ETFC

On January 12, 2000, the Company completed the acquisition of Telebank Financial Corporation (now ETFC). ETFC is the holding company for the Bank, formerly Telebank, an Internet-based federally chartered savings bank. Under the terms of the agreement, ETFC shareowners received 1.05 shares of E*TRADE common stock for each share of ETFC common stock, representing a total of 35,671,622 shares of the Company's common stock. The Company also assumed all outstanding ETFC options, which were converted to options to purchase approximately 5,494,000 shares of the Company's common stock. Prior to the acquisition, ETFC reported on a calendar year basis. Fiscal 1998 includes the results of ETFC for the twelve months ended December 31, 1998. Fiscal 1999 includes the results of ETFC for the twelve months ended September 30, 1999. The results of operations for the quarter ended December 31, 1998 (gross revenues of \$37,758,000, net revenues of \$8,905,000 and net income of \$655,000), have been included in both fiscal 1999 and 1998, and are reflected as an adjustment to retained earnings in fiscal 1999. The acquisition was accounted for as a pooling of interests and, accordingly, all prior financial data of the Company has been restated to include the historical operations of ETFC. No adjustments were required to conform accounting policies of the entities. There were no significant intercompany transactions requiring elimination for any periods presented.

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The following table shows the historical results of the Company, ETFC and VERSUS for the periods prior to the consummation of the acquisitions of the entities by E*TRADE (in thousands):

	Net Revenues	Income (Loss) Before Cumulative Effect of Accounting Change and Extraordinary Loss	Net Income (Loss)
Fiscal year ended September 30, 2000			
E*TRADE Group	\$ 1,317,104	\$ 26,364	\$ 26,364
ETFC (through December 31, 2000)	23,423	423	423
VERSUS (through August 31, 2000)	28,988	(8,007)	(8,007)
Elimination of intercompany transactions (1)	(1,197)	372	372
Combined	\$ 1,368,318	\$ 19,152	\$ 19,152

Fiscal year ended September 30, 1999				
E*TRADE Group	\$	601,763	\$	(54,438) \$ (54,438)
ETFC		55,387		4,800 2,346
Versus		14,668		(5,036) (5,036)
Elimination of intercompany transactions (1)		(370)		359 359
Combined	\$	671,448	\$	(54,315) \$ (56,769)
Fiscal year ended September 30, 1998				
E*TRADE Group	\$	324,721	\$	1,927 \$ 1,927
ETFC		25,933		1,375 1,375
VERSUS		10,535		(4,076) (4,076)
Elimination of intercompany transactions (1)		(184)		372 372
Combined	\$	361,005	\$	(402) \$ (402)

(1) Eliminations include the royalty revenue recorded by E*TRADE and the corresponding royalty expense and the amortization of the license recorded by VERSUS under the License and Service Agreement between E*TRADE and VERSUS.

Poolings of Interests—Prior Years

The following acquisitions were accounted for as poolings of interests in the prior years, and accordingly, all prior financial data of the Company have previously been restated to include the historical operating results of the acquired businesses.

TIR (Holdings) Limited

On August 31, 1999, the Company acquired TIR an international financial services company offering global multi-currency securities execution and settlement services and a leader in providing independent research to institutional investors. The Company issued 4,488,000 shares of common stock in exchange for all outstanding common stock of TIR. The Company also assumed all outstanding TIR options, which were converted to options to purchase approximately 190,000 shares of the Company's common stock.

ClearStation

On April 30, 1999, the Company acquired ClearStation, Inc. ("ClearStation"), a financial media Web site that integrates technical and fundamental analysis and discussion for investors. The Company issued 939,000 shares of common stock in exchange for all outstanding common stock of ClearStation. The Company also assumed all outstanding ClearStation options, which were converted to options to purchase approximately 112,000 shares of the Company's common stock.

ShareData

On July 30, 1998, the Company acquired ShareData, Inc. ("ShareData"). ShareData supplies stock plan knowledge-based software and Full Service Stock Plan Administration ("FSSPA") consulting services for pre-IPO and public companies. The Company issued 5,232,000 shares of its common stock in exchange for all outstanding

common stock of ShareData. The Company also assumed all outstanding ShareData options, which were converted to options to purchase approximately 744,000 shares of the Company's common stock.

Purchase Acquisitions

During the three years ended September 30, 2000, the Company completed ten acquisitions which were accounted for under the purchase method of accounting. The results of operations of each acquisition are included in the Company's consolidated statement of operations from the date of each acquisition. The amounts allocated to goodwill and other intangibles are amortized on a straight-line basis over periods not exceeding 20 years.

A summary of the Company's purchase transactions for the three years ended September 30, 2000 is included in the following table (in millions, except share amounts):

Entity Name and Description of Business Acquired	Date	Goodwill		Form of Consideration
<i>Fiscal 2000 Acquisitions:</i>				
Electronic Investing Corporation (“eInvesting”)	8/00	\$ 5.5	\$ 3.9	230,477 shares of common stock issued
Provider of individual securities portfolios			\$ 0.9	Cash
E*TRADE Access (formerly Card Capture Services)	5/00	\$ 100.6	\$ 70.5	3,122,887 shares of common stock issued

Independent network of centrally-managed ATMs			\$ 16.9	1,036,558 employee stock options assumed
			\$ 5.1	Cash
Fairvest Securities Corporation	5/00	\$ 0.6	\$ 0.5	Cash
Provider of Canadian corporate governance and related services			\$ 0.5	83,122 shares exchangeable into E*TRADE common stock
E*TRADE U.K.	12/99	\$ 148.4	\$ 12.1	Cash
Provider of retail brokerage services to the UK market			\$ 104.0	3,869,676 shares of common stock issued
			\$ 27.2	1,012,639 options assumed
E*TRADE Nordic AB	11/99	\$ 89.8	\$ 80.6	3,180,799 shares of common stock issued
Provider of retail brokerage services to the Nordic countries			\$ 4.0	157,856 plan options assumed
E*TRADE @ Net Bourse S.A. (1)	10/99	\$ 124.1	\$ 108.2	4,600,595 shares of common stock issued
Provider of retail brokerage services to Belgium, Netherlands, Luxembourg, Austria, Italy and France				
<i>Fiscal 1999 Acquisition:</i>				
Confluent, Inc.	9/99	\$ 3.0	\$ 7.4	314,000 shares of common stock issued
Developer of personal financial management tools				
<i>Fiscal 1998 Acquisitions:</i>				
OptionsLink Division of Hambrecht & Quist	11/97	\$ 2.9	\$ 3.5	Cash
Employee stock option and stock plan services for corporate stock plan participants				
MET Holdings Corporation	4/98	\$ 0.3	\$ 33.2	6,039,940 shares of common stock issued
Bank holding company for Metropolitan Bank for savings				
Direct Financial Corporation	8/98	\$ 4.0	\$ 22.3	Cash
Regional savings and loan holding company				

(1) In September 2000, the Company announced the sale of its investment in CPR E*TRADE and no longer has a retail presence in France.

The pro forma information below assumes that the fiscal 2000 and 1999 acquisitions of the Company's international affiliates, E*TRADE Access, Fairvest Securities Corporation, Confluent, Inc., and eInvesting occurred at the beginning of fiscal 1999 and includes the effect of amortization of goodwill from that date (in thousands, except per share amounts):

	Years Ended September 30,	
	2000	1999
Net revenues	\$ 1,378,999	\$ 729,917
Net income (loss)	\$ 10,639	\$ (85,275)
Income (loss) per share:		
Basic	\$ 0.04	\$ (0.30)
Diluted	\$ 0.03	\$ (0.30)

The pro forma information is for informational purposes only and is not necessarily indicative of the results of future operations nor results that would have been achieved had the acquisitions taken place at the beginning of fiscal 1999.

In August 2000, the Company entered into an agreement to acquire all of the issued and outstanding common stock of PrivateAccounts, Inc. ("PrivateAccounts"). The Company will issue approximately 618,000 shares of E*TRADE common stock in connection with this acquisition. The Company expects to issue an additional 618,000 shares of E*TRADE common stock if PrivateAccounts achieves certain milestones and up to an additional \$22.0 million of Company common stock and, if necessary, cash consideration if certain asset targets are exceeded.

4. BROKERAGE RECEIVABLES—NET AND PAYABLES

Brokerage receivables—net and payables consist of the following (in thousands):

	September 30,	
	2000	1999
Receivable from customers and non-customers (less allowance for doubtful accounts of \$3,887 and \$1,016 in fiscal 2000 and 1999, respectively)	\$5,173,220	\$2,628,778
Receivable from brokers, dealers and clearing organizations:		
Net settlement and deposits with clearing organizations	89,031	20,066
Deposits paid for securities borrowed	1,267,109	306,326
Securities failed to deliver	1,970	7,508
Other	11,178	19,398
Total brokerage receivables-net	\$6,542,508	\$2,982,076
Payable to customers and non-customers	\$1,735,228	\$1,020,365
Payable to brokers, dealers and clearing organizations:		
Deposits received for securities loaned	4,296,399	1,806,590
Securities failed to receive	6,266	7,235
Other	17,637	77,488
Total brokerage payables	\$6,055,530	\$2,911,678

Receivable from and payable to brokers, dealers and clearing organizations result from the Company's brokerage activities. Receivable from customers and non-customers represents credit extended to customers and non-customers to finance their purchases of securities on margin. At September 30, 2000 and 1999, credit extended to customers and non-customers with respect to margin accounts was \$5,040 million and \$2,476 million, respectively. Securities owned by customers and non-customers are held as collateral for amounts due on margin balances, the value of which is not reflected on the accompanying consolidated balance sheets. Payable to customers and non-customers represents free credit balances and other customer and non-customer funds pending completion of securities transactions. The Company pays interest on certain customer and non-customer credit balances.

5. MORTGAGE-BACKED SECURITIES

Mortgage-backed securities represent participating interests in pools of long-term first mortgage loans originated and serviced by the issuers of the securities. The Company has also invested in collateralized mortgage obligations ("CMOs"), which are securities issued by special purpose entities generally collateralized by pools of

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mortgage-backed securities. The Company's CMOs are senior tranches collateralized by federal agency securities or whole loans. The fair value of mortgage-backed and related securities fluctuates according to current interest rate conditions and prepayments. Fair value is estimated using quoted market prices. For illiquid securities, market prices are estimated by obtaining market price quotes on similar liquid securities and adjusting the price to reflect differences between the two securities, such as credit risk, liquidity, term, coupon, payment characteristics and other information.

The amortized cost basis and estimated fair values of available-for-sale mortgage-backed securities at September 30, 2000 and 1999 are shown as follows (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Values
September 30, 2000:				
Private issuer	\$ 49,590	\$ 138	\$ (2,356)	\$ 47,372
US Government obligations	780,684	2,299	(5,299)	777,684
Collateralized mortgage obligations	3,396,622	8,529	(41,654)	3,363,497
Total	\$ 4,226,896	\$ 10,966	\$ (49,309)	\$ 4,188,553
September 30, 1999:				
Private issuer	\$ 76,167	\$ 267	\$ (1,882)	\$ 74,552
US Government obligations	30,891	52	(489)	30,454
Collateralized mortgage obligations	1,326,400	273	(5,626)	1,321,047
Total	\$ 1,433,458	\$ 592	\$ (7,997)	\$ 1,426,053

The contractual maturities of available-for-sale mortgage-backed securities at September 30, 2000 are shown as follows (in thousands):

	Amortized Cost	Estimated Fair Values
Due within one to five years	\$ 141	\$ 135
Due within five to ten years	15,053	14,725
Due after ten years	4,211,702	4,173,693
Total	\$4,226,896	\$4,188,553

The Company pledged \$1.9 billion and \$832.0 million of private issuer mortgage-backed securities as collateral for repurchase agreements at September 30, 2000 and 1999, respectively. Gross realized gains and losses on available-for-sale mortgage-backed securities that were sold as of September 30, 2000 were \$3.9 million and \$403,000, respectively. The gross realized gains and losses on available-for-sale mortgage-backed securities that were sold as of September 30, 1999 were \$3.7 million and \$605,000, respectively. The gross realized gains and losses on available-for-sale mortgage-backed securities that were sold as of September 30, 1998 were \$2.4 million and \$113,000, respectively.

6. LOANS RECEIVABLE—NET

Loans receivable—net are summarized as follows (in thousands):

	September 30,	
	2000	1999
First mortgage loans (principally conventional):		
Secured by one- to four-family residences	\$ 4,219,084	\$2,177,075
Secured by commercial real estate	2,717	3,050
Secured by mixed-use property	503	945
Secured by five or more dwelling units	203	1,330
Secured by land	—	279
Total first mortgage loans	4,222,507	2,182,679
Other loans:		
Home equity and second mortgage loans	4,042	1,024
Other	306	685
Total loans	4,226,855	2,184,388
Less unamortized discounts, net	(43,171)	(22,718)
	4,183,684	2,161,670
Less allowance for loan losses	(10,930)	(7,161)
Loans receivable-net	\$ 4,172,754	\$2,154,509

Loans receivable held for sale are \$95.4 million and \$89.9 million at September 30, 2000 and 1999, respectively.

The largest concentrations of mortgage loans are located in California, New York and New Jersey, representing 30.0%, 7.3% and 5.3%, respectively, of the portfolio at September 30, 2000. Adjustable rate mortgages (ARM) composed 62.4%, or \$2.6 billion, of the gross loan portfolio as of September 30, 2000, while fixed rate loans represented the remaining \$1.6 billion. This is compared to an ARM/fixed ratio of 36.1%/63.9% at September 30, 1999. The weighted average maturity of mortgage loans secured by one- to four-family residences is 329 months as of September 30, 2000. Additionally, all loans outstanding at September 30, 2000 and 1999 were serviced by other companies and as of September 30, 2000, the Company had commitments to purchase \$21 million of fixed rate and \$496 million of adjustable rate mortgage loans.

The following is the relative breakout of non-performing loans, those delinquent greater than 90 days, at September 30, 2000 and 1999 (in thousands):

September 30,	
2000	1999

First mortgage loans:

Secured by one- to four-family residences	\$ 11,391	\$ 7,595
Secured by commercial real estate	657	664
Home equity lines of credit and second mortgage loans	—	21
Other	—	60
Total	\$ 12,048	\$ 8,340

Interest income is not accrued for loans classified as non-performing and any income accrued through the initial 90 day delinquency is reversed. Had these loans performed during 2000, 1999 and 1998 additional income of \$845,000, \$550,000 and \$597,000 would have been recognized, respectively. As of September 30, 2000 and 1999, there were no commitments to lend additional funds to these borrowers.

Activity in the allowance for loan losses is summarized as follows (in thousands):

	Years Ending September 30,		
	2000	1999	1998
Allowance for loan losses, beginning of the year	\$ 7,161	\$ 4,715	\$ 3,594
Provision for loan losses	4,003	2,783	905
Loan loss allowance acquired in the acquisition of DFC	—	—	724
Charge-offs, net	(234)	(337)	(457)
Allowance for loan losses, end of year	\$ 10,930	\$ 7,161	\$ 4,766

The table below presents impaired loans (in thousands):

	Total Recorded Investment in Impaired Loans	Amount of Specific Reserves	Amount of Recorded Investment Net of Specific Reserves
September 30, 2000:			
Impaired loans:			
Secured by one- to four-family residences	\$ 2,056	\$ (88)	\$ 1,968
Secured by commercial real estate	657	(303)	354
Total	\$ 2,713	\$ (391)	\$ 2,322
September 30, 1999:			
Impaired loans:			
Secured by one- to four-family residences	\$ 1,138	\$ (113)	\$ 1,025
Secured by commercial real estate	664	(293)	371
Total	\$ 1,802	\$ (406)	\$ 1,396

The average recorded investment in impaired loans for the years ended September 30, 2000 and 1999 was \$2.1 million and \$1.4 million, respectively. The Company's charge-off policy for impaired loans is consistent with its charge-off policy for other loans; impaired loans are charged-off when, in the opinion of management, all principal and interest due on the impaired loan will not be fully collected. Consistent with the Company's method for non-accrual loans, payments received on impaired loans are recognized as interest income or applied to principal when it is doubtful that full payment will be collected. For the years ended September 30, 2000 and 1999, the Company had no restructured loans.

7. INVESTMENTS

Investments are comprised of trading and available-for-sale debt and equity securities, as defined under the provisions of SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities*. Also included in investments are investments in entities in which the Company owns between 20% and 50%, which are accounted for under the equity method.

The carrying amounts of investments are shown below (in thousands):

	September 30,	
	2000	1999
Trading securities	\$ 3,867	\$ 38,269
Available-for-sale investment securities	841,002	684,055
Equity method and other investments	140,349	106,505
Total investments	\$985,218	\$828,829

For the years ended September 30, 2000, 1999 and 1998, the Company recognized \$4.1 million, \$1.4 million and \$569,000, respectively, in realized gains from the sale of trading assets, as well as \$195,000, (\$1.3 million) and (\$612,000), respectively, in unrealized appreciation (depreciation) of trading assets.

The cost basis and estimated fair values of available-for-sale investment securities at September 30, 2000 and 1999 are shown below (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Values
September 30, 2000:				
Equity securities	\$ 36,189	\$ 186,302	\$ (2,779)	\$ 219,712
Corporate bonds	288,245	2,739	(10,117)	280,867
US Government obligations	33,255	18	(427)	32,846
Money market funds	191,506	175	(315)	191,366
Commercial paper	66,617	61	(110)	66,568
Municipal bonds	15,005	40	(1,099)	13,946
Other investments	35,979	11	(293)	35,697
Total	\$ 666,796	\$ 189,346	\$ (15,140)	\$ 841,002
September 30, 1999:				
Equity securities	\$ 42,971	\$ 282,297	\$ (50)	\$ 325,218
Corporate bonds	157,530	235	(7,723)	150,042
US Government obligations	59,541	360	(426)	59,475
Money market funds	58,250	489	(236)	58,503
Commercial paper	46,499	391	(188)	46,702
Municipal bonds	30,539	126	(1,275)	29,390
Other investments	14,882	8	(165)	14,725
Total	\$ 410,212	\$ 283,906	\$ (10,063)	\$ 684,055

The contractual maturities of available-for-sale debt securities at September 30, 2000 are shown below (in thousands):

	Amortized Cost	Estimated Fair Values
Due within one year	\$ 328,736	\$ 329,299
Due within one to five years	49,074	49,635
Due within five to ten years	46,897	47,704
Due after ten years	205,900	194,652
Total	\$ 630,607	\$ 621,290

The gross realized gains and losses on available-for-sale investment securities that were sold in fiscal 2000 were \$134.0 million and \$68,000, respectively. The gross realized gains and losses on available-for-sale investment securities that were sold in fiscal 1999 were \$50.7 million and \$291,000, respectively. The gross realized gains and losses on available-for-sale investment securities that were sold in fiscal 1998 were \$1.3 million and \$8,000, respectively.

Equity Method and Other Investments

Equity method and other investments consist of (in thousands):

	September 30,	
	2000	1999
Equity method investments:		
Joint ventures	\$ 30,492	\$ 20,862
Venture funds	68,974	36,270
E*OFFERING	—	11,391
Other investments	40,883	37,982
Total equity method and other investments	\$ 140,349	\$106,505

In June 1998, the Company entered into a joint venture agreement with SOFTBANK CORP. to form E*TRADE Japan KK to provide online securities trading services to residents of Japan. As part of the transaction, the Company invested approximately \$8 million in exchange for a 42% ownership position in this joint venture. E*TRADE Japan KK issued shares to the public in an initial public offering in September 2000. Following E*TRADE Japan KK's initial public offering, the Company sold a portion of its investment recognizing a pre-tax gain of \$77.5 million, which was included in gain on sale of investments in non-operating income, reducing its ownership percentage from 42% to 32%.

In September 2000, the Company entered into a joint venture with Ernst & Young, LLP ("E&Y") to form eAdvisor to develop an online personalized financial advice and planning tool for individuals. As part of the transaction, the Company invested approximately \$7.6 million. E&Y and the Company each have a 50% ownership in this joint venture.

Venture Funds

The Company made a \$25.0 million contribution to the E*TRADE eCommerce Fund, L.P. (the "Fund") on October 1, 1999. The Fund has committed capital of approximately \$100.0 million, \$75.0 million of which was committed by third-party investors. The Fund invests in early to mid-stage Internet companies focused on e-commerce, infrastructure tools, communication and services. The Fund is managed by its General Partner, E*TRADE Ventures I, LLC (the "General Partner"). Christos M. Cotsakos, the Chairman of the Board of Directors and Chief Executive Officer of the Company, and Thomas A. Bevilacqua, the Company's Chief Strategic Investment Officer, are the managing members of the General Partner. The Company is a non-managing member of the General Partner. The General Partner receives an annual management fee of 1.75% of the total committed capital. The management fee is paid in its entirety to the Company and is used to offset the costs and expenses of its corporate development/strategic investment group. In addition, to the extent that the Fund generates profits, 20% are allocated to the General Partner as a carried interest. As a member of the General Partner, the Company is entitled to

receive 50% of such amount provided that up to one-fifth of the Company's interest can be allocated by the managing members to Company personnel.

The Company made a \$50.0 million capital commitment to the E*TRADE eCommerce Fund II, L.P. ("Fund II") as of June 16, 2000, of which \$1.0 million had been paid as of September 30, 2000. It is anticipated that Fund II will have total committed capital of between \$150-\$200 million, with all capital in excess of the E*TRADE contributions being raised from third parties. Fund II invests in early to mid-stage companies offering e-commerce related services, products or infrastructure. Fund II is managed by its General Partner, E*TRADE Ventures II, LLC ("General Partner II"). Christos M. Cotsakos, the Chairman of the Board of Directors and Chief Executive Officer, and Thomas A. Bevilacqua, the Company's Chief Strategic Investment Officer, are the managing members of General Partner II. The Company is a non-managing member of General Partner II. General Partner II receives an annual management fee of 1.75% of the total committed capital. The management fee is paid entirely to the Company and used to offset the costs and expenses of the Company's corporate development/strategic investment group. In addition, to the extent that Fund II generates profits, 25% are allocated to General Partner II as a carried interest. As a member of General Partner II, the Company is entitled to receive 32% of such amount provided that up to one-fifth of the Company's interest can be allocated by the managing members to associates of the Company.

The Company also has limited partnership interests in two other unrelated venture capital funds.

E*OFFERING

Included in equity method investments in fiscal 1999 is a 23.6% investment in E*OFFERING Corp. ("E*OFFERING"), a full service, Internet-based investment bank. On May 15, 2000, Wit Capital Group, Inc., renamed Wit Soundview Group, Inc. ("Wit"), entered into a definitive agreement to acquire E*OFFERING. Under the terms of the agreement, E*TRADE received approximately 10,532,000 shares of Wit common stock. Concurrently with this agreement, E*TRADE and Wit entered into a strategic alliance pursuant to which Wit will be the exclusive source of initial public offerings, follow-on offerings, and other investment banking products to E*TRADE for a five year term. As part of the consideration for the strategic alliance, Wit issued to E*TRADE approximately 4,026,000 shares of its common stock, which are subject to a three-year prohibition on

transfer. In a related transaction, E*TRADE also acquired Wit's retail brokerage business. In addition, Wit issued E*TRADE a warrant to purchase up to 2,000,000 shares of Wit common stock for \$10.25 per share. Finally, E*TRADE also purchased 2,000,000 shares of Wit common stock for \$10.25 per share pursuant to a stock purchase agreement. The transactions contemplated by the strategic alliance were contingent upon each other and on the closing of the acquisition of E*OFFERING by Wit, which occurred in October 2000.

Other Investments

The Company has also made investments in non-public, venture capital-backed high technology companies with which it does business and which provide Internet-based services, as well as venture capital funds. These investments represent less than 20% of the outstanding shares of these companies and are accounted for under the cost method.

8. PROPERTY AND EQUIPMENT—NET

Property and equipment—net consists of the following (in thousands):

	September 30,	
	2000	1999
Equipment	\$ 170,489	\$ 110,705
Software	157,753	75,208
Leasehold improvements	70,394	27,015
Land and buildings	36,452	13,765
Transportation	24,298	6,237
Furniture and fixtures	10,230	7,792
	469,616	240,722
Less accumulated depreciation and amortization	(135,354)	(59,047)
Total property and equipment—net	\$ 334,262	\$ 181,675

Included in property and equipment as of September 30, 2000 are gross capital leases of \$37.0 million. Total accumulated amortization of these leases as of September 30, 2000 was \$11.7 million. There were no material capital leases as of September 30, 1999. The capital lease liability is included in accounts payable, accrued and other liabilities on the balance sheet.

9. RELATED PARTY TRANSACTIONS

During fiscal 2000, the Company made relocation loans to three executive officers in the aggregate principal amount of \$9.8 million. The relocation loans accrue interest at the rates of between 6.2% and 6.8% per annum, and are collateralized by residential properties. The principal amounts of \$1.6 million, \$4.0 million, and \$4.2 million are due in March 2002, March 2005, and May 2005, respectively. Interest on the \$4.0 million and \$4.2 million loans begins to accrue in March 2003 and May 2003, respectively, and interest on the \$1.6 million loan begins to accrue immediately. Accrued interest on the loans is due upon loan maturity. Related party loans receivable are recorded in other assets.

During fiscal 2000, a wholly-owned subsidiary of the Company purchased a residential property that it leases to one of its executive officers with an option to buy. Rental income recorded in fiscal 2000 related to this property was not significant.

During fiscal 1998, the Company entered into a promissory note with Softbank Corporation, which has a 20% interest in the Company, for 567.0 million Japanese Yen (approximately \$4.1 million as of September 30, 2000). The promissory note accrues interest at 1.5% annually. The principal and accrued interest are due in January 2003.

10. BANKING DEPOSITS

The Bank initiates deposits directly with customers through contact over the Internet, phone, mail, and walk-in at its facility. Deposits are summarized as follows (dollars in thousands):

	Weighted Average Rate		Amount		Percent	
			September 30,			
	2000	1999	2000	1999	2000	1999
Demand accounts, non-interest-bearing	—%	—%	\$ 627	\$ 3,524	—%	0.2%
Demand accounts, interest-bearing	3.68%	3.86%	136,669	41,083	2.9	1.9
Money market	4.84%	4.80%	395,773	308,588	8.4	14.2
Passbook savings	2.48%	3.00%	477	646	—	0.1
Certificates of deposit	6.32%	5.88%	4,096,522	1,741,743	86.8	80.5
Brokered callable certificates of deposit	6.43%	6.62%	91,733	67,098	1.9	3.1

Total	\$ 4,721,801	\$2,162,682	100.0%	100.0%
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Certificates of deposit and money market accounts, classified by rates at September 30, 2000 and 1999 are as follows (in thousands):

	September 30,	
	2000	1999
Less than 4%	\$ 2,200	\$ 1,882
4 – 5.99%	687,983	1,440,573
6 – 7.99%	3,868,892	674,341
8 – 9.99%	24,941	610
Greater than 10%	12	23
Total	\$ 4,584,028	\$2,117,429

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At September 30, 2000, scheduled maturities of certificates of deposit and money market accounts are as follows (in thousands):

	Less than one year	1-2 years	2-3 years	3-4 years	4-5 years	5+ years	Total
Less than 4%	\$ 1,592	\$ 421	\$ 121	\$ 66	\$ —	\$ 2	\$ 2,202
4 – 5.99%	394,614	79,571	147,406	22,567	11,385	32,440	687,983
6 – 7.99%	405,818	2,155,790	544,006	263,289	25,949	474,038	3,868,890
8 – 9.99%	—	64	—	—	—	24,877	24,941
Greater than 10%	—	12	—	—	—	—	12
Total	\$802,024	\$2,235,858	\$691,533	\$285,922	\$37,334	\$531,357	\$4,584,028

The aggregate amount of certificates of deposit with denominations greater than or equal to \$100,000 was \$590.4 million and \$220.4 million at September 30, 2000 and 1999, respectively.

Interest expense on deposits in fiscal 2000, 1999 and 1998 is summarized as follows (in thousands):

	September 30,		
	2000	1999	1998
Money market	\$ 16,435	\$ 12,206	\$ 7,961
Passbook savings	12	17	16
Checking	2,501	688	46
Certificates of deposit	178,800	66,477	36,890
Brokered callable certificates of deposit	5,825	4,450	3,638
Total	\$ 203,573	\$ 83,838	\$ 48,551

Accrued interest payable on deposits at September 30, 2000 and 1999 was \$2.9 million and \$2.8 million, respectively.

11. BORROWINGS BY BANK SUBSIDIARY

Borrowings by bank subsidiary is comprised of FHLB advances and securities sold under agreements to repurchase ("REPO's"). The maturities of borrowings by bank subsidiary at September 30, 2000 are shown below (dollars in thousands):

Due in Fiscal:	September 30, 2000	Weighted Average Interest Rate
2001	\$ 877,000	6.55%
2002	160,000	6.11%

2003	300,000	6.33%
2004	100,000	6.89%
2005—Thereafter	200,000	6.95%
<hr/>		
Total FHLB advances	1,637,000	6.47%
Securities sold under REPO agreements	1,894,000	6.71%
<hr/>		
Total borrowings by bank subsidiary	\$ 3,531,000	

All advances are floating rate advances and adjust daily to the Federal Funds Rate or quarterly or semi-annually to the London InterBank Offering Rate ("LIBOR") rate. In 2000 and 1999, the advances were collateralized by a specific lien on mortgage loans in accordance with an "Advances, Specific Collateral Pledge and Security Agreement" with the FHLB of Atlanta, executed September 10, 1980. Under this agreement, the Bank is required to maintain qualified collateral equal to 120 to 160 percent of the Bank's FHLB advances, depending on the collateral type. As of September 30, 2000, and 1999, the Company secured these advances with an assignment of specific mortgage loan collateral from its loan and mortgage-backed security portfolio. These one- to four-family first mortgage whole loans and securities pledged as collateral totaled approximately \$2.6 billion and \$1.2 billion at September 30, 2000 and 1999, respectively. The Company is required to be a member of the FHLB System and to maintain an investment in the stock of the FHLB of Atlanta at least equal to the greater of one percent of the unpaid

principal balance of its residential mortgage loans, one percent of 30 percent of its total assets, or one-twentieth of its outstanding advances from the FHLB.

Information concerning borrowings under fixed- and variable-rate coupon repurchase agreements is summarized as follows (dollars in thousands):

	September 30,	
	2000	1999
Weighted average balance during the year (calculated on a daily basis)	\$1,471,435	\$ 555,552
Weighted average interest rate during the year (calculated on a daily basis)	6.39%	5.32%
Weighted average interest rate at year-end	6.71%	5.47%
Maximum month-end balance during the year	\$2,173,410	\$ 790,474
Balance at year-end	\$1,894,000	\$ 790,474
Mortgage-backed securities underlying the agreements as of the end of the year:		
Carrying value, including accrued interest	\$1,951,950	\$ 863,598
Estimated market value	\$1,933,630	\$ 832,397

The securities sold under repurchase agreements at September 30, 2000 are due in less than one year. The Company enters into sales of securities under agreements to repurchase the same securities. Repurchase agreements are collateralized by fixed and variable rate mortgage-backed securities or investment grade securities. Repurchase agreements are treated as financings, and the obligations to repurchase securities sold are reflected as a liability in the balance sheet. The dollar amount of securities underlying the agreement remains in the asset accounts. The securities underlying the agreements are Depository Trust Corporation and book entry securities, and the brokers retain possession of the securities collateralizing the repurchase agreements. If the counterparty in a repurchase agreement was to fail, the Company might incur an accounting loss for the excess collateral posted with the counterparty. As of September 30, 2000, there were no counterparties with which the Company's amount at risk exceeded 10% of the Company's shareowners' equity.

12. NOTES PAYABLE AND SHORT-TERM FUNDING

The principal source of financing for E*TRADE Securities' margin lending activity is cash balances in customers' accounts and financing obtained from other broker-dealers through E*TRADE Securities' stock loan program. E*TRADE Securities, also maintains financing facilities with banks totaling \$400.0 million to finance margin lending. There were no borrowings outstanding under these lines at September 30, 2000 and 1999.

In November 1999, the Company obtained a \$50 million line of credit under an agreement with a bank that expires in November 2000. The line of credit is collateralized by investment securities that are owned by the Company. Borrowings under the line of credit bear interest at 0.35% above LIBOR. The agreement requires the Company to meet certain financial covenants and management believes that the Company is in compliance with the financial covenants of its debt agreement as of September 30, 2000. The Company had \$22.2 million outstanding under this line of credit at September 30, 2000, which is included in accounts payable, accrued and other liabilities.

13. SUBORDINATED DEBT

In 1994, ETFC issued 17,250 units of subordinated debt at a price of \$17.3 million. The units each consisted of \$1,000 of 11.5% subordinated notes due in 2004 and 20 detachable warrants to purchase common stock at a price of \$1.91 per share. The total value of the 345,000 warrants resulted in an original issue discount on the subordinated debt in the amount of \$899,300. In June 1999, ETFC redeemed all of the outstanding \$17.3 million face amount of subordinated debt at a price of 105.75% of the principal amount plus accrued interest resulting in an extraordinary loss on the early extinguishment of debt totaling approximately \$1.3 million, net of tax.

In February 1997, ETFC sold \$29.9 million of units consisting of \$13.7 million in 9.5% senior subordinated notes with 198,088 detachable warrants, \$16.2 million in 4.0% convertible preferred stock, par value \$0.01 (the "Preferred Stock"), and rights to 205,563 contingent warrants. The non-contingent warrants, which in total entitle the bearers to purchase 831,969 shares of E*TRADE common stock, are exercisable at \$2.26 per share with an expiration date of February 28, 2005. The Preferred Stock converted to 5,038,906 shares of common stock upon consummation of ETFC's equity offering on July 28, 1998. The contingent warrants, which in total entitle the bearers to purchase 215,841 shares of E*TRADE common stock, may be exercised upon a change of control or at

any time after February 19, 2002. In June 1999, the Company redeemed all of the outstanding \$13.7 million face amount of subordinated debt at par. ETFC wrote off the remaining unamortized discount as an extraordinary loss on the early extinguishment of debt, totaling approximately \$691,000, net of tax.

On February 7, 2000, the Company completed a Rule 144A offering of \$500 million convertible subordinated notes due February 2007. On March 17, 2000, the initial purchasers exercised an option to purchase an additional \$150 million of notes. The notes are convertible, at the option of the holder, into a total of 27,542,373 shares of the Company's common stock at a conversion price of \$23.60 per share. The notes bear interest at 6%, payable semiannually, and are non-callable for three years and may then be called by the Company at a premium, which declines over time. The holders have the right to require redemption at a premium in the event of a change in control or other defined redemption event. The Company used \$145.0 million of the net proceeds to repay the outstanding balance on a line of credit in February 2000. Debt issuance costs of \$19.1 million are included in other assets and are being amortized to corporate interest expense over the term of the notes.

14. INCOME TAXES

The components of income tax expense (benefit) are as follows (in thousands):

	Years Ended September 30,		
	2000	1999	1998
Current:			
Federal	\$ 18,857	\$ 6,133	\$ 1,483
Foreign	7,571	254	237
State	4,086	1,110	(189)
Total current	30,514	7,497	1,531
Deferred:			
Federal	41,144	(30,522)	(229)
State	13,820	(8,263)	581
Total deferred	54,964	(38,785)	352
Income tax expense (benefit)	\$ 85,478	\$ (31,288)	\$ 1,883

The components of pre-tax income (loss) before minority interest in subsidiaries are as follows (in thousands):

	Years Ended September 30,		
	2000	1999	1998
Domestic	\$ 116,573	\$ (84,027)	\$ 2,901
Foreign	(12,124)	621	(58)
Total pre-tax income (loss)	\$ 104,449	\$ (83,406)	\$ 2,843

Deferred income taxes are recorded when revenues and expenses are recognized in different periods for financial statement and tax return purposes. The temporary differences and tax carryforwards that created deferred tax assets (liabilities) are as follows (in thousands):

September 30,	
2000	1999

Deferred tax assets:		
Reserves and allowances	\$ 4,013	\$ 4,519
Net operating loss carryforwards	57,232	80,415
Depreciation and amortization	1,543	1,188
Deferred compensation	3,146	1,373
Capitalized technology development	7,433	5,290
General loan loss	3,591	—
Undistributed earnings in subsidiaries	5,563	5,261
Alternative minimum tax credit	1,680	1,997
Other	3,455	2,530
Total deferred tax assets	87,656	102,573
Deferred tax liabilities:		
Internally developed software	(2,857)	(1,709)
Acquired intangibles	(6,746)	—
Basis difference in investments	(43,511)	(109,054)
Purchased software	(3,024)	(3,024)
Other	(463)	(304)
Total deferred tax liabilities	(56,601)	(114,091)
Valuation allowance	(10,537)	(1,629)
Net deferred tax asset (liability)	\$ 20,518	\$ (13,147)

The Company recorded a valuation allowance of \$10.5 million and \$1.6 million for the deferred tax assets at September 30, 2000 and 1999, respectively, as full realization of net operating loss carry forwards is not expected in certain foreign countries.

The effective tax rates differed from the federal statutory rates as follows:

	Years Ended September 30,		
	2000	1999	1998
Federal statutory rate	35.0%	(35.0)%	35.0%
State income taxes, net of federal tax benefit	5.8	(5.9)	4.7
Income of Subchapter S corporation	—	—	19.4
Nondeductible acquisition costs	12.6	3.3	7.2
Tax-exempt interest	(0.3)	(1.7)	(38.1)
Difference between statutory rate and foreign effective tax rate	10.3	(44.2)	(10.0)
Amortization of goodwill	7.4	0.7	6.6
Change in valuation allowance	8.5	—	—
VERSUS—tax benefit of losses and timing differences not recognized	—	44.4	42.6
Other	2.5	0.9	(1.2)
Effective tax rate	81.8%	(37.5)%	66.2%

The Company has not provided deferred income taxes on approximately \$25.1 million of undistributed earnings in its foreign subsidiaries at September 30, 2000 as it is the Company's intention to permanently reinvest such earnings.

At September 30, 2000, the Company had net operating loss carryforwards of approximately \$136.9 million for federal income tax purposes. These carryforwards expire through 2019. The extent to which the loss carryforwards can be used to offset future taxable income may be limited, depending on the extent of ownership changes within any three-year period.

15. MANDATORILY REDEEMABLE PREFERRED SECURITIES

On April 30, 1996, TIR issued 3,000,000, 8% cumulative redeemable preference shares, \$1 par, which were redeemable at par value from time to time or, if not previously redeemed, on April 30, 2001. These shares were redeemed upon the closing of the TIR acquisition on August 31, 1999. Dividend payments on the 8% cumulative preference shares are included within retained earnings (deficit) and are deducted from net income or added to net loss when computing income (loss) applicable to common stock.

In June 1997, ETFC formed Telebank Capital Trust I ("TCT I"), which in turn sold, at par, 10,000 shares of trust preferred securities, Series A, liquidation amount of \$1,000, for a total of \$10.0 million. TCT I is a business trust formed for the purpose of issuing capital securities and investing the proceeds in junior subordinated debentures issued by ETFC. The trust preferred securities mature in 2027 and have an annual dividend rate of 11.0%, or \$1.1 million, payable semi-annually. The net proceeds were used for general corporate purposes, including to fund the Bank operations and the creation and expansion of its financial service and product operations.

In May 1999, ETFC purchased \$1.0 million face amount of TCT I trust preferred securities on the open market at a price of 112.5%. ETFC deemed these repurchased securities to be retired and, therefore, wrote off the resulting premium and a proportionate share of the discount on TCT I securities against additional paid-in-capital.

In July 1998, ETFC formed Telebank Capital Trust II ("TCT II"), a business trust formed solely for the purpose of issuing capital securities. TCT II sold, at par, 1,100,000 shares of Beneficial Unsecured Securities, Series A, (the "BLUSSM"), with a liquidation amount of \$25, for a total of \$27.5 million and invested the net proceeds in ETFC's 9.0% Junior Subordinated Deferrable Interest Debentures, Series A. The BLUSSM, mature in 2028 and have an annual dividend rate of 9.0%, payable quarterly, beginning in September 1998. The net proceeds were used for ETFC's general corporate purposes, which include funding ETFC's continued growth and augmenting working capital.

In June and July 1999, ETFC purchased a total of \$4.1 million face amount of TCT II trust preferred securities on the open market at par. ETFC deemed these repurchased securities to be retired and, therefore, wrote off a proportionate share of the discount on TCT II securities against additional paid-in capital.

All of the capital securities of TCT I and TCT II (together the "Trusts") are owned by ETFC. The guarantees for the Trusts, together with obligations under the trust agreements as assumed in the Company's acquisition of ETFC, and the indenture and junior subordinated debentures, constitute a full, irrevocable and unconditional guarantee by the Company of the capital securities issued by TCT I and TCT II.

16. SHAREOWNERS' EQUITY

Shares Exchangeable into Common Stock

In August 2000, EGI Canada Corporation issued approximately 9,354,000 Exchangeable Shares in connection with the Company's acquisition of VERSUS (See Note 3). Holders of Exchangeable Shares have dividend, voting, and other rights equivalent to those of E*TRADE's common shareowners. Exchangeable Shares may be exchanged at any time, at the option of the holder, on a one-for-one basis for E*TRADE common stock. The Company may redeem all outstanding Exchangeable Shares for E*TRADE common stock after August 23, 2005 or earlier under certain circumstances.

During fiscal 2000, approximately 3,734,000 Exchangeable Shares were converted to E*TRADE common stock. At September 30, 2000, approximately 5,620,000 Exchangeable Shares were outstanding.

Stock Issuances

In July and August 1999, ETFC sold 10,867,500 shares of common stock to the public at an offering price of \$6.90. Simultaneously, pursuant to a conversion agreement dated May 15, 1998, ETFC's 29,900 outstanding shares of preferred stock converted to 5,038,906 shares of common stock, upon consummation of ETFC's equity offering on July 28, 1998. In addition, upon the conversion, ETFC issued a special dividend in the amount of 251,948 shares of common stock to the holders of the preferred stock.

In July 1998, the Company sold 62,600,000 shares of common stock to SOFTBANK Holdings, Inc. for an aggregate purchase price of \$400 million.

In March 1999, VERSUS raised aggregate net proceeds of \$30.7 million in a public offering in Canada.

Stock Option Plans

The Company's stock option plans provide for the granting of nonqualified or incentive stock options to officers, directors, key associates and consultants for the purchase of shares of the Company's common stock at a price determined by the board of directors at the date the option is granted. The options are generally exercisable ratably over a four-year period from the date the option is granted and expire within ten years from the date of grant.

In July 1996, the shareowners of the Company approved the 1996 Stock Incentive Plan (the "1996 Plan") and reserved 16,000,000 shares of common stock for future grants. In addition, all shares then currently reserved to the predecessors to the 1996 Plan were incorporated into the 1996 Plan. The 1996 Plan has been subsequently amended by the shareowners to increase the maximum number of shares of common stock authorized for issuance under the plan to 46,500,000 shares. Following adoption, no additional grants may be made under any prior plans. The 1996 Plan is divided into five components: the Discretionary Option Grant Program, the Salary Investment Option Grant Program, the Stock Issuance Program, the Automatic Option Grant Program and the Director Fee Option Grant Program. Under the Discretionary Option Grant Program, options may be granted to purchase shares of common stock at an exercise price not less than the fair market value of those shares on the grant date to eligible associates. The Salary Investment Option Grant Program allows executive officers and other highly compensated associates the opportunity to apply a portion of their base salary to the acquisition of special below-market stock option grants. The Stock Issuance Program allows for individuals to be issued shares of common stock directly through the purchase of such shares at a price not less than the fair market value of those shares at the time of issuance or as a bonus tied to the performance of services. The Director Fee Option Grant Program provides each non-associate Board member the opportunity to apply all or a portion of any annual retainer fee otherwise payable in cash to the acquisition of a below-market stock option grant. Under the Automatic Option Grant Program, options are automatically granted at periodic intervals to eligible non-associate members of the board of directors to purchase shares of common stock at an exercise price equal to the fair market value of those shares on the grant date. The Salary Investment Option Grant Program and the Director Fee Option Grant Program have each been activated for the first time to allow for the granting of such options in calendar year 2001. The Company has also assumed option plans as a result of several acquisitions during the year. No additional grants will be made under these plans.

A summary of stock option activity follows (in thousands, except per share amounts):

	Number of Shares	Weighted Average Exercise Price
Outstanding at September 30, 1997	28,340	\$ 2.69
Granted	16,035	\$ 5.50
Exercised	(3,642)	\$ 1.43
Canceled	(2,028)	\$ 4.53
Outstanding at September 30, 1998	38,705	\$ 3.88
Granted	10,811	\$ 10.67
Exercised	(8,020)	\$ 2.25
Canceled	(1,410)	\$ 8.57
Outstanding at September 30, 1999	40,086	\$ 7.59
Granted	16,438	\$ 20.71
Exercised	(9,747)	\$ 4.25
Canceled	(6,796)	\$ 15.28
Outstanding at September 30, 2000	39,981	\$ 12.50

	September 30,		
	2000	1999	1998
Options available for grant	4,261	20,394	29,015
Options exercisable	16,799	11,798	9,851
Options exercisable weighted average exercise price	\$ 9.57	\$ 3.95	\$ 2.75

Included in the above table as of September 30, 2000 are 500,000 stock options issued and outstanding outside the 1996 Plan, which were granted below fair market value. Such options were immediately vested. Accordingly, the Company recorded expense of \$4.9 million for the estimated fair value of these options. The weighted average fair value and the weighted average exercise price of these option grants in fiscal 2000 were \$13.55, and \$13.00, respectively. These options expire at various dates in 2009 and 2010.

Also included in the above table as of September 30, 2000 are 800,000 warrants issued and outstanding outside the 1996 Plan, which were granted to two consultants at \$4.25 per share during fiscal 1999. Such warrants were immediately vested. Accordingly, the Company recorded expense of \$2.2 million for the estimated fair value of these options.

On October 22, 1998, the Company implemented an option cancellation/regrant program pursuant to which associates who held outstanding stock options with an exercise price in excess of \$4.25 per share were able to cancel the previously issued options and receive the same number of new options at an exercise price of \$4.25, the closing price of the Company's common stock on October 22, 1998. Each new option has a maximum term of ten years, subject to earlier termination upon the optionee's cessation of service, and will become exercisable in a series of four successive equal annual installments over the optionee's period of continued service which the Company measured from October 22, 1998, the regrant date. Options covering a total of 14,422,604 shares of the Company's common stock were cancelled and regranted under the program. The cancellation and regranting of such shares has been excluded from the stock option activity schedule above.

The following table summarizes information on outstanding and exercisable stock options as of September 30, 2000:

	Options Outstanding			Options Exercisable	
	Number Outstanding as of 9/30/00 (in thousands)	Weighted Average Contractual Life (Years)	Weighted Average Exercise Price	Number Exercisable as of 9/30/00 (in thousands)	Weighted Average Exercise Price
\$0.10—\$2.63	6,203	5.61	\$ 1.30	4,801	\$ 1.27
\$2.64—\$5.00	11,032	7.68	\$ 4.25	4,200	\$ 4.35
\$5.08—\$8.02	3,516	7.84	\$ 7.46	2,467	\$ 6.74
\$8.44—\$15.57	5,050	9.46	\$ 14.32	1,117	\$ 13.83
\$15.59—\$30.00	13,171	9.20	\$ 23.89	4,069	\$ 24.00
\$30.39—\$58.75	1,009	8.92	\$ 38.92	145	\$ 45.77

\$0.10—\$58.75	39,981	8.12 \$	12.50	16,799 \$	9.57
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Stock Purchase Plan

In July 1996, the shareowners of the Company approved the 1996 Stock Purchase Plan (the "Purchase Plan"), and reserved 2,600,000 shares of common stock for sale to associates at a price no less than 85% of the lower of the fair market value of the common stock at the beginning of the two-year offering period or the end of each of the six-month purchase periods. At September 30, 2000, 905,989 shares were available for purchase under the Purchase Plan.

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Additional Stock Plan Information

In accordance with SFAS No. 123, the Company applied APB Opinion 25 and related interpretations in accounting for its stock option plans, and accordingly does not record compensation costs on grants to associates. If the Company had elected to recognize compensation cost based on the fair value of the option granted at the grant date as prescribed by SFAS No. 123, net income (loss) and income (loss) per share, basic and diluted, would have been reduced (increased) to the pro forma amounts shown below (in thousands, except per share amounts):

	Years Ended September 30,		
	2000	1999	1998
As Reported			
Net income (loss)	\$ 19,152	\$ (56,769)	\$ (402)
Income (loss) per share-basic	\$ 0.06	\$ (0.21)	\$ (0.01)
Income (loss) per share-diluted	\$ 0.06	\$ (0.21)	\$ (0.01)
Pro Forma			
Net loss	\$ (108,913)	\$ (131,877)	\$ (25,745)
Loss per share-basic	\$ (0.36)	\$ (0.48)	\$ (0.13)
Loss per share-diluted	\$ (0.36)	\$ (0.48)	\$ (0.13)

The Company's calculations were made using the minimum value method and Black-Scholes option pricing models with the following weighted average assumptions applied to grants made in the fiscals:

	Years Ended September 30,		
	2000	1999	1998
Dividend yield	—	—	—
Expected volatility	85%	105%	75%
Risk-free interest rate	6%	6%	6%
Expected life of option following vesting (in months)	17	12	12

Under SFAS No. 123, the fair value of stock-based awards to associates is calculated using option pricing models, even though such models were developed to estimate the fair value of freely tradable, fully transferable options without vesting restrictions, which significantly differ from the Company's stock option awards. These models also require subjective assumptions, including future stock price volatility and expected time to exercise, which greatly affect the calculated values.

The Company's calculations are based on a multiple option valuation approach and forfeitures are recognized as they occur. The valuations of the computed weighted average fair values of option grants under SFAS No. 123 in fiscal 2000, 1999 and 1998 were \$12.78, \$8.41 and \$2.95, respectively.

Retirement Plans

The Company has a 401(k) salary deferral program for eligible associates who have met certain service requirements. The Company matches certain associate contributions; additional contributions to this plan are at the discretion of the Company. Total contribution expense under this plan for the years ended September 30, 2000, 1999 and 1998 was \$3.3 million, \$1.6 million and \$570,000, respectively.

Employee Stock Ownership Plan

ETFC sponsored an Employee Stock Ownership Plan ("ESOP"). All employees of ETFC who met limited qualifications participated in the ESOP. Under the ESOP, ETFC made contributions to a separate trust fund maintained exclusively for the benefit of those employees who became participants. The ESOP previously borrowed from ETFC and used the proceeds to acquire common stock. The ESOP shares initially were pledged as collateral for its debt to ETFC. As the debt is repaid, shares are released from collateral and allocated to active employees, based on the proportion of debt service paid in the year. Accordingly, the shares pledged as collateral are reported as unearned ESOP shares in the balance sheet. As shares are released from collateral, the Company reports compensation expense equal to the current market price of the shares. As of September 30, 2000 and 1999, the ESOP owned 688,791 and 935,432 shares, respectively, of the Company's common stock, with approximately 614,722 and 501,438 shares allocated, respectively. As of September 30, 2000 and 1999, the fair value of unearned

shares held by the ESOP was \$3.6 million and \$9.0 million, respectively. Compensation expense was \$1.8 million, \$3.3 million and \$391,000 for the years ended September 30, 2000, 1999 and 1998, respectively. Following the Company's acquisition of ETFC, no new employees are eligible for participation in the ESOP.

Shareowner Notes Receivable

During fiscal 2000, the Company made full recourse loans to several of its executive officers in the aggregate principal and interest amount of \$19.1 million. The proceeds of these loans were used to fund the purchase of shares of E*TRADE common stock for the exercise and hold of stock options. The loans accrue interest at the rate of 7.75% per annum. The principal amount and accrued interest on the shareowners' notes receivable are due through July 2001.

17. INCOME (LOSS) PER SHARE

The following table sets forth the computation of the numerator and denominator used in the computation of basic and diluted income (loss) per share (in thousands):

	2000		1999	1998
	Basic Income Per Share	Diluted Income Per Share	Basic Loss Per Share	Basic Loss Per Share
Numerator:				
Income (loss) before cumulative effect of accounting change and extraordinary loss	\$ 19,152	\$ 19,152	\$ (54,315)	\$ (402)
Premium on redemption of trust preferred securities (1)	—	—	(410)	—
Preferred stock dividends	—	—	(222)	(2,352)
Income (loss) before cumulative effect of accounting change and extraordinary loss applicable to common stock	19,152	19,152	(54,947)	(2,754)
Cumulative effect of accounting change, net of tax	—	—	(469)	—
Extraordinary loss on early extinguishment of subordinated debt, net of tax	—	—	(1,985)	—
Income (loss) applicable to common stock	\$ 19,152	\$ 19,152	\$ (57,401)	\$ (2,754)
Denominator:				
Weighted average shares outstanding	301,926	301,926	272,832	195,051
Dilutive effect of options issued to associates	—	16,330	—	—
Dilutive effect of warrants outstanding	—	1,080	—	—
	301,926	319,336	272,832	195,051

- (1) This charge represents costs incurred to purchase certain of the Company's trust preferred securities on the open market. The costs were charged against additional paid-in capital but increase the net loss for earnings per share purposes (see Note 15).

Because the Company reported a net loss in fiscal 1999 and 1998, the calculation of diluted earnings per share does not include common stock equivalents as they are anti-dilutive, resulting in a reduction of loss per share. If the Company had reported net income in fiscal 1999 and 1998, there would have been 22,803,000 and 13,445,000 additional shares for options outstanding, respectively, and 1,626,000 and 1,699,000 additional shares for warrants outstanding, respectively, and 0 and 2,873,000 additional shares for convertible preferred stock, respectively, outstanding in the calculation of diluted earnings per share.

The following options to purchase shares of common stock have not been included in the computation of diluted income (loss) per share because the options' exercise price was greater than the average market price of the Company's common stock for the following years stated, and therefore, the effect would be anti-dilutive (in thousands, except exercise price data):

September 30,

	2000	1999	1998
Options excluded from computation of diluted income (loss) per share	10,371	363	6,946
Exercise price ranges:			
High	\$ 58.75	\$ 58.75	\$ 9.34
Low	\$ 22.72	\$ 26.22	\$ 6.22

18. REGULATORY REQUIREMENTS

E*TRADE Securities is subject to the Uniform Net Capital Rule (the "Rule") under the Securities Exchange Act of 1934 administered by the Securities and Exchange Commission ("SEC") and the National Association of Securities Dealers Regulation, Inc. ("NASDR"), which requires the maintenance of minimum net capital. E*TRADE Securities has elected to use the alternative method permitted by the Rule, which requires that the Company maintain minimum net capital equal to the greater of \$250,000 or two percent of aggregate debit balances arising from customer transactions, as defined. E*TRADE Securities had amounts in relation to the Rule as follows (dollars in thousands):

	September 30,	
	2000	1999
Net capital	\$479,036	\$162,729
Percentage of aggregate debit balances	9.2%	6.2%
Required net capital	\$103,747	\$ 52,206
Excess net capital	\$375,289	\$110,523

Under the alternative method, a broker-dealer may not repay subordinated borrowings, pay cash dividends or make any unsecured advances or loans to its parent or employees if such payment would result in net capital of less than 5% of aggregate debit balances or less than 120% of its minimum dollar amount requirement.

TIR's and VERSUS' brokerage subsidiary companies and the Company's international subsidiaries are also subject to net capital requirements. These companies are located in the United States, Canada, South Africa, Australia, Europe, and Southeast Asia, and have various and differing capital requirements, all of which were met at September 30, 2000 and 1999. The aggregate net capital, required net capital, and excess net capital of these companies at September 30, 2000, is \$48.4 million, \$18.5 million, and \$29.9 million, respectively.

ETFC's registered broker-dealer subsidiary, ETCM, is also subject to the Rule and is required to maintain net capital equal to the greater of \$100,000 or 6.67% of aggregate indebtedness, as defined. The Rule also requires that the ratio of aggregate indebtedness to net capital shall not exceed 15 to 1.

The table below summarizes the minimum capital requirements for the Company's U.S. brokerage subsidiary companies (in thousands):

	September 30, 2000			September 30, 1999		
	Required Net Capital	Net Capital	Excess Net Capital	Required Net Capital	Net Capital	Excess Net Capital
TIR Securities, Inc	\$ 250	\$ 1,161	\$ 911	\$ 82	\$ 2,289	\$ 2,207
TIR Investor Select, Inc	\$ 5	\$ 351	\$ 346	\$ 5	\$ 254	\$ 249
Marquette Securities, Inc	\$ 250	\$ 536	\$ 286	\$ 250	\$ 445	\$ 195
E*TRADE Capital Markets, Inc	\$ 113	\$ 21,774	\$ 21,661	\$ 190	\$ 17,310	\$ 17,120
VERSUS Brokerage Services (U.S.), Inc.	\$ 100	\$ 233	\$ 133	\$ 100	\$ 233	\$ 133

The Bank is subject to various regulatory capital requirements administered by the federal banking agencies. Failure to meet minimum capital requirements can initiate certain mandatory—and possibly additional discretionary—actions by regulators that, if undertaken, could have a direct material effect on the Bank's financial

statements. Under capital adequacy guidelines and the regulatory framework for prompt corrective action, the Bank must meet specific capital guidelines that involve quantitative measures of the Bank's assets, liabilities, and certain off-balance-sheet items as calculated under regulatory accounting practices. The Bank's capital amounts and classification are also subject to qualitative judgments by the regulators about components, risk weightings, and other factors.

Quantitative measures established by regulation to ensure capital adequacy require the Bank to maintain minimum amounts and ratios of total and Tier I capital to risk-weighted assets and of Tier I capital to average assets. Management believes, as of September 30, 2000, that the Bank meets all capital adequacy requirements to which it is subject. As of September 30, 2000 and 1999, the Office of Thrift Supervision categorized the Bank as well capitalized under the regulatory framework for prompt corrective action. To be categorized as well capitalized the Bank must maintain minimum total risk-based, Tier I risk-based and Tier I leverage ratios as set forth in the following table. There are no conditions or events since that notification that management believes have changed the institution's category.

The Bank's actual capital amounts and ratios are presented in the table below (dollars in thousands):

	Actual		Required for Capital Adequacy Purposes		Required to be Well Capitalized Under Prompt Corrective Action Provisions	
	Amount	Ratio	Amount	Ratio	Amount	Ratio
As of September 30, 2000:						
Core Capital (to adjusted tangible assets)	\$ 582,058	6.5%	>\$ 359,874	>	4.0%	\$ 449,843 > 5.0%
Tangible Capital (to tangible assets)	\$ 582,058	6.5%	>\$ 134,953	>	1.5%	N/A N/A
Tier I Capital (to risk weighted assets)	\$ 582,058	16.8%	N/A	N/A	\$ 207,890	> 6.0%
Total Capital (to risk weighted assets)	\$ 592,597	17.1%	>\$ 277,186	>	8.0%	\$ 346,483 > 10.0%
As of September 30, 1999:						
Core Capital (to adjusted tangible assets)	\$ 440,469	11.2%	>\$ 157,320	>	4.0%	>\$ 196,651 > 5.0%
Tangible Capital (to tangible assets)	\$ 440,469	11.2%	>\$ 58,995	>	1.5%	N/A N/A
Tier I Capital (to risk weighted assets)	\$ 440,469	25.9%	N/A	N/A	>\$ 101,768	> 6.0%
Total Capital (to risk weighted assets)	\$ 447,170	26.3%	>\$ 135,691	>	8.0%	>\$ 169,614 > 10.0%

The Bank is subject to certain restrictions on the amount of dividends it may declare without prior regulatory approval. At September 30, 2000, approximately \$137.2 million of the Bank's retained earnings was available for dividend declaration.

19. LEASE ARRANGEMENTS

The Company has facilities in Menlo Park, California, Rancho Cordova, California and Alpharetta, Georgia. Through ClearStation, TIR, and the Bank, the Company also leases facilities in California, New York, Virginia, New Jersey, Australia, Hong Kong, Ireland, the Philippines and the United Kingdom.

The Company has non-cancelable operating leases for facilities through 2025 and operating leases for equipment through 2013. Future minimum rental commitments under these leases at September 30, 2000 are as follows (in thousands):

Fiscal years ending September 30:

2001	\$ 53,646
2002	49,854
2003	49,220
2004	43,211
2005	32,655
Thereafter	176,184
Future minimum lease payments	\$ 404,770

Certain leases contain provisions for renewal options and rent escalations based on increases in certain costs incurred by the lessor. Rent expense for the years ended September 30, 2000, 1999 and 1998 was \$43.6 million, \$37.1 million and \$22.0 million, respectively.

20. COMMITMENTS, CONTINGENCIES AND OTHER REGULATORY MATTERS

The Company is a defendant in civil actions arising from the normal course of business. These include six putative class actions alleging various causes of action for "unfair or deceptive business practices" that were filed against the Company between November 21, 1997, and April 14, 1999, as a result of various systems interruptions the Company previously experienced.

To date, none of these putative class actions has been certified, and the Company believes that the foregoing claims are without merit and intends to defend against them vigorously. An unfavorable outcome in any of these matters for which the Company's pending insurance claims are rejected could have a material adverse effect on the Company's business, financial condition and results of operations. In addition, even if the ultimate outcomes are resolved in the Company's favor, the defense of such litigation could entail considerable cost and the diversion of efforts of management, either of which could have a material adverse effect on the Company's results of operations.

From time to time, the Company has been threatened with, or named as a defendant in, lawsuits, arbitrations and administrative claims. Compliance and trading problems that are reported to regulators such as the SEC or the NASDR by dissatisfied customers or others are investigated by such regulators, and may, if pursued, result in formal arbitration claims being filed against the Company by customers and/or disciplinary action being taken against the Company by regulators. Any such claims or disciplinary actions that are decided against the Company could have a material adverse effect on the Company's business, financial condition and results of operations. The Company is also subject to periodic regulatory audits and inspections.

The securities industry is subject to extensive regulation under federal, state and applicable international laws. As a result, the Company is required to comply with many complex laws and rules and its ability to so comply is dependent in large part upon the establishment and maintenance of a qualified compliance system.

The Company maintains insurance in such amounts and with such coverage, deductibles and policy limits as management believes are reasonable and prudent. The principal risks that the Company insures against are comprehensive general liability, commercial property damage,

hardware/software damage, directors and officers, Fidelity (crime) Bond, and errors and omissions liability. The Company believes that such insurance coverage is adequate for the purpose of its business.

The Company has entered into employment agreements with several of its key executive officers. These employment agreements provide for annual base salary compensation, stock option acceleration and severance payments in the event of termination of employment under certain defined circumstances, or change in the Company's control. Base salaries are subject to adjustments according to the Company's financial performance.

21. FINANCIAL INSTRUMENTS WITH OFF-BALANCE-SHEET CREDIT RISK AND CONCENTRATIONS OF CREDIT RISK

The Company is party to a variety of interest rate caps, floors and swaps to manage interest rate exposure. The Company enters into interest rate swap agreements to assume fixed-rate interest payments in exchange for variable market-indexed interest payments. The effect of these agreements is to lengthen short-term variable rate liabilities into longer-term fixed-rate liabilities or to shorten long-term fixed rate assets into short-term variable rate assets. The interest rate swaps are specifically designated to specific liabilities or assets at their acquisition. The net payments of these agreements are charged to interest expense or interest income, depending on whether the agreement is designated to hedge a liability or an asset.

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Interest rate swap agreements are summarized as follows (dollars in thousands):

	Years Ended September 30,	
	2000	1999
Weighted average fixed rate payments	6.87%	6.18%
Weighted average original term	4.3 yrs	4.0 yrs
Weighted average remaining term	3.5 yrs	3.4 yrs
Weighted average variable rate obligation	6.70%	5.44%
Notional amount	\$ 4,702,305	\$ 1,448,000

The counterparties to the interest rate swap agreements described above are Bank of America, Salomon Smith Barney, Goldman Sachs, Deutsche Bank, Lehman Brothers, and Nomura. Credit-related losses can occur in the event of non-performance by the counterparties to the derivative financial instruments. The credit risk that results from interest rate swaps, interest rate floors and interest rate caps is represented by the fair value of contracts that have positive value at the reporting date. As of September 30, 2000, the credit risk associated with Bank of America, Salomon Smith Barney, and Goldman Sachs was \$9.5 million, \$6.1 million and \$1.9 million, respectively. The interest rate swap agreements described above required the Company to pledge approximately \$37.8 million in securities as collateral.

The Company enters into interest rate cap and floor agreements to hedge outstanding mortgage loans, mortgage-backed securities, FHLB advances and repurchase agreements. Under the terms of the interest rate cap agreements, the Company generally would receive an amount equal to the difference between the applicable interest rate index and the strike rate for the cap or floor, multiplied by the notional amount. Premiums paid for the caps and floors are amortized into expense based on the term of the agreement. The interest rate agreements are summarized as follows (dollars in millions):

	Notional Balance	Maturity Date
Cap Strike Rate		
5.0%-5.9%	\$ 300	October 2000
7.0%-7.9%	\$ 2,775	October 2001 – June 2005
Floor Strike Rate		
5.0%	\$ 25	May 2001

The counterparties to the interest rate cap agreements described above are Deutsche Bank, Goldman Sachs, Salomon Smith Barney, and Bank of America. As of September 30, 2000, the credit risk associated with the aforementioned counterparties was \$12.0 million, \$6.8 million, \$1.5 million and \$1.4 million, respectively. The credit risk is attributable to the unamortized cap premium and any amounts due from the counterparty as of September 30, 2000.

During the years ended September 30, 2000 and 1999, all derivative activities presented above relate to designated hedging relationships. On September 30, 2000 certain hedging relationships were terminated and the resultant derivatives are reported at fair market value as freestanding derivatives. Of these derivatives, \$1.9 billion notional, were undesignated as of September 30, 2000.

The Company's customer securities activities are transacted on either a cash or margin basis. In margin transactions, the Company extends credit to the customer, subject to various regulatory and internal margin requirements, collateralized by cash and securities in the customer's account. As customers write option contracts or sell securities short, the Company may incur losses if the customers do not fulfill their obligations and the collateral in customer accounts is not sufficient to fully cover losses which customers may incur from these strategies. To control this risk, the Company monitors required margin levels daily, and customers are required to deposit additional collateral, or reduce positions, when necessary.

Through its broker-dealer subsidiaries, the Company loans securities temporarily to other brokers in connection with its securities lending activities. The Company receives cash as collateral for the securities loaned. Increases in security prices may cause the market value of the securities loaned to exceed the amount of cash received as collateral. In the event the counterparty to these transactions does not return the

loaned securities, the Company may be exposed to the risk of acquiring the securities at prevailing market prices in order to satisfy its

customer obligations. The Company controls this risk by requiring credit approvals for counterparties, by monitoring the market value of securities loaned on a daily basis and by requiring deposits of additional cash as collateral when necessary.

The Company is obligated to settle transactions with brokers and other financial institutions even if its customers fail to meet their obligations to the Company. Customers are required to complete their transactions on settlement date, generally three business days after trade date. If customers do not fulfill their contractual obligations, the Company may incur losses. The Company has established procedures to reduce this risk by requiring that customers deposit cash and/or securities into their account prior to placing an order.

The Company may at times maintain inventories in equity securities on both a long and short basis. While long inventory positions represent the Company's ownership of securities, short inventory positions represent obligations of the Company. Accordingly, both long and short inventory positions may result in losses or gains to the Company as market values of securities fluctuate. To mitigate the risk of losses, long and short positions are marked to market daily and are continuously monitored by the Company.

22. FAIR VALUE DISCLOSURE OF FINANCIAL INSTRUMENTS

The fair value information for financial instruments that is provided below is based on the requirements of SFAS No. 107, *Disclosure About Fair Value of Financial Instruments*. Much of the information used to determine fair value is subjective and judgmental in nature. Therefore, fair value estimates, especially for less marketable securities, may vary. In addition, the amounts actually realized or paid upon settlement or maturity could be significantly different. The following methods and assumptions were used to estimate the fair value of each class of financial instrument for which it is reasonable to estimate that value:

Cash and interest-bearing deposits—Fair value is estimated to be carrying value.

Investment securities—Fair value is estimated by using quoted market prices for most securities. For illiquid securities, market prices are estimated by obtaining market price quotes on similar liquid securities and adjusting the price to reflect differences between the two securities, such as credit risk, liquidity, term coupon, payment characteristics, and other information.

Brokerage receivables-net—Fair value is estimated to be carrying value.

Mortgage-backed securities—Fair value is estimated using quoted market prices. For illiquid securities, market prices are estimated by obtaining market price quotes on similar liquid securities and adjusting the price to reflect differences between the two securities, such as credit risk, liquidity, term coupon, payment characteristics, and other information.

Loans receivable—For certain residential mortgage loans, fair value is estimated using quoted market prices for similar types of products. The fair value of certain other types of loans is estimated using quoted market prices for securities backed by similar loans. The fair value for loans that could not be reasonably established using the previous two methods was estimated by discounting future cash flows using current rates for similar loans. Management adjusts the discount rate to reflect the individual characteristics of the loan, such as credit risk, coupon, term, payment characteristics, and the liquidity of the secondary market for these types of loans.

Trading securities—Fair value is estimated using quoted market prices. For illiquid securities, market prices are estimated by obtaining market price quotes on similar securities and adjusting the price to reflect differences between the two securities, such as credit risk, liquidity, term, coupon, payment characteristics, and other information.

Brokerage payables—Fair value is estimated to be carrying value.

Retail deposits—For passbook savings, checking and money market accounts, fair value is estimated at carrying value. For fixed maturity certificates of deposit, fair value is estimated by discounting future cash flows at the currently offered rates for deposits of similar remaining maturities.

Brokered callable certificates of deposit—Fair value is estimated by discounting future cash flows at the currently offered rates for deposits of similar remaining maturities.

Advances from the FHLB of Atlanta—For adjustable rate advances, fair value is estimated at carrying value. For fixed rate advances, fair value is estimated by discounting future cash flows at the currently offered rates for fixed-rate advances of similar remaining maturities.

Securities sold under agreements to repurchase—Fair value is estimated using carrying value. The interest rate on the repurchase arrangements adjust on a semiannual basis.

Subordinated notes—For subordinated notes, fair value is estimated using quoted market prices.

FHLB stock—Cost considered to be a reasonable estimate at fair market value because the FHLB has historically redeemed securities at fair value.

Off-balance sheet instruments—The fair value of interest rate exchange agreements is the net cost to the Company to terminate the agreement as determined from quoted market prices.

Commitments to purchase loans—The fair value is estimated value of all outstanding "failure to deliver" contract clauses, generally equal to 0.25% of the applicable outstanding loans.

The fair value of financial instruments whose estimated fair values were different than carrying value at year end is as follows (in thousands):

	September 30, 2000		September 30, 1999	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Assets				
Loans receivable-net	\$ 4,172,754	\$ 4,188,206	\$ 2,154,509	\$ 2,075,676
Interest rate caps	\$ 14,935	\$ 14,891	\$ 19,388	\$ 35,246
Equity method and other investments	\$ 140,349	\$ 333,506	\$ 106,505	\$ 106,505
Liabilities				
Banking deposits	\$ 4,630,068	\$ 4,643,480	\$ 2,095,584	\$ 2,083,136
Brokered callable certificates of deposit	\$ 91,733	\$ 92,165	\$ 67,098	\$ 66,042
Fixed rate FHLB Advances	\$ 400,000	\$ 402,348	\$ 200,000	\$ 198,488
Subordinated notes	\$ 650,000	\$ 597,188	\$ —	\$ —
Off-balance sheet instruments	\$ (30,540)	\$ (39,191)	\$ —	\$ 4,844
Commitments to purchase loans	\$ —	\$ 130	\$ —	\$ 72

23. SEGMENT AND GEOGRAPHIC INFORMATION

Segment Information

With the expansion of its business during fiscal 2000, the Company has separated its financial services into four major categories: 1) domestic retail brokerage, 2) banking, 3) global and institutional, and 4) asset gathering and other. Domestic retail brokerage is comprised of the activities of the Company's wholly-owned subsidiary, E*TRADE Securities, which offers domestic retail brokerage services online, by touch-tone telephone, and direct modem access. Banking is comprised of the activities of ETFC, the holding company of the Bank, offering a wide range of Federal Deposit Insurance Corporation ("FDIC")-insured and other banking products, and E*TRADE Access which operates a nationwide network of ATMs. Global and institutional includes the activities of TIR, which provides services primarily to institutional investors, VERSUS, which provides both retail and institutional services, and international affiliates which provide services primarily to retail investors. Asset gathering and other includes mutual fund operations, the Business Solutions Group ("BSG"), eInvesting, and other services focused on retirement/401(k) programs, college savings plans, delivery of electronic advice and money management, tiered product offerings and activities generated from corporate operations. As the asset gathering and other operations business represent emerging activities which are not material to the consolidated results for segment reporting purposes, management has aggregated asset gathering and other with domestic retail brokerage to form one of three reportable segments. Banking and global and institutional comprise the other two segments constituting the manner in which management currently evaluates company performance.

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Financial information for the Company's reportable segments is presented in the table below, and the totals are equal to the Company's consolidated amounts as reported in the consolidated financial statements.

	Domestic Retail Brokerage & Other	Banking	Global and Institutional	Total
	(in thousands)			
Year Ended September 30, 2000:				
Interest-net of interest expense	\$ 234,926	\$ 118,458	\$ 6,112	\$ 359,496
Non-interest revenue-net of provision for loan losses	814,429	22,031	172,362	1,008,822
Net revenues	\$ 1,049,355	\$ 140,489	\$ 178,474	\$ 1,368,318
Operating income (loss)	\$ (68,721)	\$ 6,793	\$ (18,398)	\$ (80,326)
Year Ended September 30, 1999:				
Interest-net of interest expense	\$ 101,786	\$ 49,932	\$ 1,904	\$ 153,622
Non-interest revenue-net of provision for loan losses	391,377	5,455	120,994	517,826
Net revenues	\$ 493,163	\$ 55,387	\$ 122,898	\$ 671,448
Operating income (loss)	\$ (158,290)	\$ 8,471	\$ 626	\$ (149,193)
Year Ended September 30, 1998:				
Interest-net of interest expense	\$ 44,984	\$ 19,805	\$ 1,000	\$ 65,789

Non-interest revenue-net of provision for loan losses	189,113	6,128	99,975	295,216
Net revenues	\$ 234,097	\$ 25,933	\$ 100,975	\$ 361,005
Operating income (loss)	\$ (13,429)	\$ 4,191	\$ 1,577	\$ (7,661)
As of September 30, 2000:				
Segment assets	\$ 7,805,843	\$ 9,027,185	\$ 484,409	\$ 17,317,437
As of September 30, 1999:				
Segment assets	\$ 3,768,863	\$ 3,981,244	\$ 282,067	\$ 8,032,174

Geographic Information

The Company operates in both U.S. and international markets. The Company's international operations are conducted by the global and institutional group through offices in Europe, Japan, Canada and South East Asia. The following information provides a reasonable representation of each region's contribution to the consolidated amounts.

	United States	Europe	South East Asia	Rest Of World (1)	Total
(in thousands)					
Net revenues:					
Year ended September 30, 2000	\$ 1,240,980	\$ 70,439	\$ 24,588	\$ 32,311	\$ 1,368,318
Year ended September 30, 1999	\$ 591,366	\$ 29,663	\$ 35,751	\$ 14,668	\$ 671,448
Year ended September 30, 1998	\$ 294,140	\$ 27,175	\$ 29,155	\$ 10,535	\$ 361,005
Long-lived assets:					
As of September 30, 2000	\$ 317,243	\$ 9,070	\$ 1,963	\$ 5,986	\$ 334,262
As of September 30, 1999	\$ 177,095	\$ 1,054	\$ 705	\$ 2,821	\$ 181,675

(1) Comprised of Canada and South Africa

No single customer accounted for greater than 10% of gross revenues for the fiscal years ended September 30, 2000, 1999 or 1998.

24. CONDENSED FINANCIAL INFORMATION (PARENT COMPANY ONLY)

The following presents the Parent's condensed balance sheets as of September 30, 2000 and 1999 and statements of operations and cash flows for each of the three years in the period ended September 30, 2000.

BALANCE SHEETS (in thousands)

	September 30,	
	2000	1999
ASSETS		
Property and equipment—net	\$ 240,697	\$ 152,125
Investments	618,858	545,750
Equity in net assets of bank subsidiary	669,534	505,634
Equity in net assets of other consolidated subsidiaries	1,106,409	329,934
Receivable from subsidiaries	—	44,317
Other assets	175,513	72,785
Total assets	\$ 2,811,011	\$ 1,650,545
LIABILITIES AND SHAREOWNERS' EQUITY		
Convertible subordinated notes (see Note 13)	\$ 650,000	\$ —
Other liabilities	292,606	198,750

Payable to subsidiaries	11,572	—
Shareowners' equity	1,856,833	1,451,795
Total liabilities and shareowners' equity	\$ 2,811,011	\$ 1,650,545

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STATEMENTS OF OPERATIONS
(in thousands)

	Years Ended September 30,		
	2000	1999	1998
Revenues:			
Management fees from subsidiaries	\$ 549,173	\$ 224,352	\$ 89,929
Other	22,500	29,463	24,411
Net revenues	571,673	253,815	114,340
Cost of services	164,966	106,227	45,385
Operating expenses:			
Selling and marketing	14,296	17,662	7,639
Technology development	121,125	85,347	42,046
General and administrative	112,278	47,718	33,659
Amortization of goodwill	16,167	589	—
Acquisition-related expenses	14,972	7,174	1,167
Total operating expenses	278,838	158,490	84,511
Total cost of services and operating expenses	443,804	264,717	129,896
Operating income (loss)	127,869	(10,902)	(15,556)
Non-operating income (expense):			
Gain on sale of investments	208,707	49,957	—
Corporate interest income	14,969	17,810	9,428
Corporate interest expense	(29,590)	(71)	—
Equity in losses of investments	(8,593)	(9,093)	—
Unrealized loss on venture funds	(736)	—	—
Other non-operating expense	(68)	(1,237)	(325)
Total non-operating income	184,689	57,366	9,103
Pre-tax income (loss)	312,558	46,464	(6,453)
Income tax expense (benefit)	143,498	19,645	(2,705)
Equity in losses (income) of bank subsidiary	5,546	(2,346)	(1,375)
Equity in losses (income) of other consolidated subsidiaries	144,362	85,934	(1,971)
Net income (loss)	19,152	(56,769)	(402)
Other comprehensive income, net of tax	(91,171)	144,159	11,043
Total comprehensive income (loss)	\$ (72,019)	\$ 87,390	\$ 10,641

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STATEMENTS OF CASH FLOWS
(in thousands)

	Years Ended September 30,		
	2000	1999	1998
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income (loss)	\$ 19,152	\$ (56,769)	\$ (402)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Equity in undistributed (income) loss of bank subsidiary	5,546	(2,346)	(1,375)
Equity in undistributed (income) loss of other subsidiaries	144,362	85,934	(1,971)
Equity in net loss of investments	8,593	9,093	
Depreciation and amortization	85,621	31,596	12,513
Gain on sale of investments	(208,707)	(49,957)	—
Other	4,195	(5,709)	(219)
Other changes—net:			
Other assets	53,724	(60,060)	(3,788)
Other liabilities	138,085	176,464	10,749
Net cash provided by operating activities	250,571	128,246	15,507
CASH FLOWS FROM INVESTING ACTIVITIES:			
Purchase of property and equipment	(120,787)	(129,101)	(35,329)
Purchase of investments	(5,611,889)	(4,397,244)	(3,274,691)
Proceeds from sale/maturity of investments	5,659,158	4,649,618	2,924,167
Cash used in business acquisitions, net of cash acquired	(32,703)	—	(3,500)
Advances to other subsidiaries	(701,553)	(272,881)	(38,444)
Restricted deposits	(72,689)	—	—
Other	(9,586)	—	—
Net cash used in investing activities	(890,049)	(149,608)	(427,79)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from issuance of common stock, net of issuance costs	20,117	20,453	405,169
Proceeds from issuance of convertible subordinated notes, net of issuance costs	631,312	—	—
Payment of capital leases	(11,586)		
Other	(365)	273	4,170
Net cash provided by financing activities	639,478	20,726	409,339
DECREASE IN CASH AND EQUIVALENTS	—	(636)	(2,951)
CASH AND EQUIVALENTS—Beginning of period	—	636	3,587
CASH AND EQUIVALENTS—End of period	\$ —	\$ —	\$ 636

25. QUARTERLY DATA (UNAUDITED)

In the fourth quarter of fiscal 2000, the unaudited quarterly financial information of the Company was restated for all prior periods to reflect the acquisition of VERSUS, which was accounted for as a pooling of interests transaction. The information presented below reflects all adjustments which, in the opinion of management, are of a normal and recurring nature necessary to present fairly the results of operations for the periods presented (in thousands, except per share amounts).

Fiscal 2000				Fiscal 1999			
4 th	3 rd	2 nd	1 st	4 th	3 rd	2 nd	1 st
Quarter	Quarter	Quarter	Quarter	Quarter	Quarter	Quarter	Quarter(1)

E*TRADE Group (as previously reported):								
Net revenues	\$330,341	\$407,430	\$267,642	\$189,536	\$186,422	\$161,775	\$119,417	
Cost of services	124,489	\$130,474	\$111,507	93,943	\$82,237	66,493	\$50,237	
Gain (loss) on sale of investments and venture funds	\$20,954	\$ (3,713)	\$56,769	\$12,287	\$8,439	\$33,367	\$—	
Income (loss) before cumulative effect of accounting change and extraordinary loss	\$5,690	\$ (23,189)	\$ (4,791)	\$ (25,982)	\$ (21,761)	\$9,037	\$ (10,932)	
Net income (loss)	\$5,690	\$ (23,189)	\$ (4,791)	\$ (25,982)	\$ (23,746)	\$8,568	\$ (10,932)	
Income (loss) per share before cumulative effect of accounting change and extraordinary loss:								
Basic	\$0.02	\$ (0.08)	\$ (0.02)	\$ (0.09)	\$ (0.08)	\$0.03	\$ (0.04)	
Diluted	\$0.02	\$ (0.08)	\$ (0.02)	\$ (0.09)	\$ (0.08)	\$0.03	\$ (0.04)	
Income (loss) per share:								
Basic	\$0.02	\$ (0.08)	\$ (0.02)	\$ (0.09)	\$ (0.08)	\$0.03	\$ (0.04)	
Diluted	\$0.02	\$ (0.08)	\$ (0.02)	\$ (0.09)	\$ (0.08)	\$0.03	\$ (0.04)	
VERSUS (as previously reported):								
Net revenues	\$8,278	\$9,741	\$5,535	\$3,559	\$4,282	\$3,608	\$3,219	
Cost of services	\$4,509	\$5,669	\$3,957	\$2,945	\$2,860	\$2,263	\$2,093	
Net loss	\$ (1,566)	\$ (2,370)	\$ (2,558)	\$ (2,153)	\$ (1,052)	\$ (1,135)	\$ (696)	
Elimination of intercompany transactions:								
Net revenues	\$ (322)	\$ (471)	\$ (117)	\$ (75)	\$ (214)	\$ (81)	\$—	
Cost of services	\$ (415)	\$ (564)	\$ (210)	\$ (165)	\$ (304)	\$ (171)	\$ (89)	
Net income	\$94	\$93	\$93	\$90	\$90	\$90	\$89	
Combined:								
Net revenues	\$340,261	\$338,297	\$416,700	\$273,060	\$193,020	\$190,490	\$165,302	\$122,636
Cost of services	\$136,155	\$128,583	\$135,579	\$115,254	\$96,723	\$84,793	\$68,585	\$52,241
Gain (loss) on sale of investments and venture funds	\$136,403	\$20,954	\$ (3,713)	\$56,769	\$12,287	\$8,439	\$33,367	\$—
Income (loss) before cumulative effect of accounting change and extraordinary loss	\$47,656	\$4,218	\$ (25,466)	\$ (7,256)	\$ (28,045)	\$ (22,723)	\$7,992	\$ (11,539)
Net income (loss)	\$47,656	\$4,218	\$ (25,466)	\$ (7,256)	\$ (28,045)	\$ (24,708)	\$7,523	\$ (11,539)
Income (loss) per share before cumulative effect of accounting change and extraordinary loss:								
Basic	\$0.15	\$0.01	\$ (0.09)	\$ (0.02)	\$ (0.10)	\$ (0.08)	\$0.03	\$ (0.04)
Diluted	\$0.15	\$0.01	\$ (0.09)	\$ (0.02)	\$ (0.10)	\$ (0.08)	\$0.03	\$ (0.04)
Income (loss) per share:								
Basic	\$0.15	\$0.01	\$ (0.09)	\$ (0.02)	\$ (0.10)	\$ (0.09)	\$0.03	\$ (0.04)
Diluted	\$0.15	\$0.01	\$ (0.09)	\$ (0.02)	\$ (0.10)	\$ (0.09)	\$0.03	\$ (0.04)

(1) The results of operations for ETFC for the quarter ended December 31, 1998 are included in both the first quarter of fiscal 1999 and the fourth quarter of fiscal 1998.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not applicable.

PART III

The Company's Proxy Statement for its Annual Meeting of Shareowners, to be held December 21, 2000, which, when filed pursuant to

Regulation 14A under the Securities Exchange Act of 1934, will be incorporated by reference in this Annual Report on Form 10-K pursuant to General Instruction G(3) of Form 10-K, provides the information required under Part III (Items 10, 11, 12 and 13), except for the information with respect to the Company's executive officers who are not directors, which is included in "Item 1. Business—Executive Officers of the Registrant."

PART IV

ITEM 14. EXHIBITS, CONSOLIDATED FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K.

(a) The following documents are filed as part of this report:

Consolidated Financial Statements and Financial Statement Schedules

See "Item 8. Consolidated Financial Statements and Supplementary Data"

(b) Reports on Form 8-K

On July 18, 2000, the Company filed a Current Report on Form 8-K to report the announcement of an agreement to acquire VERSUS Technologies, Inc., a Canadian based provider of electronic securities. In connection with this transaction, the Company agreed to acquire all of the outstanding ordinary shares of VERSUS in exchange for an aggregate of \$174 million worth of the Company's common stock, with VERSUS to become a wholly-owned subsidiary of the Company.

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<u>Exhibit Number</u>	<u>Description</u>
2.1	Agreement and Plan of Acquisition and Reorganization as of May 31, 1999 by and among the Registrant, Turbo Acquisition Corp. and Telebank Financial Corporation (incorporated by reference to Exhibit 2.1 of the Company's Registration Statement on Form S-4, Registration Statement No. 333-91467).
2.2	Merger Agreement made as of June 14, 2000 between the Company, 3045157 Nova Scotia Company, EGI Canada Corporation, Versus Technologies Inc., Versus Brokerage Services Inc., Versus Brokerage Services (U.S.) Inc. and Fairvest Securities Corporation (incorporated by reference to Exhibit 2.1 of the Company's Registration Statement on Form S-3, Registration Statement No. 333-41628).
*3.1	Fourth Amended and Restated Certificate of Incorporation.
3.2	Certificate of Designation of Series A Preferred Stock of the Company (incorporated by reference to Exhibit 4.2 of Amendment No. 1 to the Company's Registration Statement on Form S-3, Registration Statement No. 333-41628).
*3.3	Restated Bylaws of the Registrant.
4.1	Specimen of Common Stock Certificate (Incorporated by reference to Exhibit 4.1 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
4.2	Reference is hereby made to Exhibits 3.1, 3.2 and 3.3.
4.3	Provisions attaching to the Exchangeable Shares of EGI Canada Corporation (incorporated by reference to Exhibit 4.1 of the Company's Registration Statement on Form S-3, Registration Statement No. 333-41628).
4.4	Indenture, dated February 1, 2000, by and between the Company and The Bank of New York. (incorporated by reference to Exhibit 4.4 of the Company's Registration Statement on Form S-3, Registration Statement No. 333-35802)
4.5	Registration Rights Agreement, dated February 1, 2000, by and among the Company, FleetBoston Robertson Stephens Inc., Hambrecht & Quist LLC and Goldman, Sachs & Co. (incorporated by reference to Exhibit 4.5 of the Company's Registration Statement on Form S-3, Registration Statement No. 333-35802)
10.1	Form of Indemnification Agreement entered into between the Registrant and its directors and certain officers (Incorporated by reference to Exhibit 10.1 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
10.2	1983 Employee Incentive Stock Option Plan (Incorporated by reference to Exhibit 10.2 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
10.3	1993 Stock Option Plan (Incorporated by reference to Exhibit 10.3 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
*10.4	Amended 1996 Stock Incentive Plan.
10.5	401(k) Plan (Incorporated by reference to Exhibit 10.8 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
10.6	1996 Stock Purchase Plan (Incorporated by reference to Exhibit 99.13 of the Company's Registration

- Statement on Form S-8, Registration Statement No. 333-12503.)
- 10.7 Employee Bonus Plan (Incorporated by reference to Exhibit 10.10 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
- *10.8 Menlo Oaks Corporate Center Standard Business Lease by and between Menlo Partners, L.P. and E*Trade Group, Inc. dated August 18, 1998.
- 10.9 Lease of premises at Four Embarcadero Place, 2400 Geng Road, Palo Alto, California (Incorporated by reference to Exhibit 10.11 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
- 10.10 Lease of premises at 10951 White Rock Road, Rancho Cordova, California (Incorporated by reference to Exhibit 10.12 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
- 10.11 Clearing Agreement between E*TRADE Securities, Inc. and Herzog, Heine, Geduld, Inc. dated May 11, 1994 (Incorporated by reference to Exhibit 10.14 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
- 10.12 Guarantee by the Registrant to Herzog, Heine, Geduld, Inc. (Incorporated by reference to Exhibit 10.15 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
- 10.13 BETAHOST Master Subscription Agreement between E*TRADE Securities, Inc. and BETA Systems Inc. dated June 27, 1996 (Incorporated by reference to Exhibit 10.13 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
- 10.14 Stock Purchase Agreement among the Registrant, General Atlantic Partners II, L.P. and GAP Coinvestment Partners, L.P. dated September 28, 1995 (Incorporated by reference to Exhibit 10.17 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)

<u>Exhibit Number</u>	<u>Description</u>
10.15	Stock Purchase Agreement among the Registrant, General Atlantic Partners II, L.P., and GAP Coinvestment Partners, L.P., Richard S. Braddock and the Cotsakos Group dated April 10, 1996 (Incorporated by reference to Exhibit 10.18 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
10.16	Stock Purchase Agreement between the Registrant and SOFTBANK Holdings Inc. dated June 6, 1996 (Incorporated by reference to Exhibit 10.19 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
10.17	Shareowners Agreement among the Registrant, General Atlantic Partners II, L.P., GAP Coinvestment Partners, L.P. and the Shareowners named therein dated September 1995 (the "Shareowners Agreement") (Incorporated by reference to Exhibit 10.20 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
10.18	Supplement No. 1 to Shareowners Agreement dated as of April 10, 1996 (Incorporated by reference to Exhibit 10.21 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
10.19	Shareowners Agreement Supplement and Amendment dated as of June 6, 1996 (Incorporated by reference to Exhibit 10.22 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
10.20	Purchase Agreement, dated February 1, 2000, by and among the Company, FleetBoston Robertson Stephens Inc., Hambrecht & Quist LLC and Goldman, Sachs & Co. (Incorporated by reference to Exhibit 10.3 of the Company's Form 10-Q, filed on February 14, 2000.
10.21	Consulting Agreement between the Registrant and George Hayter dated as of June 1996 (Incorporated by reference to Exhibit 10.23 of the Company's Registration Statement on Form S-1, Registration Statement No. 333-05525.)
10.24	Joint Venture Agreement dated June 3, 1998 by and between E*TRADE Group, Inc. and SOFTBANK CORP. (Incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on June 12, 1998).
10.25	Promissory Note dated June 5, 1998 issued by E*TRADE Group, Inc. to SOFTBANK CORP.

- (Incorporated by reference to Exhibit 10.2 of the Company's Form 8-K filed on June 12, 1998).
- 10.26 Stock Purchase Agreement dated June 5, 1998 by and between E*TRADE Group, Inc. and SOFTBANK Holdings, Inc. (Incorporated by reference to Exhibit 10.3 of the Company's Form 8-K filed on June 12, 1998).
- 10.27 Stock Purchase Agreement dated July 9, 1998 by and between E*TRADE Group, Inc. and SOFTBANK Holdings, Inc. (Incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on July 17, 1998).
- 10.28 E*TRADE Ventures I, LLC, Limited Liability Company Operating Agreement (Incorporated by reference to Exhibit 10.5 of the Company's Form 10-Q/A filed on April 17, 2000).
- 10.29 E*TRADE eCommerce Fund, L.P., Amended and Restated Limited Partnership Agreement (Incorporated by reference to Exhibit 10.6 of the Company's Form 10-Q/A filed on April 17, 2000).
- *10.30 E*TRADE Ventures II, LLC, Limited Liability Company Operating Agreement.
- 10.31 E*TRADE eCommerce Fund II, L.P., Limited Partnership Agreement (Incorporated by reference to Exhibit 10.7 of the Company's Form 10-Q filed on August 14, 2000).
- 10.32 [redacted] Amended and Restated Strategic Alliance Agreement dated September 26, 2000 by and between the Company and Wit SoundView Group, Inc. (Incorporated by reference to Exhibit 10.14 of the Company's Form 10-Q/A filed on October 25, 2000).
- 10.33 E*TRADE Group, Inc. Note Secured by Deed of Trust dated March 17, 2000, by and between the Company and Theodore J. Theophilos. (Incorporated by reference to Exhibit 10.7 of the Company's Form 10-Q filed on May 15, 2000).
- 10.34 E*TRADE Group, Inc. Amendment to Note Secured by Deed of Trust, dated May 5, 2000, by and between the Company and Theodore J. Theophilos. (Incorporated by reference to Exhibit 10.8 of the Company's Form 10-Q filed on May 15, 2000).
- 10.35 Form of Note Secured by Stock Pledge Agreement by and between the Company and Christos M. Cotsakos, Jerry Gramaglia, Connie M. Dotson, Pamela Kramer, Michael Sievert and Leonard C. Purkis. (Incorporated by reference to Exhibit 10.11 of the Company's Form 10-Q filed on August 14, 2000).

Exhibit Number	Description
10.36	Form of Stock Pledge Agreement by and between the Company and Christos M. Cotsakos, Jerry Gramaglia, Connie M. Dotson, Pamela Kramer, Michael Sievert and Leonard C. Purkis. (Incorporated by reference to Exhibit 10.12 of the Company's Form 10-Q filed on August 14, 2000).
10.37	E*TRADE Group, Inc. Note Secured by Deed of Trust dated May, 2000, by and between the Company and Chuck W. Thomson. (Incorporated by reference to Exhibit 10.13 of the Company's Form 10-Q filed on August 14, 2000).
*10.38	Form of Note secured by Deed of Trust dated February 28, 2000 by and between the Company and Dennis Lundien.
*10.39	Management Continuity Agreement dated June 9, 1999 by and between the Company and Mitchell H. Caplan.
*10.40	Management Continuity Agreement dated July 7, 1999 by and between the Company and Jarrett Lilien.
*10.41	Employment Agreement, dated June 1, 2000 by and between the Company and Jerry Gramaglia.
*10.42	Employment Agreement, dated October 1, 2000 by and between the Company and Christos M. Cotsakos.
*12.1	Statement of Earnings to Fixed Charges
*21.1	Subsidiaries of the Registrant.
*23.1	Consent of Independent Auditors.
*23.2	Consent of Independent Public Accountants.
*27.1	Financial Data Schedule for the fiscal year ended September 30, 2000

* Filed herewith

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be

signed on its behalf by the undersigned, thereunto duly authorized.

Dated: November 9, 2000

E*TRADE Group, Inc.

By: /s/ Christos M. Cotsakos

Christos M. Cotsakos
*Chairman of the Board and
Chief Executive Officer*

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities indicated on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ Christos M. Cotsakos <hr/> (Christos M. Cotsakos)	Chairman of the Board and Chief Executive Officer (principal executive officer)	November 9, 2000
/s/ Leonard C. Purkis <hr/> (Leonard C. Purkis)	Chief Financial Officer (principal financial and accounting officer)	November 9, 2000
William A. Porter <hr/> (William A. Porter)	Chairman Emeritus	
Peter Chernin <hr/> (Peter Chernin)	Director	
Ronald D. Fisher <hr/> (Ronald D. Fisher)	Director	
/s/ William E. Ford <hr/> (William E. Ford)	Director	November 9, 2000
/s/ David C. Hayden <hr/> (David C. Hayden)	Director	November 9, 2000
/s/ George Hayter <hr/> (George Hayter)	Director	November 9, 2000
Lester C. Thurow <hr/> (Lester C. Thurow)	Director	
/s/ Lewis E. Randall	Director	November 9, 2000

(Lewis E. Randall)

**FOURTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
E*TRADE GROUP, INC.**

Pursuant to Section 242 and 245 of the Delaware General Corporation Law

It is hereby certified, on behalf of E*TRADE Group, Inc., a Delaware corporation (the "Corporation") as follows:

1. The name of the Corporation is E*TRADE Group, Inc.
2. The Third Amended and Restated Certificate of Incorporation of the corporation was originally filed with the Secretary of State of the State of Delaware on March 12, 1999.
3. The Third Amended and Restated Certificate of Incorporation of this Corporation shall be restated in its entirety as attached hereto and made a part hereof.
4. The Fourth Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the Delaware General Corporation Law, by resolution of the Board of Directors of the corporation and by the affirmative vote of at least a majority of the outstanding shares entitled to vote.

In WITNESS WHEREOF, E*TRADE Group, Inc. has caused this Fourth Amended and Restated Certificate of Incorporation to be executed by its President and attested to by its Secretary this 25th day of June, 1999.

E*TRADE GROUP, INC.

By: /s/ Christos M. Cotsakos

Christos M. Cotsakos
President

ATTEST:

/s/ Thomas A. Bevilacqua

Thomas A. Bevilacqua
Secretary

**FOURTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
E*TRADE GROUP, INC.**

FIRST. The name of the corporation is E*TRADE Group, Inc. (the "Corporation").

SECOND. The address of its registered office in the State of Delaware is 1013 Centre Road, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Prentice-Hall Corporation System, Inc.

THIRD. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH. (a) The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that the corporation is authorized to issue is Six Hundred One Million (601,000,000) shares. Six Hundred Million (600,000,000) shares shall be Common Stock, \$0.01 par value per share. One Million (1,000,000) shares shall be Preferred Stock, \$0.01 par value.

(b) The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is expressly authorized, in the resolution or resolutions providing for the issuance of any wholly unissued series of Preferred Stock, to fix, state and express the powers, rights, designations, preferences, qualifications, limitations and restrictions thereof, including without limitation: the rate of dividends upon which and the times at which dividends on shares of such series shall be payable and the preference, if any, which such dividends shall have relative to dividends on shares of any other class or classes or any other series of stock of the Corporation; whether such dividends shall be cumulative or noncumulative, and if cumulative, the date or dates from which dividends on shares of such series shall be cumulative; the voting rights, if any, to be provided for shares of such series; the rights, if any, which the holders of shares of such series shall have in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation; the rights, if any, which the holders of shares of such series shall

have to convert such shares into or exchange such shares for shares of stock of the Corporation, and the terms and conditions, including price and rate of exchange of such conversion or exchange; and the redemption rights (including sinking fund provisions), if any, for shares of such series; and such other powers, rights, designations, preferences, qualifications, limitations and restrictions as the Board of Directors may desire to so fix. The Board of Directors is also expressly authorized to fix the number of shares constituting such series and to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not to decrease such number below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

FIFTH. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is authorized to make, alter or repeal any or all of the Bylaws of the Corporation; provided, however, that any Bylaw amendment adopted by the Board of Directors increasing or reducing the authorized number of Directors shall require the affirmative vote of two-thirds of the total number of Directors which the Corporation would have if there were no vacancies. In addition, new Bylaws may be adopted or the Bylaws may be amended or repealed by the affirmative vote of at least 66 2/3 percent of the combined voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 66 2/3 percent of the combined voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, change, amend, repeal or adopt any provision inconsistent with, this Article FIFTH.

SIXTH. (a) Any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing of such stockholders.

(b) Special meetings of stockholders of the Corporation may be called only by the (i) Chairman of the Board of Directors, (ii) President, (iii) Chairman or the Secretary at the written request of a majority of the total number of Directors which the Corporation would have if there were no vacancies upon not fewer than 10 or more than 60 days' written notice, or (iv) holders of shares entitled to cast not less than 10 percent of the votes at such special meeting upon not fewer than 10 nor more than 60 days' written notice. Any request for a special meeting of stockholders shall be sent to the Chairman and the Secretary and shall state the purposes of the proposed meeting. Special meetings of holders of the outstanding Preferred Stock may be called in the manner and for the purposes provided in the resolutions of the Board of Directors providing for the issue of such stock. Business transacted at special meetings shall be confined to the purpose or purposes stated in the notice of meeting.

(c) Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 66 2/3 percent of the combined voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, change, amend, repeal or adopt any provision inconsistent with, this Article SIXTH.

SEVENTH. (a) The number of Directors which shall constitute the whole Board of Directors of this corporation shall be as specified in the Bylaws of this corporation, subject to this Article SEVENTH.

(b) The Directors shall be classified with respect to the time for which they severally hold office into three classes designated Class I, Class II and Class III, as nearly equal in number as possible, as shall be provided in the manner specified in the Bylaws of the Corporation. Each Director shall serve for a term ending on the date of the third annual meeting of stockholders following the annual meeting at which the Director was elected; provided, however, that each initial Director in Class I shall hold office until the annual meeting of stockholders in 1999, each initial Director in Class II shall hold office until the annual meeting of stockholders in 1998, and each initial Director in Class III shall hold office until the annual meeting of stockholders in 1997. Notwithstanding the foregoing provisions of this Article SEVENTH, each Directors shall serve until his successor is duly elected and qualified or until his death, resignation or removal.

(c) In the event of any increase or decrease in the authorized number of Directors, (i) each Director then serving as such shall nevertheless continue as a Director of the class of which he is a member until the expiration of his current term, or his early resignation, removal from office or death, and (ii) the newly created or eliminated directorship resulting from such increase or decrease shall be apportioned by the Board of Directors among the three classes of Directors so as to maintain such classes as nearly equally as possible.

(d) Any Director or the entire Board of Directors may be removed by the affirmative vote of the holders of at least 66 2/3 percent of the combined voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

(e) Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 66 2/3 percent of the combined voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, change, amend, repeal or adopt any provision inconsistent with, this Article SEVENTH.

EIGHTH. (a) 1. In addition to any affirmative vote required by law, any Business Combination (as hereinafter defined) shall require the affirmative vote of at least 66 2/3 percent of the combined voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class (for purposes of this Article EIGHTH, the "Voting Shares"). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that some lesser percentage may be specified by law or in any agreement with any national securities exchange or otherwise.

2. The term "Business Combination" as used in this Article EIGHTH shall mean any transaction which is referred to in any one or more of the following clauses (A) through (E):

(A) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with or into (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) or Associate (as hereinafter defined) of an Interested Stockholder; or

(B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of related transactions) to or with, or proposed by or on behalf of, any Interested

Stockholder or any Affiliate or Associate of any Interested Stockholder, of any assets of the Corporation or any Subsidiary constituting not less than five percent of the total assets of the Corporation, as reported in the consolidated balance sheet of the Corporation as of the end of the most

recent quarter with respect to which such balance sheet has been prepared; or

(C) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of related transactions) of any securities of the Corporation or any Subsidiary to, or proposed by or on behalf of, any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) constituting not less than five percent of the total assets of the Corporation, as reported in the consolidated balance sheet of the Corporation as of the end of the most recent quarter with respect to which such balance sheet has been prepared; or

(D) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or any spin-off or split-up of any kind of the Corporation or any Subsidiary, proposed by or on behalf of an Interested Stockholder or any Affiliate or Associate of any Interested Stockholder; or

(E) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any similar transaction (with or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the percentage of the outstanding shares of (i) any class of equity securities of the Corporation or any Subsidiary or (ii) any class of securities of the Corporation or any Subsidiary convertible into equity securities of the Corporation or any Subsidiary, represented by securities of such class which are directly or indirectly owned by any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder.

(b) The provisions of section (a) of this Article EIGHTH shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law and any other provision of this Certificate of Incorporation, if such Business Combination has been approved by two-thirds of the whole Board of Directors.

(c) For the purpose of this Article EIGHTH:

1. A "person" shall mean any individual, firm, corporation or other entity.

2. "Interested Stockholder" shall mean, in respect of any Business Combination, any person (other than the Corporation or any Subsidiary) who or which, as of the record date for the determination of stockholders entitled to notice of and to vote on such Business Combination, or immediately prior to the consummation of any such transaction

(A) is or was, at any time within two years prior thereto, the beneficial owners, directly or indirectly, of 10 percent or more of the then outstanding Voting Shares, or

(B) is an Affiliate or Associate of the Corporation and at any time within two years prior thereto was the beneficial owner, directly or indirectly, of 10 percent or more of the then outstanding Voting Shares, or

(C) is an assignee of or has otherwise succeeded to any shares of capital stock of the Corporation which were at any time within two years prior thereto beneficially owned by any Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction, or series of transactions, not involving a public offering within the meaning of the Securities Act of 1933, as amended.

3. A "person" shall be the "beneficial owner" of any Voting Shares

(A) which such person or any of its Affiliates and Associates (as hereinafter defined) beneficially own, directly or indirectly, or

(B) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding, or

(C) which are beneficially owned, directly or indirectly, by any other person with which such first mentioned person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purposes of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation.

4. The outstanding Voting Shares shall include shares deemed owned through application of paragraph 3 above but shall not include any other Voting Shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options, or otherwise.

5. "Affiliate" and "Associate" shall have the respective meanings given those terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on the date of adoption of this Certificate of Incorporation (the "Exchange Act").

6. "Subsidiary" shall mean any corporation of which a majority of any class of equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Exchange Act) is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Interested Stockholder set forth in paragraph 2 of this section (c) the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(d) A majority of the directors shall have the power and duty to determine for the purposes of this Article EIGHTH on the basis of information known to them, (1) whether a person is an Interested Stockholder, (2) the number of Voting Shares beneficially owned by any person, (3) whether a person is an Affiliate or Associate of another, (4) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in paragraph 3 of section (c), or (5) whether the assets subject to any Business Combination or the consideration received for the issuance or transfer of securities by the Corporation or any Subsidiary constitutes not less than five percent of the total assets of the Corporation.

(e) Nothing contained in this Article EIGHTH shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

(f) Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 66 2/3 percent of the combined voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, change, amend, repeal or adopt any provision inconsistent with, this Article EIGHTH.

NINTH. This Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

TENTH. A Director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except for liability (1) for any breach of the Directors' duty of loyalty to the Corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the General Corporation Law of Delaware, or (4) for any transaction from which the Director derived any improper personal benefit. If the General Corporation Law of Delaware is hereafter amended to authorize, with the approval of a corporation's stockholders, further reductions in the liability of a corporation's directors for breach of fiduciary duty, then a Director of the Corporation shall not be liable for any such breach to the fullest extent permitted by the General Corporation Law of Delaware as so amended. Any repeal or modification of the foregoing provisions of this Article TENTH by the stockholders of the Corporation shall not adversely affect any right or protection of a Director of the Corporation existing at the time of such repeal or modification.

**AMENDED AND RESTATED BYLAWS
OF
E*TRADE GROUP, INC.
(a Delaware corporation)**

as of October 25, 2000

ARTICLE 1 — STOCKHOLDERS

1.1 Place of Meetings. All meetings of stockholders shall be held at such place within or without the State of Delaware as may be designated from time to time by the Board of Directors or the President or, if not so designated, at the registered office of the corporation.

1.2 Annual Meeting. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held each year beginning in the calendar year 1997 on such date and at such time as the Board of Directors determines. If this date shall fall upon a legal holiday at the place of the meeting, then such meeting shall be held on the next succeeding business day at the same hour. If no annual meeting is held in accordance with the foregoing provisions, the Board of Directors shall cause the meeting to be held as soon thereafter as convenient.

1.3 Special Meetings. Special meetings of stockholders may be called only in accordance with Article SIXTH of the Certificate of Incorporation as it may be amended from time to time (the "Certificate of Incorporation").

1.4 Notice of Meetings. Except as otherwise provided by law, written notice of each meeting of stockholders, whether annual or special, shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. The notices of all meetings shall state the place, date and hour of the meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation.

1.5 Voting List. The officer who has charge of the stock ledger of the corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, at a place within the city where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and may be inspected by any stockholder who is present.

1.6 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the holders of a majority of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business.

1.7 Adjournments. Any meeting of stockholders may be adjourned to another time and to any other place at which a meeting of stockholders may be held under these Bylaws by the stockholders present or represented at the meeting and entitled to vote, although less than a quorum, or, if no stockholder is present, by any officer entitled to preside at or to act as Secretary of such meeting. It shall not be necessary to notify any stockholder of any adjournment of less than 30 days if the time and place of the adjourned meeting are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for the adjourned meeting. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting.

1.8 Voting and Proxies. Each stockholder shall have one vote for each share of stock entitled to vote held of record by such stockholder and a proportionate vote for each fractional share so held, unless otherwise provided in the Certificate of Incorporation. Each stockholder of record entitled to vote at a meeting of stockholders may vote in person or may authorize another person or persons to vote or act for him by written proxy

executed by the stockholder or his authorized agent and delivered to the Secretary of the corporation. No such proxy shall be voted or acted upon after three years from the date of its execution, unless the proxy expressly provides for a longer period.

1.9 Action at Meeting. In all matters other than the election of directors, when a quorum is present at any meeting, the holders of a majority of the stock present or represented and entitled to vote on the subject matter (or if there are two or more classes of stock entitled to vote as separate classes, then in the case of each such class, the holders of a majority of the stock of that class present or represented and entitled to vote on the subject matter) shall decide any matter to be voted upon by the stockholders at such meeting, except when a different vote is required by express provision of law, the Certificate of Incorporation or these Bylaws. Any election of directors by stockholders shall be determined by a plurality of the votes cast by the stockholders entitled to vote at the election.

1.10 Advance Notice of Stockholder Nominees and Stockholder Business.

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be: (A) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (B) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (C) otherwise properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation not later than the close of business one hundred and twenty (120) days nor earlier than the close of business one hundred and fifty (150) days prior to the first anniversary of the proxy statement relating to the preceding year's annual meeting; provided, however, that in the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) days from the date contemplated at the time of the previous year's proxy statement, notice by the stockholder to be timely must be so received not earlier than the close of business one hundred and fifty

(150) days prior to such annual meeting and not later than the close of business one hundred and twenty (120) days prior to such annual meeting or, in the event public announcement of the date of such annual meeting is first made by the corporation fewer than seventy (70) days prior to the date of such annual meeting, the close of business on the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the corporation. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting: (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, (iii) the class and number of shares of the corporation which are beneficially owned by the stockholder, (iv) any material interest of the stockholder in such business and (v) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "1934 Act"), in his or her capacity as a proponent to a stockholder proposal. Notwithstanding the foregoing, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholder's meeting, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this paragraph (a). The chairman of the annual meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting and in accordance with the provisions of this paragraph (a), and, if he or she should so determine, such chairman shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

(b) Only persons who are nominated in accordance with the procedures set forth in this paragraph (b) shall be eligible for election as directors. Nominations of persons for election to the Board of Directors of the corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors or by any stockholder of the corporation entitled to vote in the election of directors at the meeting who complies with the notice procedures set forth in this paragraph (b). Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice (as set forth in paragraph (a) of this Section 1.10) in writing to the Secretary of the corporation in accordance with the provisions of paragraph (b) of this Section 1.10. Such stockholder's notice shall set forth (i) as to each person, if any, whom the stockholder proposes to nominate for election or re-election as a director: (A) the name, age, business address and residence address of such person, (B) the principal occupation or employment of such person, (C) the class and number of shares of the

corporation which are beneficially owned by such person, (D) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder, and (E) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected), and (ii) as to such stockholder giving notice, the information required to be provided pursuant to paragraph (a) of this Section 1.10. At the request of the Board of Directors, any person nominated by a stockholder for election as a director shall furnish to the Secretary of the corporation that information required to be set forth in the stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth in this paragraph (b). The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws, and if he or she should so determine, such chairman shall so declare at the meeting, and the defective nomination shall be disregarded.

(c) For purposes of this Section 1.10, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

ARTICLE 2 — DIRECTORS

2.1 General Powers. The business and affairs of the corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the corporation except as otherwise provided by law, the Certificate of Incorporation or these Bylaws. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law, may exercise the powers of the full Board of Directors until the vacancy is filled.

2.2 Number; Election; Tenure and Qualification. The number of Directors of the Corporation shall be nine (9), subject to amendment in accordance with Article FIFTH of the Certificate of Incorporation. The Directors shall be classified and their successors elected in accordance with Article SEVENTH of the Certificate of Incorporation. Subject to the requirement of the Certificate of Incorporation that the classes be as nearly equal in number as possible, the size of each class of Directors shall be as determined from time to time by resolution adopted by a majority of the Board of Directors. Any reduction in the size of any class of Directors shall not shorten the term of office of any incumbent Director. Directors need not be stockholders of the corporation.

2.3 Enlargement of the Board of Directors. The authorized number of directors on the Board of Directors may be increased in accordance with Article FIFTH of the Certificate of Incorporation.

2.4 Vacancies. Unless and until filled by the stockholders, any vacancy in the Board of Directors, however occurring, including a vacancy resulting from an enlargement of the Board of Directors, may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director; provided, however, a vacancy created by the removal of a director by the vote of the stockholders or by court order may be filled only by the affirmative vote of a majority of the shares represented and voting at a duly held meeting at which a quorum is present (which shares voting affirmatively also constitute a majority of the required quorum). Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor shall have been elected and qualified, or until such director's earlier death, resignation or removal.

2.5 Resignation. Any director may resign by delivering his written resignation to the corporation at its principal office or to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

2.6 Removal. Any director or the entire Board of Directors may be removed, only as permitted by applicable law and Article SEVENTH

of the Certificate of Incorporation.

2.7 Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and place, within or without the State of Delaware, as shall be determined from time to time by

the Board of Directors; provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.8 Special Meetings. Special meetings of the Board of Directors may be held at any time and place, within or without the State of Delaware, designated in a call by the Chairman of the Board, Vice Chairman of the Board, two or more directors, President or the Secretary.

2.9 Notice of Special Meetings. Notice of any special meeting of directors shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. Notice shall be given to each director in person, by telephone, by facsimile transmission or by telegram sent to his business or home address at least 48 hours in advance of the meeting, or by written notice mailed to his business or home address at least 72 hours in advance of the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

2.10 Meetings by Telephone Conference Calls. Directors or any members of any committee designated by the directors may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

2.11 Quorum. A majority of the number of directors fixed pursuant to Section 2.2 shall constitute a quorum at all meetings of the Board of Directors. In the event one or more of the directors shall be disqualified to vote at any meeting, then the required quorum shall be reduced by one for each such director so disqualified; provided, however, that in no case shall less than one-third (1/3) of the number so fixed constitute a quorum. In the absence of a quorum at any such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

2.12 Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of those present shall be sufficient to take any action, unless a different vote is specified by law, the Certificate of Incorporation or these Bylaws.

2.13 Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee of the Board of Directors may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent to the action in writing, and the written consents are filed with the minutes of proceedings of the Board of Directors or committee.

2.14 Committees. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of the General Corporation Law of Delaware, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers which may require it. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these Bylaws for the Board of Directors.

2.15 Compensation for Directors. Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from serving the corporation or any of its parent or subsidiary corporations in any other capacity and receiving compensation for such service.

ARTICLE 3 —OFFICERS

3.1 Enumeration. The officers of the corporation shall consist of a President, a Secretary, a Treasurer and such other officers with such other titles as the Board of Directors shall determine, including a Chairman of the Board, a Vice Chairman of the Board, and one or more Vice Presidents, Assistant Treasurers, and Assistant Secretaries. The Board of Directors may appoint such other officers as it may deem appropriate.

3.2 Election. The President, Treasurer and Secretary shall be elected by the Board of Directors at its first meeting following the annual meeting of stockholders. Other officers may be appointed by the Board of Directors at such meeting or at any other meeting.

3.3 Qualification. The Chairman must be an officer of the corporation. The President need not be a director. No officer need be a stockholder. Any two or more offices may be held by the same person.

3.4 Tenure. Except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws, each officer shall hold office

until his successor is elected and qualified, unless a different term is specified in the vote choosing or appointing him, or until his earlier death, resignation or removal.

3.5 Resignation and Removal. Any officer may resign by delivering his written resignation to the corporation at its principal office or to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

The Board of Directors, or a committee duly authorized to do so, may remove any officer with or without cause. Except as the Board of Directors may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following his resignation or removal, or any right to damages on account of such removal, whether his compensation be by the month or by the year or otherwise, unless such compensation is expressly provided in a duly authorized written agreement with the corporation.

3.6 Vacancies. The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices other than those of President, Treasurer and Secretary. Each such successor shall hold office for the unexpired term of his predecessor and until his successor is elected and qualified, or until his earlier death, resignation or removal.

3.7 Chairman of the Board and Vice Chairman of the Board. If the Board of Directors appoints a Chairman of the Board, he shall, when present, preside at all meetings of the Board of Directors. He shall perform such duties and possess such powers as are usually vested in the office of the Chairman of the Board or as may be vested in him by the Board of Directors. If the Board of Directors appoints a Vice Chairman of the Board, he shall, in the absence or disability of the Chairman of the Board, perform the duties and exercise the powers of the Chairman of the Board and shall perform such other duties and possess such other powers as may from time to time be vested in him by the Board of Directors.

3.8 President. The President shall be the chief operating officer of the corporation. He shall also be the chief executive officer of the corporation unless such title is assigned to a Chairman of the Board. The President shall, subject to the direction of the Board of Directors, have general supervision and control of the business of the corporation. Unless otherwise provided by the directors, he shall preside at all meetings of the stockholders and of the Board of Directors (except as provided in Section 3.7 above). The President shall perform such other duties and shall have such other powers as the Board of Directors may from time to time prescribe.

3.9 Vice Presidents. Any Vice President shall perform such duties and possess such powers as the Board of Directors or the President may from time to time prescribe. In the event of the absence, inability or refusal to act of the President, the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors) shall perform the duties of the President and when so performing shall have all the powers of and be subject to all the restrictions upon the President. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors.

3.10 Secretary and Assistant Secretary. The Secretary shall perform such duties and shall have such powers as the Board of Directors or the President may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the secretary, including without

limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to attend all meetings of stockholders and the Board of Directors and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the President or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the person presiding at the meeting shall designate a temporary secretary to keep a record of the meeting.

3.11 Treasurer and Assistant Treasurer. The Treasurer shall be the chief financial officer and the chief accounting officer of the corporation. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned to him by the Board of Directors or the President. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the corporation, to deposit funds of the corporation in depositories selected in accordance with these Bylaws, to disburse such funds as ordered by the Board of Directors, to make proper accounts of such funds, and to render as required by the Board of Directors statements of all such transactions and of the financial condition of the corporation.

Any Assistant Treasurers shall perform such duties and possess such powers as the Board of Directors, the President or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Treasurer.

3.12 Bonded Officers. The Board of Directors may require any officer to give the corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors upon such terms and conditions as the Board of Directors may specify, including without limitation a bond for the faithful performance of his duties and for the restoration to the corporation of all property in his possession or under his control belonging to the corporation.

3.13 Salaries. Officers of the corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors.

ARTICLE 4 — CAPITAL STOCK

4.1 Issuance of Stock. Unless otherwise voted by the stockholders and subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the corporation held in its treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such consideration and on such terms as the Board of Directors may determine.

4.2 Certificates of Stock. Every holder of stock of the corporation shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, certifying the number and class of shares owned by him in the corporation. Each such certificate shall be signed by, or in the name of the corporation by, the Chairman or Vice Chairman, if any, of the Board of Directors, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the corporation. Any or all of the signatures on the certificate may be a facsimile.

Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, the Bylaws, applicable securities laws or any agreement among any number of stockholders or among such holders and the corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

4.3 Transfers. Subject to the restrictions, if any, stated or noted on the stock certificates, shares of stock may be transferred on the books of the corporation by the surrender to the corporation or its transfer

agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these Bylaws, the corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the corporation in accordance with the requirements of these Bylaws.

4.4 Lost, Stolen or Destroyed Certificates. The corporation may issue a new certificate of stock in place of any previously issued certificate alleged to have been lost, stolen, or destroyed, upon such terms and conditions as the Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity as the Board of Directors may require for the protection of the corporation or any transfer agent or registrar.

4.5 Record Date. The Board of Directors may fix in advance a date as a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders or to express consent (or dissent) to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action. Such record date shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action to which such record date relates.

If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is expressed. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

ARTICLE 5 — INDEMNIFICATION

The corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of Delaware, as that Section may be amended and supplemented from time to time, indemnify any director or officer which it shall have power to indemnify under the Section against any expenses, liabilities or other matters referred to in or covered by that Section. The indemnification provided for in this Article: (i) shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement or vote of stockholders or disinterested directors or otherwise, both as to action in their official capacities and as to action in another capacity while holding such office; (ii) shall continue as to a person who has ceased to be a director or officer; and (iii) shall inure to the benefit of the heirs, executors and administrators of such a person. The corporation's obligation to provide indemnification under this Article shall be offset to the extent of any other source of indemnification or any otherwise applicable insurance coverage under a policy maintained by the corporation or any other person.

Expenses incurred by a director of the corporation in defending a civil or criminal action, suit or proceeding by reason of the fact that he is or was a director of the corporation (or was serving at the corporation's request as a director or officer of another corporation) shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized by relevant sections of the General Corporation Law of Delaware.

To assure indemnification under this Article of all such persons who are determined by the corporation or otherwise to be or to have been "fiduciaries" of any employee benefit plan of the corporation which may exist from time to time, such Section 145 shall, for the purposes of this Article, be interpreted as follows: an "other enterprise" shall be deemed to include such an employee benefit plan, including, without limitation, any plan

of the corporation which is governed by the Act of Congress entitled "Employee Retirement Income Security Act of 1974," as amended from time to time; the corporation shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his duties to the corporation also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to such Act of Congress shall be deemed "fines"; and action taken or omitted by a person with respect to an employee benefit plan in the performance of such person's duties for a purpose reasonably believed by such person to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the corporation.

ARTICLE 6 — GENERAL PROVISIONS

6.1 Fiscal Year. Except as from time to time otherwise designated by the Board of Directors, the fiscal year of the corporation shall end on December 31.

6.2 Corporate Seal. The corporate seal shall be in such form as shall be approved by the Board of Directors.

6.3 Execution of Instruments. The President, the Chief Executive Officer, any Vice President, the Secretary or the Treasurer shall have power to execute and deliver on behalf and in the name of the corporation any instrument requiring the signature of an officer of the corporation, except as otherwise provided in these Bylaws, or where the execution and delivery of such an instrument shall be expressly delegated by the Board of Directors to some other officer or agent of the corporation.

6.4 Waiver of Notice. Whenever any notice whatsoever is required to be given by law, by the Certificate of Incorporation or by these Bylaws, a waiver of such notice either in writing signed by the person entitled to such notice or such person's duly authorized attorney, or by telegraph, cable or any other available method, whether before, at or after the time stated in such waiver, or the appearance of such person or persons at such meeting in person or by proxy, shall be deemed equivalent to such notice.

6.5 Voting of Securities. Except as the directors may otherwise designate, the President, the Chief Executive Officer, any Vice President, the Secretary or Treasurer may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for this corporation (with or without power of substitution) at, any meeting of stockholders or shareholders of any other corporation or organization, the securities of which may be held by this corporation.

6.6 Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

6.7 Certificate of Incorporation. All references in these Bylaws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the corporation, as amended and in effect from time to time. These Bylaws are subject to the provisions of the Certificate of Incorporation and applicable law.

6.8 Transactions with Interested Parties. No contract or transaction between the corporation and one or more of the directors or officers, or between the corporation and any other corporation, partnership, association, or other organization in which one or more of the directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or a committee of the Board of Directors which authorizes the contract or transaction or solely because his or their votes are counted for such purpose, if:

(a) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum;

(b) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(c) The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee of the Board of Directors, or the stockholders.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

6.9 Severability. Any determination that any provision of these Bylaws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these Bylaws.

6.10 Pronouns. All pronouns used in these Bylaws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

ARTICLE 7 — AMENDMENTS

7.1 By the Board of Directors. Subject to the provisions of the Certificate of Incorporation, these Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board

of Directors at which a quorum is present.

7.2 By the Stockholders. Subject to the provisions of the Certificate of Incorporation, these Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the affirmative vote of the holders of at least 66-2/3% of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at any regular meeting of stockholders, or at any special meeting of stockholders, provided notice of such alteration, amendment, repeal or adoption of new bylaws shall have been stated in the notice of such special meeting.

As amended through October 25, 2000

**E*TRADE GROUP, INC.
1996 STOCK INCENTIVE PLAN**

AS AMENDED AND RESTATED THROUGH APRIL 19, 2000

ARTICLE ONE

GENERAL PROVISIONS

I. Purpose of the Plan

This 1996 Stock Incentive Plan is intended to promote the interests of E*TRADE Group, Inc., a Delaware corporation, by providing eligible persons with the opportunity to acquire a proprietary interest, or otherwise increase their proprietary interest, in the Corporation as an incentive for them to remain in the service of the Corporation.

Capitalized terms shall have the meanings assigned to such terms in the attached Appendix.

II. Structure of the Plan

A. The Plan shall be divided into five separate equity programs:

- the Discretionary Option Grant Program under which eligible persons may, at the discretion of the Plan Administrator, be granted options to purchase shares of Common Stock,
- the Salary Investment Option Grant Program under which eligible associates may elect to have a portion of their base salary invested each year in special option grants,
- the Stock Issuance Program under which eligible persons may, at the discretion of the Plan Administrator, be issued shares of Common Stock directly, either through the immediate purchase of such shares or as a bonus for services rendered the Corporation (or any Parent or Subsidiary),
- the Automatic Option Grant Program under which eligible non-associate Board members shall automatically receive option grants at periodic intervals to purchase shares of Common Stock, and
- the Director Fee Option Grant Program under which non-associate Board members may elect to have all or any portion of their annual retainer fee otherwise payable in cash applied to a special option grant.

B. The provisions of Articles One and Seven shall apply to all equity programs under the Plan and shall govern the interests of all persons under the Plan.

III. Administration of the Plan

A. The Primary Committee shall have sole and exclusive authority to administer the Discretionary Option Grant and Stock Issuance Programs with respect to Section 16 Insiders. Administration of the Discretionary Option Grant and Stock Issuance Programs with respect to all other persons eligible to participate in those programs may, at the Board's discretion, be vested in the Primary Committee or a Secondary Committee, or the Board may retain the power to administer those programs with respect to all such persons. The members of the Secondary Committee may be Board members who are Associates eligible to receive discretionary option grants or direct stock issuances under the Plan or any other stock option, stock appreciation, stock bonus or other stock plan of the Corporation (or any Parent or Subsidiary).

B. Members of the Primary Committee or any Secondary Committee shall serve for such period of time as the Board may determine and may be removed by the Board at any time. The Board may also at any time terminate the functions of any Secondary Committee and reassume all powers and authority previously delegated to such committee.

C. Each Plan Administrator shall, within the scope of its administrative functions under the Plan, have full power and authority (subject to the provisions of the Plan) to establish such rules and regulations as it may deem appropriate for proper administration of the Discretionary Option Grant and Stock Issuance Programs and to make such determinations under, and issue such interpretations of, the provisions of such programs and any outstanding options or stock issuances thereunder as it may deem necessary or advisable. Decisions of the Plan Administrator within the scope of its administrative functions under the Plan shall be final and binding on all parties who have an interest in the Discretionary Option Grant and Stock Issuance Programs under its jurisdiction or any option or stock issuance thereunder.

D. The Primary Committee shall have the sole and exclusive authority to determine which Section 16 Insiders and other highly compensated Associates shall be eligible for participation in the Salary Investment Option Grant Program for one or more calendar years. However, all option grants under the Salary Investment Option Grant Program shall be made in accordance with the express terms of that program, and the Primary Committee shall not exercise any discretionary functions with respect to the option grants made under that program.

E. Service on the Primary Committee or the Secondary Committee shall constitute service as a Board member, and members of each such committee shall accordingly be entitled to full indemnification and reimbursement as Board members for their service on such committee. No member of the Primary Committee or the Secondary Committee shall be liable for any act or omission made in good faith with respect to the Plan or any option grants or stock issuances under the Plan.

F. Administration of the Automatic Option Grant and Director Fee Option Grant Programs shall be self-executing in accordance with the terms of those programs, and no Plan Administrator shall exercise any discretionary functions with respect to any option grants or stock

issuances made under those programs.

IV. Eligibility

A. The persons eligible to participate in the Discretionary Option Grant and Stock Issuance Programs are as follows:

1. Associates,
2. non-associate members of the Board or the board of directors of any Parent or Subsidiary, and
3. consultants and other independent advisors who provide services to the Corporation (or any Parent or Subsidiary).

B. Only Employees who are Section 16 Insiders or other highly compensated individuals shall be eligible to participate in the Salary Investment Option Grant Program.

C. Each Plan Administrator shall, within the scope of its administrative jurisdiction under the Plan, have full authority to determine, (i) with respect to the option grants under the Discretionary Option Grant Program, which eligible persons are to receive option grants, the time or times when such option grants are to be made, the number of shares to be covered by each such grant, the status of the granted option as either an Incentive Option or a Non-Statutory Option, the time or times when each option is to become exercisable, the vesting schedule (if any) applicable to the option shares and the maximum term for which the option is to remain outstanding and (ii) with respect to stock issuances under the Stock Issuance Program, which eligible persons are to receive stock issuances, the time or times when such issuances are to be made, the number of shares to be issued to each Participant, the vesting schedule (if any) applicable to the issued shares and the consideration for such shares.

D. The Plan Administrator shall have the absolute discretion either to grant options in accordance with the Discretionary Option Grant Program or to effect stock issuances in accordance with the Stock Issuance Program.

E. The individuals who shall be eligible to participate in the Automatic Option Grant Program shall be limited to (i) those individuals serving as non-associate Board members on the Underwriting Date who have not previously received a stock option grant from the Corporation, (ii) those individuals who first become non-associate Board members after the Underwriting Date, whether through appointment by the Board or election by the Corporation's stockholders, and (iii) those individuals who continue to serve as non-associate Board members at one

or more Annual Stockholders Meetings held after the Underwriting Date. A non-associate Board member who has previously been in the employ of the Corporation (or any Parent or Subsidiary) shall not be eligible to receive an option grant under the Automatic Option Grant Program at the time he or she first becomes a non-associate Board member, but shall be eligible to receive periodic option grants under the Automatic Option Grant Program while he or she continues to serve as a non-associate Board member.

F. All non-associate Board members shall be eligible to participate in the Director Fee Option Grant Program.

V. Stock Subject to the Plan

A. The stock issuable under the Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Corporation on the open market. The maximum number of shares of Common Stock initially reserved for issuance over the term of the Plan shall not exceed 70,476,480(1) shares. Such authorized share reserve is comprised of (i) the shares subject to the outstanding options under the Predecessor Plan which have been incorporated into the Plan plus (ii) an additional increase of 16,000,000(1) shares authorized by the Board and subsequently approved by the stockholders prior to the Section 12 Registration Date, plus (iii) an additional increase of 7,600,000(1) shares authorized by the Board on December 22, 1997, and approved by the stockholders at the 1998 Annual Meeting; plus (iv) an additional increase of 11,000,000(1) shares authorized by the Board on October 21, 1998, and approved by the stockholders at the 1999 Annual Meeting; plus (v) an additional increase of 11,900,000 shares authorized by the Board and approved by the stockholders on December 21, 1999.

B. No one person participating in the Plan may receive options, separately exercisable stock appreciation rights and direct stock issuances for more than 2,000,000(1) shares of Common Stock in the aggregate per calendar year, beginning with the 1996 calendar year.

C. Shares of Common Stock subject to outstanding options (including options incorporated into this Plan from the Predecessor Plan) shall be available for subsequent issuance under the Plan to the extent those options expire or terminate for any reason prior to exercise in full. Unvested shares issued under the Plan and subsequently cancelled or repurchased by the Corporation, at the original issue price paid per share, pursuant to the Corporation's repurchase rights under the Plan shall be added back to the number of shares of Common Stock reserved for issuance under the Plan and shall accordingly be available for reissuance through one or more subsequent option grants or direct stock issuances under the Plan. However, should the exercise price of an option under the Plan be paid with shares of Common Stock or should shares of Common Stock otherwise issuable under the Plan be withheld by the Corporation in satisfaction of the withholding taxes incurred in connection with the exercise of an option or the vesting of a stock issuance under the Plan, then the number of shares of Common Stock available for issuance under the Plan shall be reduced by the gross number of shares for which the option is exercised or which vest under the stock issuance, and not by the net number of shares of Common Stock issued to the holder of such option or stock issuance.

D. If any change is made to the Common Stock by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration, appropriate adjustments shall be made to (i) the maximum number and/or class of securities issuable under the Plan, (ii) the number and/or class of securities for which any one person may be granted stock options, separately exercisable stock appreciation rights and direct stock issuances under this Plan per calendar year, (iii) the number and/or class of securities for which grants are subsequently to be made under the Automatic Option Grant Program to new and continuing non-associate Board members, (iv) the number and/or class of securities and the exercise price per share in effect under each outstanding option under the Plan and (v) the number and/or class of securities and price per share in effect under each outstanding option incorporated into this Plan from the Predecessor Plan. Such adjustments to the outstanding options are to be effected in a manner which shall preclude the enlargement or dilution of rights and benefits under such options. The adjustments determined by the Plan Administrator shall be final, binding and conclusive.

(1) Share number reflects 2 for 1 stock splits effective on January 29, 1999 and May 21, 1999.

ARTICLE TWO

DISCRETIONARY OPTION GRANT PROGRAM

I. Option Terms

Each option shall be evidenced by one or more documents in the form approved by the Plan Administrator; provided, however, that each such document shall comply with the terms specified below. Each document evidencing an Incentive Option shall, in addition, be subject to the provisions of the Plan applicable to such options.

A. Exercise Price.

1. The exercise price per share shall be fixed by the Plan Administrator but shall not be less than one hundred percent (100%) of the Fair Market Value per share of Common Stock on the option grant date.

2. The exercise price shall become immediately due upon exercise of the option and shall, subject to the provisions of Section I of Article Seven and the documents evidencing the option, be payable in one or more of the forms specified below:

(i) cash or check made payable to the Corporation,

(ii) shares of Common Stock held for the requisite period necessary to avoid a charge to the Corporation's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date, or

(iii) to the extent the option is exercised for vested shares, through a special sale and remittance procedure pursuant to which the Optionee shall concurrently provide irrevocable written instructions to (a) a Corporation-designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Corporation, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate exercise price payable for the purchased shares plus all applicable Federal, state and local income and employment taxes required to be withheld by the Corporation by reason of such exercise and (b) the Corporation to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale.

Except to the extent such sale and remittance procedure is utilized, payment of the exercise price for the purchased shares must be made on the Exercise Date.

B. Exercise and Term of Options. Each option shall be exercisable at such time or times, during such period and for such number of shares as shall be determined by the Plan Administrator and set forth in the documents evidencing the option. However, no option shall have a term in excess of ten (10) years measured from the option grant date.

C. Effect of Termination of Service.

1. The following provisions shall govern the exercise of any options held by the Optionee at the time of cessation of Service or death:

(i) Any option outstanding at the time of the Optionee's cessation of Service for any reason shall remain exercisable for such period of time thereafter as shall be determined by the Plan Administrator and set forth in the documents evidencing the option, but no such option shall be exercisable after the expiration of the option term.

(ii) Any option exercisable in whole or in part by the Optionee at the time of death may be subsequently exercised by the personal representative of the Optionee's estate or by the person or persons to whom the option is transferred pursuant to the Optionee's will or in accordance with the laws of descent and distribution.

(iii) Should the Optionee's Service be terminated for Misconduct, then all outstanding options held by the Optionee shall terminate immediately and cease to be outstanding.

(iv) During the applicable post-Service exercise period, the option may not be exercised in the aggregate for more than the number of vested shares for which the option is exercisable on the date

of the Optionee's cessation of Service. Upon the expiration of the applicable exercise period or (if earlier) upon the expiration of the option term, the option shall terminate and cease to be outstanding for any vested shares for which the option has not been exercised. However, the option shall, immediately upon the Optionee's cessation of Service, terminate and cease to be outstanding to the extent the option is not otherwise at that time exercisable for vested shares.

2. The Plan Administrator shall have complete discretion, exercisable either at the time an option is granted or at any time while the option remains outstanding, to:

(i) extend the period of time for which the option is to remain exercisable following the Optionee's cessation of Service from the limited exercise period otherwise in effect for that option to such greater period of time as the Plan Administrator shall deem appropriate, but in no event beyond the expiration of the option term, and/or

(ii) permit the option to be exercised, during the applicable post-Service exercise period, not only with respect to the number of vested shares of Common Stock for which such option is exercisable at the time of the Optionee's cessation of Service but also with respect to one or more additional installments in which the Optionee would have vested had the Optionee continued in Service.

D. **Stockholder Rights.** The holder of an option shall have no stockholder rights with respect to the shares subject to the option until such person shall have exercised the option, paid the exercise price and become a holder of record of the purchased shares.

E. **Repurchase Rights.** The Plan Administrator shall have the discretion to grant options which are exercisable for unvested shares of Common Stock. Should the Optionee cease Service while holding such unvested shares, the Corporation shall have the right to repurchase, at the exercise price paid per share, any or all of those unvested shares. The terms upon which such repurchase right shall be exercisable (including the period and procedure for exercise and the appropriate vesting schedule for the purchased shares) shall be established by the Plan Administrator and set forth in the document evidencing such repurchase right.

F. **Limited Transferability of Options.** During the lifetime of the Optionee, Incentive Options shall be exercisable only by the Optionee and shall not be assignable or transferable other than by will or by the laws of descent and distribution following the Optionee's death. However, a Non-Statutory Option may, in connection with the Optionee's estate plan, be assigned in whole or in part during the Optionee's lifetime to one or more members of the Optionee's immediate family or to a trust established exclusively for one or more such family members. The assigned portion may only be exercised by the person or persons who acquire a proprietary interest in the option pursuant to the assignment. The terms applicable to the assigned portion shall be the same as those in effect for the option immediately prior to such assignment and shall be set forth in such documents issued to the assignee as the Plan Administrator may deem appropriate.

II. Incentive Options

The terms specified below shall be applicable to all Incentive Options. Except as modified by the provisions of this Section II, all the provisions of Articles One, Two and Seven shall be applicable to Incentive Options. Options which are specifically designated as Non-Statutory Options when issued under the Plan shall not be subject to the terms of this Section II.

A. **Eligibility.** Incentive Options may only be granted to Associates.

B. **Dollar Limitation.** The aggregate Fair Market Value of the shares of Common Stock (determined as of the respective date or dates of grant) for which one or more options granted to any Associate under the Plan (or any other option plan of the Corporation or any Parent or Subsidiary) may for the first time become exercisable as Incentive Options during any one calendar year shall not exceed the sum of One Hundred Thousand Dollars (\$100,000). To the extent the Associate holds two (2) or more such options which become exercisable for the first time in the same calendar year, the foregoing limitation on the exercisability of such options as Incentive Options shall be applied on the basis of the order in which such options are granted.

C. **10% Stockholder.** If any Associate to whom an Incentive Option is granted is a 10% Stockholder, then the exercise price per share shall not be less than one hundred ten percent (110%) of the Fair Market Value per

share of Common Stock on the option grant date, and the option term shall not exceed five (5) years measured from the option grant date.

III. Corporate Transaction/Change In Control

A. In the event of any Corporate Transaction, each outstanding option shall automatically accelerate so that each such option shall, immediately prior to the effective date of the Corporate Transaction, become fully exercisable with respect to the total number of shares of Common Stock at the time subject to such option and may be exercised for any or all of those shares as fully-vested shares of Common Stock. However, an outstanding option shall not so accelerate if and to the extent: (i) such option is, in connection with the Corporate Transaction, either to be assumed by the successor corporation (or parent thereof) or to be replaced with a comparable option to purchase shares of the capital stock of the successor corporation (or parent thereof), (ii) such option is to be replaced with a cash incentive program of the successor corporation which preserves the spread existing on the unvested option shares at the time of the Corporate Transaction and provides for subsequent payout in accordance with the same vesting schedule applicable to such option or (iii) the acceleration of such option is subject to other limitations imposed by the Plan Administrator at the time of the option grant. The determination of option comparability under clause (i) above shall be made by the Plan Administrator, and its determination shall be final, binding and conclusive.

B. All outstanding repurchase rights shall also terminate automatically, and the shares of Common Stock subject to those terminated rights shall immediately vest in full, in the event of any Corporate Transaction, except to the extent: (i) those repurchase rights are to be assigned to the successor corporation (or parent thereof) in connection with such Corporate Transaction or (ii) such accelerated vesting is precluded by other limitations imposed by the Plan Administrator at the time the repurchase right is issued.

C. Immediately following the consummation of the Corporate Transaction, all outstanding options shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or parent thereof).

D. Each option which is assumed in connection with a Corporate Transaction shall be appropriately adjusted, immediately after such Corporate Transaction, to apply to the number and class of securities which would have been issuable to the Optionee in consummation of such Corporate Transaction had the option been exercised immediately prior to such Corporate Transaction. Appropriate adjustments to reflect such Corporate Transaction shall also be made to (i) the exercise price payable per share under each outstanding option, provided the aggregate exercise price payable for such securities shall remain the same, (ii) the maximum number and/or class of securities available for issuance over the remaining term of the Plan and (iii) the maximum number and/or class of securities for which any one person may be granted stock options, separately exercisable stock appreciation rights and direct stock issuances under the Plan per calendar year.

E. The Plan Administrator shall have full power and authority to grant options under the Discretionary Option Grant Program which will automatically accelerate in the event the Optionee's Service subsequently terminates by reason of an Involuntary Termination within a designated period (not to exceed eighteen (18) months) following the effective date of any Corporate Transaction in which those options are assumed or replaced and do not otherwise accelerate. Any options so accelerated shall remain exercisable for fully-vested shares until the earlier of (i) the

expiration of the option term or (ii) the expiration of the one (1)-year period measured from the effective date of the Involuntary Termination. In addition, the Plan Administrator may provide that one or more of the Corporation's outstanding repurchase rights with respect to shares held by the Optionee at the time of such Involuntary Termination shall immediately terminate, and the shares subject to those terminated repurchase rights shall accordingly vest in full.

F. The Plan Administrator shall have full power and authority to grant options under the Discretionary Option Grant Program which will automatically accelerate in the event the Optionee's Service subsequently terminates by reason of an Involuntary Termination within a designated period (not to exceed eighteen (18) months) following the effective date of any Change in Control. Each option so accelerated shall remain exercisable for fully-vested shares until the earlier of (i) the expiration of the option term or (ii) the expiration of the one (1)-year period measured from the effective date of the Involuntary Termination. In addition, the Plan Administrator may provide that one or more of the Corporation's outstanding repurchase rights with respect to shares held by the Optionee at the time of such Involuntary Termination shall immediately terminate, and the shares subject to those terminated repurchase rights shall accordingly vest in full.

G. The portion of any Incentive Option accelerated in connection with a Corporate Transaction or Change in Control shall remain exercisable as an Incentive Option only to the extent the applicable One Hundred Thousand Dollar limitation is not exceeded. To the extent such dollar limitation is exceeded, the accelerated portion of such option shall be exercisable as a Non-Statutory Option under the Federal tax laws.

H. The outstanding options shall in no way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

IV. Cancellation and Regrant of Options

The Plan Administrator shall have the authority to effect, at any time and from time to time, with the consent of the affected option holders, the cancellation of any or all outstanding options under the Discretionary Option Grant Program (including outstanding options incorporated from the Predecessor Plan) and to grant in substitution new options covering the same or different number of shares of Common Stock but with an exercise price per share based on the Fair Market Value per share of Common Stock on the new grant date.

V. Stock Appreciation Rights

A. The Plan Administrator shall have full power and authority to grant to selected Optionees tandem stock appreciation rights and/or limited stock appreciation rights.

B. The following terms shall govern the grant and exercise of tandem stock appreciation rights:

(i) One or more Optionees may be granted the right, exercisable upon such terms as the Plan Administrator may establish, to elect between the exercise of the underlying option for shares of Common Stock and the surrender of that option in exchange for a distribution from the Corporation in an amount equal to the excess of (a) the Fair Market Value (on the option surrender date) of the number of shares in which the Optionee is at the time vested under the surrendered option (or surrendered portion thereof) over (b) the aggregate exercise price payable for such shares.

(ii) No such option surrender shall be effective unless it is approved by the Plan Administrator. If the surrender is so approved, then the distribution to which the Optionee shall be entitled may be made in shares of Common Stock valued at Fair Market Value on the option surrender date, in cash, or partly in shares and partly in cash, as the Plan Administrator shall in its sole discretion deem appropriate.

(iii) If the surrender of an option is rejected by the Plan Administrator, then the Optionee shall retain whatever rights the Optionee had under the surrendered option (or surrendered portion thereof) on the option surrender date and may exercise such rights at any time prior to the later of (a) five (5) business days after the receipt of the rejection notice or (b) the last day on which the option is otherwise exercisable in accordance with the terms of the documents evidencing such option, but in no event may such rights be exercised more than ten (10) years after the option grant date.

C. The following terms shall govern the grant and exercise of limited stock appreciation rights:

(i) One or more Section 16 Insiders may be granted limited stock appreciation rights with respect to their outstanding options.

(ii) Upon the occurrence of a Hostile Take-Over, each individual holding one or more options with such a limited stock appreciation right shall have the unconditional right (exercisable for a thirty (30)-day period following such Hostile Take-Over) to surrender each such option to the Corporation, to the extent the option is at the time exercisable for vested shares of Common Stock. In return for the surrendered option, the Optionee shall receive a cash distribution from the Corporation in an amount equal to the excess of (A) the Take-Over Price of the shares of Common Stock which are at the time vested under each surrendered option (or surrendered portion thereof) over (B) the aggregate exercise price payable for such shares. Such cash distribution shall be paid within five (5) days following the option surrender date.

(iii) The Plan Administrator shall, at the time the limited stock appreciation right is granted, pre-approve the subsequent exercise of that right in accordance with the terms and conditions of this Section V.C. Accordingly, no additional approval of the Plan Administrator or the Board shall be required at the time of the actual option surrender and cash distribution.

(iv) The balance of the option (if any) shall continue in full force and effect in accordance with the documents evidencing such option.

ARTICLE THREE

SALARY INVESTMENT OPTION GRANT PROGRAM

I. Option Grants

The Primary Committee shall have the sole and exclusive authority to determine the calendar year or years (if any) for which the Salary Investment Option Grant Program is to be in effect and to select the Section 16 Insiders and other highly compensated Associates eligible to participate in the Salary Investment Option Grant Program for those calendar year or years. Each selected individual who elects to participate in the Salary Investment Option Grant Program must, prior to the start of each calendar year of participation, file with the Plan Administrator (or its designate) an irrevocable authorization directing the Corporation to reduce his or her base salary for that calendar year by an amount not less than Ten Thousand Dollars (\$10,000.00) nor more than Fifty Thousand Dollars (\$50,000.00). The Primary Committee shall have complete discretion to determine whether to approve the filed authorization in whole or in part. To the extent the Primary Committee approves the authorization, the individual who filed that authorization shall automatically be granted an option under the Salary Investment Grant Program on the first trading day in January of the calendar year for which the salary reduction is to be in effect.

II. Option Terms

Each option shall be a Non-Statutory Option evidenced by one or more documents in the form approved by the Plan Administrator; provided, however, that each such document shall comply with the terms specified below.

A. Exercise Price.

1. The exercise price per share shall be thirty-three and one-third percent (33-1/3%) of the Fair Market Value per share of Common Stock on the option grant date.

2. The exercise price shall become immediately due upon exercise of the option and shall be payable in one or more of the alternative forms authorized under the Discretionary Option Grant Program. Except to the extent the sale and remittance procedure specified thereunder is utilized, payment of the exercise price for the purchased shares must be made on the Exercise Date.

B. Number of Option Shares. The number of shares of Common Stock subject to the option shall be determined pursuant to the following formula (rounded down to the nearest whole number):

$$X = A \div (B \times 66\frac{2}{3}\%), \text{ where}$$

X is the number of option shares,

A is the dollar amount of the approved reduction in the Optionee's base salary for the calendar year, and

B is the Fair Market Value per share of Common Stock on the option grant date.

C. Exercise and Term of Options. The option shall become exercisable in a series of twelve (12) successive equal monthly installments upon the Optionee's completion of each calendar month of Service in the calendar year for which the salary reduction is in effect. Each option shall have a maximum term of ten (10) years measured from the option grant date.

D. Effect of Termination of Service. Should the Optionee cease Service for any reason while holding one or more options under this Article Three, then each such option shall remain exercisable, for any or all of the shares for which the option is exercisable at the time of such cessation of Service, until the earlier of (i) the expiration of the ten (10)-year option term or (ii) the expiration of the three (3)-year period measured from the date of such cessation of Service. Should the Optionee die while holding one or more options under this Article Three, then each such option may be exercised, for any or all of the shares for which the option is exercisable at the time of the Optionee's cessation of Service (less any shares subsequently purchased by Optionee prior to death), by the personal representative of the Optionee's estate or by the person or persons to whom the option is transferred pursuant to the Optionee's will or in accordance with the laws of descent and distribution. Such right of exercise shall lapse, and the option shall terminate, upon the earlier of (i) the expiration of the ten (10)-year option term or (ii) the three (3)-year period measured from the date of the Optionee's cessation of Service. However, the option

shall, immediately upon the Optionee's cessation of Service for any reason, terminate and cease to remain outstanding with respect to any and all shares of Common Stock for which the option is not otherwise at that time exercisable.

III. Corporate Transaction/Change in Control/Hostile Take-Over

A. In the event of any Corporate Transaction while the Optionee remains in Service, each outstanding option held by such Optionee under this Salary Investment Option Grant Program shall automatically accelerate so that each such option shall, immediately prior to the effective date of the Corporate Transaction, become fully exercisable with respect to the total number of shares of Common Stock at the time subject to such option and may be exercised for any or all of those shares as fully-vested shares of Common Stock. Each such outstanding option shall be assumed by the successor corporation (or parent thereof) in the Corporate Transaction and shall remain exercisable for the fully-vested shares until the earlier of (i) the expiration of the ten (10)-year option term or (ii) the expiration of the three (3)-year period measured from the date of the Optionee's cessation of Service.

B. In the event of a Change in Control while the Optionee remains in Service, each outstanding option held by such Optionee under this Salary Investment Option Grant Program shall automatically accelerate so that each such option shall immediately become fully exercisable with respect to the total number of shares of Common Stock at the time subject to such option and may be exercised for any or all of those shares as fully-vested shares of Common Stock. The option shall remain so exercisable until the earlier of (i) the expiration of the ten (10)-year option term,

(ii) the expiration of the three (3)-year period measured from the date of the Optionee's cessation of Service or (iii) the surrender of the option in connection with a Hostile Take-Over.

C. Upon the occurrence of a Hostile Take-Over, the Optionee shall have a thirty (30)-day period in which to surrender to the Corporation each outstanding option granted him or her under the Salary Investment Option Grant Program. The Optionee shall in return be entitled to a cash distribution from the Corporation in an amount equal to the excess of (i) the Take-Over Price of the shares of Common Stock at the time subject to the surrendered option (whether or not the Optionee is otherwise at the time vested in those shares) over (ii) the aggregate exercise price payable for such shares. Such cash distribution shall be paid within five (5) days following the surrender of the option to the Corporation. The Primary Committee shall, at the time the option with such limited stock appreciation right is granted under the Salary Investment Option Grant Program, pre-approve any subsequent exercise of that right in accordance with the terms of this Paragraph C. Accordingly, no further approval of the Primary Committee or the Board shall be required at the time of the actual option surrender and cash distribution.

D. The grant of options under the Salary Investment Option Grant Program shall in no way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

IV. Remaining Terms

The remaining terms of each option granted under the Salary Investment Option Grant Program shall be the same as the terms in effect for option grants made under the Discretionary Option Grant Program.

ARTICLE FOUR

STOCK ISSUANCE PROGRAM

I. Stock Issuance Terms

Shares of Common Stock may be issued under the Stock Issuance Program through direct and immediate issuances without any intervening option grants. Each such stock issuance shall be evidenced by a Stock Issuance Agreement which complies with the terms specified below.

A. Purchase Price.

1. The purchase price per share shall be fixed by the Plan Administrator, but shall not be less than one hundred percent (100%) of the Fair Market Value per share of Common Stock on the issuance date.

2. Subject to the provisions of Section I of Article Seven, shares of Common Stock may be issued under the Stock Issuance Program for any of the following items of consideration which the Plan Administrator may deem appropriate in each individual instance:

- (i) cash or check made payable to the Corporation, or
- (ii) past services rendered to the Corporation (or any Parent or Subsidiary).

B. Vesting Provisions.

1. Shares of Common Stock issued under the Stock Issuance Program may, in the discretion of the Plan Administrator, be fully and immediately vested upon issuance or may vest in one or more installments over the Participant's period of Service or upon attainment of specified performance objectives. The elements of the vesting schedule applicable to any unvested shares of Common Stock issued under the Stock Issuance Program, namely:

- (i) the Service period to be completed by the Participant or the performance objectives to be attained,
- (ii) the number of installments in which the shares are to vest,
- (iii) the interval or intervals (if any) which are to lapse between installments, and

(iv) the effect which death, Permanent Disability or other event designated by the Plan Administrator is to have upon the vesting schedule, shall be determined by the Plan Administrator and incorporated into the Stock Issuance Agreement.

2. Any new, substituted or additional securities or other property (including money paid other than as a regular cash dividend) which the Participant may have the right to receive with respect to the Participant's unvested shares of Common Stock by reason of any stock dividend, stock split, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration shall be issued subject to (i) the same vesting requirements applicable to the Participant's unvested shares of Common Stock and (ii) such escrow arrangements as the Plan Administrator shall deem appropriate.

3. The Participant shall have full stockholder rights with respect to any shares of Common Stock issued to the Participant under the Stock Issuance Program, whether or not the Participant's interest in those shares is vested. Accordingly, the Participant shall have the right to vote such shares and to receive any regular cash dividends paid on such shares.

4. Should the Participant cease to remain in Service while holding one or more unvested shares of Common Stock issued under the Stock Issuance Program or should the performance objectives not be attained with respect to one or more such unvested shares of Common Stock, then those shares shall be immediately surrendered to the Corporation for cancellation, and the Participant shall have no further stockholder rights with respect to those shares. To the extent the surrendered shares were previously issued to the Participant for consideration paid in cash or cash equivalent (including the Participant's purchase-money indebtedness), the

Corporation shall repay to the Participant the cash consideration paid for the surrendered shares and shall cancel the unpaid principal balance of any outstanding purchase-money note of the Participant attributable to the surrendered shares .

5. The Plan Administrator may in its discretion waive the surrender and cancellation of one or more unvested shares of Common Stock (or other assets attributable thereto) which would otherwise occur upon the cessation of the Participant's Service or the non-attainment of the performance objectives applicable to those shares. Such waiver shall result in the immediate vesting of the Participant's interest in the shares of Common Stock as to which the waiver applies. Such waiver may be effected at any time, whether before or after the Participant's cessation of Service or the attainment or non-attainment of the applicable performance objectives.

II. Corporate Transaction/Change in Control

A. All of the Corporation's outstanding repurchase/cancellation rights under the Stock Issuance Program shall terminate automatically, and all the shares of Common Stock subject to those terminated rights shall immediately vest in full, in the event of any Corporate Transaction, except to the extent (i) those repurchase/cancellation rights are to be assigned to the successor corporation (or parent thereof) in connection with such Corporate Transaction or (ii) such accelerated vesting is precluded by other limitations imposed in the Stock Issuance Agreement.

B. The Plan Administrator shall have the discretionary authority, exercisable either at the time the unvested shares are issued or any time while the Corporation's repurchase/cancellation rights remain outstanding under the Stock Issuance Program, to provide that those rights shall automatically terminate in whole or in part, and the shares of Common Stock subject to those terminated rights shall immediately vest, in the event the Participant's Service should subsequently terminate by reason of an Involuntary Termination within a designated period (not to exceed eighteen (18) months) following the effective date of any Corporate Transaction in which those repurchase/cancellation rights are assigned to the successor corporation (or parent thereof).

C. The Plan Administrator shall have the discretionary authority, exercisable either at the time the unvested shares are issued or any time while the Corporation's repurchase/cancellation rights remain outstanding under the Stock Issuance Program, to provide that those rights shall automatically terminate in whole or in part, and the shares of Common Stock subject to those terminated rights shall immediately vest, in the event the Participant's Service should subsequently terminate by reason of an Involuntary Termination within a designated period (not to exceed eighteen (18) months) following the effective date of any Change in Control.

III. Share Escrow/Legends

Unvested shares may, in the Plan Administrator's discretion, be held in escrow by the Corporation until the Participant's interest in such shares vests or may be issued directly to the Participant with restrictive legends on the certificates evidencing those unvested shares.

ARTICLE FIVE

AUTOMATIC OPTION GRANT PROGRAM

I. Option Terms

A. **Grant Dates.** Option grants shall be made on the dates specified below:

1. Each individual serving as a non-associate Board member on the Underwriting Date shall automatically be granted at that time a Non-Statutory Option to purchase 50,000(1) shares of Common Stock, provided that individual has not previously been in the employ of the Corporation or any Parent or Subsidiary and has not previously received a stock option grant from the Corporation.

2. Each individual who is first elected or appointed as a non-associate Board member at any time after the Underwriting Date shall automatically be granted, on the date of such initial election or appointment, a Non-Statutory Option to purchase 50,000(1) shares of Common Stock, provided that individual has not previously been in the employ of the Corporation or any Parent or Subsidiary.

3. On the date of each Annual Stockholders Meeting held after the Underwriting Date, each individual who is to continue to serve as an Eligible Director, whether or not that individual is standing for re-election to the Board at that particular Annual Meeting, shall automatically be granted a Non-Statutory Option to purchase 20,000(1) shares of Common Stock, provided such individual has served as a non-associate Board member for at least six (6) months. There shall be no limit on the number of such 20,000(1) share option grants any one Eligible Director may receive over his or her period of Board service, and non-associate Board members who have previously been in the employ of the Corporation (or any Parent or Subsidiary) or who have otherwise received a stock option grant from the Corporation prior to the Underwriting Date shall be eligible to receive one or more such annual option grants over their period of continued Board service.

B. **Exercise Price.**

1. The exercise price per share shall be equal to one hundred percent (100%) of the Fair Market Value per share of Common Stock on the option grant date.

2. The exercise price shall be payable in one or more of the alternative forms authorized under the Discretionary Option Grant Program. Except to the extent the sale and remittance procedure specified thereunder is utilized, payment of the exercise price for the purchased shares must be made on the Exercise Date.

C. **Option Term.** Each option shall have a term of ten (10) years measured from the option grant date.

D. **Exercise and Vesting of Options.** Each option shall be immediately exercisable for any or all of the option shares. However, any shares purchased under the option shall be subject to repurchase by the Corporation, at the exercise price paid per share, upon the Optionee's cessation of Board service prior to vesting in those shares. Each initial 50,000(1)-share grant shall vest, and the Corporation's repurchase right shall lapse, in a series of four (4) successive equal annual installments over the Optionee's period of continued service as a Board member, with the first such installment to vest upon the Optionee's completion of one (1) year of Board service measured from the option grant date. Each annual 20,000(1)-share grant shall vest, and the Corporation's repurchase right shall lapse, upon the Optionee's completion of two (2) years of Board service measured from the option grant date.

(1)Share number reflects 2 for 1 stock splits effective on January 29, 1999 and May 21, 1999.

E. **Termination of Board Service.** The following provisions shall govern the exercise of any options held by the Optionee at the time the Optionee ceases to serve as a Board member:

(i) The Optionee (or, in the event of Optionee's death, the personal representative of the Optionee's estate or the person or persons to whom the option is transferred pursuant to the Optionee's will or in accordance with the laws of descent and distribution) shall have a twelve (12)-month period following the date of such cessation of Board service in which to exercise each such option.

(ii) During the twelve (12)-month exercise period, the option may not be exercised in the aggregate for more than the number of vested shares of Common Stock for which the option is exercisable at the time of the Optionee's cessation of Board service.

(iii) Should the Optionee cease to serve as a Board member by reason of death or Permanent Disability, then all shares at the time subject to the option shall immediately vest so that such option may, during the twelve (12)-month exercise period following such cessation of Board service, be exercised for all or any portion of those shares as fully-vested shares of Common Stock.

(iv) In no event shall the option remain exercisable after the expiration of the option term. Upon the expiration of the twelve (12)-month exercise period or (if earlier) upon the expiration of the option term, the option shall terminate and cease to be outstanding for any vested shares for which the option has not been exercised. However, the option shall, immediately upon the Optionee's cessation of Board service for any reason other than death or Permanent Disability, terminate and cease to be outstanding to the extent the option is not otherwise at that time exercisable for vested shares.

II. Corporate Transaction/Change in Control/ Hostile Take-Over

A. In the event of any Corporate Transaction, the shares of Common Stock at the time subject to each outstanding option but not otherwise vested shall automatically vest in full so that each such option shall, immediately prior to the effective date of the Corporate Transaction, become fully exercisable for all of the shares of Common Stock at the time subject to such option and may be exercised for all or any portion of those shares as fully-vested shares of Common Stock. Immediately following the consummation of the Corporate Transaction, each automatic option grant shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or parent thereof).

B. In connection with any Change in Control, the shares of Common Stock at the time subject to each outstanding option but not otherwise vested shall automatically vest in full so that each such option shall, immediately prior to the effective date of the Change in Control, become fully exercisable for all of the shares of Common Stock at the time subject to such option and may be exercised for all or any portion of those shares as fully-vested shares of Common Stock. Each such option shall remain exercisable for such fully-vested option shares until the expiration or sooner termination of the option term or the surrender of the option in connection with a Hostile Take-Over.

C. Upon the occurrence of a Hostile Take-Over, the Optionee shall have a thirty (30)-day period in which to surrender to the Corporation each automatic option held by him or her. The Optionee shall in return be entitled to a cash distribution from the Corporation in an amount equal to the excess of (i) the Take-Over Price of the shares of Common Stock at the time subject to the surrendered option (whether or not the Optionee is otherwise at the time vested in those shares) over (ii) the aggregate exercise price payable for such shares. Such cash distribution shall be paid within five (5) days following the surrender of the option to the Corporation. Stockholder approval of the Plan, as amended and restated on December 24, 1998, shall constitute pre-approval of the surrender of each automatic option in accordance with the terms and provisions of this Section II.C. No additional approval of any Plan Administrator or the consent of the Board shall be required in connection with such option surrender and cash distribution.

D. Each option which is assumed in connection with a Corporate Transaction shall be appropriately adjusted, immediately after such Corporate Transaction, to apply to the number and class of securities which would have been issuable to the Optionee in consummation of such Corporate Transaction had the option been exercised immediately prior to such Corporate Transaction. Appropriate adjustments shall also be made to the exercise price payable per share under each outstanding option, provided the aggregate exercise price payable for such securities shall remain the same.

E. The grant of options under the Automatic Option Grant Program shall in no way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

III. Remaining Terms

The remaining terms of each option granted under the Automatic Option Grant Program shall be the same as the terms in effect for option grants made under the Discretionary Option Grant Program .

ARTICLE SIX

DIRECTOR FEE OPTION GRANT PROGRAM

I. Option Grants

Each non-associate Board member may elect to apply all or any portion of the annual retainer fee otherwise payable in cash for his or her service on the Board to the acquisition of a special option grant under this Director Fee Option Grant Program. Such election must be filed with the Corporation's Chief Financial Officer prior to first day of the calendar year for which the annual retainer fee which is the subject of that election is otherwise payable. Each non-associate Board member who files such a timely election shall automatically be granted an option under this Director Fee Option Grant Program on the first trading day in January in the calendar year for which the annual retainer fee which is the subject of that election would otherwise be payable in cash.

II. Option Terms

Each option shall be a Non-Statutory Option governed by the terms and conditions specified below.

A. Exercise Price.

1. The exercise price per share shall be thirty-three and one-third percent (33-1/3%) of the Fair Market Value per share of Common Stock on the option grant date.

2. The exercise price shall become immediately due upon exercise of the option and shall be payable in one or more of the alternative forms authorized under the Discretionary Option Grant Program. Except to the extent the sale and remittance procedure specified thereunder is utilized, payment of the exercise price for the purchased shares must be made on the Exercise Date.

B. Number of Option Shares. The number of shares of Common Stock subject to the option shall be determined pursuant to the following formula (rounded down to the nearest whole number):

$$X = A \div (B \times 66\frac{2}{3}\%), \text{ where}$$

X is the number of option shares,

A is the portion of the annual retainer fee subject to the non-associate Board member's election, and

B is the Fair Market Value per share of Common Stock on the option grant date.

C. Exercise and Term of Options. The option shall become exercisable in a series of twelve (12) equal monthly installments upon the Optionee's completion of each month of Board service over the twelve (12)-month period measured from the grant date. Each option shall have a maximum term of ten (10) years measured from the option grant date.

D. Termination of Board Service. Should the Optionee cease Board service for any reason (other than death or Permanent Disability) while holding one or more options under this Director Fee Option Grant Program, then each such option shall remain exercisable, for any or all of the shares for which the option is exercisable at the time of such cessation of Board service, until the earlier of (i) the expiration of the ten (10)-year option term or (ii) the expiration of the three (3)-year period measured from the date of such cessation of Board service. However, each option held by the Optionee under this Director Fee Option Grant Program at the time of his or her cessation of Board service shall immediately terminate and cease to remain outstanding with respect to any and all shares of Common Stock for which the option is not otherwise at that time exercisable.

E. Death or Permanent Disability. Should the Optionee's service as a Board member cease by reason of death or Permanent Disability, then each option held by such Optionee under this Director Fee Option Grant Program shall immediately become exercisable for all the shares of Common Stock at the time subject to that option, and the option may be exercised for any or all of those shares as fully-vested shares until the earlier of (i) the expiration of the ten (10)-year option term or (ii) the expiration of the three (3)-year period measured from the date of such cessation of Board service.

Should the Optionee die after cessation of Board service but while holding one or more options under this Director Fee Option Grant Program, then each such option may be exercised, for any or all of the shares for which the option is exercisable at the time of the Optionee's cessation of Board service (less any shares subsequently purchased by Optionee prior to death), by the personal representative of the Optionee's estate or by the person or persons to whom the option is transferred pursuant to the Optionee's will or in accordance with the laws of descent and distribution. Such right of exercise shall lapse, and the option shall terminate, upon the earlier of (i) the expiration of the ten (10)-year option term or (ii) the three (3)-year period measured from the date of the Optionee's cessation of Board service.

III. Corporate Transaction/Change in Control/Hostile Take-Over

A. In the event of any Corporate Transaction while the Optionee remains a Board member, each outstanding option held by such Optionee under this Director Fee Option Grant Program shall automatically accelerate so that each such option shall, immediately prior to the effective date of the Corporate Transaction, become fully exercisable with respect to the total number of shares of Common Stock at the time subject to such option and may be exercised for any or all of those shares as fully-vested shares of Common Stock. Each such outstanding option shall be assumed by the successor corporation (or parent thereof) in the Corporate Transaction and shall remain exercisable for the fully-vested shares until the earlier of (i) the expiration of the ten (10)-year option term or (ii) the expiration of the three (3)-year period measured from the date of the

Optionee's cessation of Board service.

B. In the event of a Change in Control while the Optionee remains in Service, each outstanding option held by such Optionee under this Director Fee Option Grant Program shall automatically accelerate so that each such option shall immediately become fully exercisable with respect to the total number of shares of Common Stock at the time subject to such option and may be exercised for any or all of those shares as fully-vested shares of Common Stock. The option shall remain so exercisable until the earlier or (i) the expiration of the ten (10)-year option term or (ii) the expiration of the three (3)-year period measured from the date of the Optionee's cessation of Service.

C. Upon the occurrence of a Hostile Take-Over, the Optionee shall have a thirty (30)-day period in which to surrender to the Corporation each outstanding option granted him or her under the Director Fee Option Grant Program. The Optionee shall in return be entitled to a cash distribution from the Corporation in an amount equal to the excess of (i) the Take-Over Price of the shares of Common Stock at the time subject to each surrendered option (whether or not the Optionee is otherwise at the time vested in those shares) over (ii) the aggregate exercise price payable for such shares. Such cash distribution shall be paid within five (5) days following the surrender of the option to the Corporation. No approval or consent of the Board or any Plan Administrator shall be required in connection with such option surrender and cash distribution.

D. The grant of options under the Director Fee Option Grant Program shall in no way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

IV. Remaining Terms

The remaining terms of each option granted under this Director Fee Option Grant Program shall be the same as the terms in effect for option grants made under the Discretionary Option Grant Program.

ARTICLE SEVEN

MISCELLANEOUS

I. Financing

The Plan Administrator may permit any Optionee or Participant to pay the option exercise price under the Discretionary Option Grant Program or the purchase price of shares issued under the Stock Issuance Program by delivering a full-recourse, interest bearing promissory note payable in one or more installments. The terms of any such promissory note (including the interest rate and the terms of repayment) shall be established by the Plan Administrator in its sole discretion. In no event may the maximum credit available to the Optionee or Participant exceed the sum of (i) the aggregate option exercise price or purchase price payable for the purchased shares plus (ii) any Federal, state and local income and employment tax liability incurred by the Optionee or the Participant in connection with the option exercise or share purchase.

II. Tax Withholding

A. The Corporation's obligation to deliver shares of Common Stock upon the exercise of options or the issuance or vesting of such shares under the Plan shall be subject to the satisfaction of all applicable Federal, state and local income and employment tax withholding requirements.

B. The Plan Administrator may, in its discretion, provide any or all holders of Non-Statutory Options or unvested shares of Common Stock under the Plan (other than the options granted or the shares issued under the Automatic Option Grant or Director Fee Option Grant Program) with the right to use shares of Common Stock in satisfaction of all or part of the Taxes incurred by such holders in connection with the exercise of their options or the vesting of their shares. Such right may be provided to any such holder in either or both of the following formats:

Stock Withholding: The election to have the Corporation withhold, from the shares of Common Stock otherwise issuable upon the exercise of such Non-Statutory Option or the vesting of such shares, a portion of those shares with an aggregate Fair Market Value equal to the percentage of the Taxes (not to exceed one hundred percent (100%)) designated by the holder.

Stock Delivery: The election to deliver to the Corporation, at the time the Non-Statutory Option is exercised or the shares vest, one or more shares of Common Stock previously acquired by such holder (other than in connection with the option exercise or share vesting triggering the Taxes) with an aggregate Fair Market Value equal to the percentage of the Taxes (not to exceed one hundred percent (100%)) designated by the holder.

III. Effective Date and Term of the Plan

A. The Plan was initially adopted by the Board on May 31, 1996, and was subsequently approved by the stockholders. The Discretionary Option Grant and the Stock Issuance Programs became effective immediately upon the Plan Effective Date.

B. The Automatic Option Grant Program became effective on the Underwriting Date. The Plan was subsequently amended by the Board on December 22, 1997 to (i) increase the maximum number of shares of Common Stock authorized for issuance under the Plan by 7,600,000(1) shares, (ii) allow individuals who administer the Plan to be included in the group of non-associate Board members eligible to receive option grants and direct stock issuances under the Discretionary Option Grant and Stock Issuance Programs, (iii) remove certain restrictions on the eligibility of non-associate Board members to serve as Plan Administrator, and (iv) effect a series of technical changes to the provisions of the Plan (including stockholder approval requirements, certain holding period restrictions, and the frequency of which the Automatic Option Grant Program may be amended) in order to take advantage of the November 1996 amendments to Rule 16b-3 of the 1934 Act which exempts certain officer and director transactions under the Plan from the short-swing liability provisions of the federal securities laws ("December 1997 Amendment"). The December 1997 Amendment was approved by the stockholders at the 1998 Annual Meeting.

(1)Share number reflects 2 for 1 stock splits effective on January 29, 1999 and May 21, 1999.

C. On October 21, 1998, the Board amended and restated the Plan to increase the maximum number of shares of Common Stock authorized for issuance under the Plan by 11,000,000¹ shares, to 58,576,480⁽¹⁾ shares of Common Stock. On December 24, 1998 the Board again amended and restated the Plan to incorporate the Salary Investment Option Grant and Director Fee Option Grant Programs. Both Amendments were approved by the stockholders at the 1999 Annual Meeting. The Salary Investment Option Grant Program and Director Fee Option Program shall not be implemented until such time as the Primary Committee may deem appropriate. The option grants made prior to the October 1998 Amendment shall remain outstanding in accordance with the terms and conditions of the respective instruments evidencing those options or issuances and nothing in the October 1998 Amendment shall be deemed to modify or in any way affect those outstanding options or issuances. Subject to the foregoing limitations, the Plan Administrator may make option grants under the Plan at any time before the date fixed herein for the termination of the Plan.

D. On December 21, 1999, the Board amended and restated the Plan to increase the maximum number of shares of Common Stock authorized for issuance under the Plan by 11,900,000¹ shares, to 70,476,480¹ shares of Common Stock. The Amendment was concurrently approved by the stockholders on December 21, 1999. The option grants made prior to the December 1999 Amendment shall remain outstanding in accordance with the terms and conditions of the respective instruments evidencing those options or issuances and nothing in the December 1999 Amendment shall be deemed to modify or in any way affect those outstanding options or issuances. Subject to the foregoing limitations, the Plan Administrator may make option grants under the Plan at any time before the date fixed herein for the termination of the Plan.

E. The Plan shall serve as the successor to the Predecessor Plan, and no further option grants or direct stock issuances shall be made under the Predecessor Plan after the Section 12(g) Registration Date. All options outstanding under the Predecessor Plan on the Section 12(g) Registration Date shall be incorporated into the Plan at that time and shall be treated as outstanding options under the Plan. However, each outstanding option so incorporated shall continue to be governed solely by the terms of the documents evidencing such option, and no provision of the Plan shall be deemed to affect or otherwise modify the rights or obligations of the holders of such incorporated options with respect to their acquisition of shares of Common Stock.

F. One or more provisions of the Plan, including (without limitation) the option/vesting acceleration provisions of Article Two relating to Corporate Transactions and Changes in Control, may, in the Plan Administrator's discretion, be extended to one or more options incorporated from the Predecessor Plan which do not otherwise contain such provisions.

G. The Plan shall terminate upon the earliest of (i) May 30, 2006, (ii) the date on which all shares available for issuance under the Plan shall have been issued as fully-vested shares or (iii) the termination of all outstanding options in connection with a Corporate Transaction. Upon such plan termination, all outstanding option grants and unvested stock issuances shall thereafter continue to have force and effect in accordance with the provisions of the documents evidencing such grants or issuances.

IV. Amendment of the Plan

A. The Board shall have complete and exclusive power and authority to amend or modify the Plan in any or all respects. However, no such amendment or modification shall adversely affect the rights and obligations with respect to stock options or unvested stock issuances at the time outstanding under the Plan unless the Optionee or the Participant consents to such amendment or modification. In addition, certain amendments may require stockholder approval pursuant to applicable laws or regulations.

B. Options to purchase shares of Common Stock may be granted under the Discretionary Option Grant and Salary Investment Option Grant Programs and shares of Common Stock may be issued under the Stock Issuance Program that are in each instance in excess of the number of shares then available for issuance under the Plan, provided any excess shares actually issued under those programs shall be held in escrow until there is obtained

(1)Share number reflects 2 for 1 stock splits effective on January 29, 1999 and May 21, 1999.

stockholder approval of an amendment sufficiently increasing the number of shares of Common Stock available for issuance under the Plan. If such stockholder approval is not obtained within twelve (12) months after the date the first such excess issuances are made, then (i) any unexercised options granted on the basis of such excess shares shall terminate and cease to be outstanding and (ii) the Corporation shall promptly refund to the Optionees and the Participants the exercise or purchase price paid for any excess shares issued under the Plan and held in escrow, together with interest (at the applicable Short Term Federal Rate) for the period the shares were held in escrow, and such shares shall thereupon be automatically cancelled and cease to be outstanding.

V. Use of Proceeds

Any cash proceeds received by the Corporation from the sale of shares of Common Stock under the Plan shall be used for general corporate purposes.

VI. Regulatory Approvals

A. The implementation of the Plan, the granting of any stock option under the Plan and the issuance of any shares of Common Stock (i) upon the exercise of any granted option or (ii) under the Stock Issuance Program shall be subject to the Corporation's procurement of all approvals

and permits required by regulatory authorities having jurisdiction over the Plan, the stock options granted under it and the shares of Common Stock issued pursuant to it.

B. No shares of Common Stock or other assets shall be issued or delivered under the Plan unless and until there shall have been compliance with all applicable requirements of Federal and state securities laws, including the filing and effectiveness of the Form S-8 registration statement for the shares of Common Stock issuable under the Plan, and all applicable listing requirements of any stock exchange (or the Nasdaq National Market, if applicable) on which Common Stock is then listed for trading.

VII. No Employment/Service Rights

Nothing in the Plan shall confer upon the Optionee or the Participant any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation (or any Parent or Subsidiary employing or retaining such person) or of the Optionee or the Participant, which rights are hereby expressly reserved by each, to terminate such person's Service at any time for any reason, with or without cause.

APPENDIX

The following definitions shall be in effect under the Plan:

A. **Associate** shall mean an individual who is in the employ of the Corporation (or any Parent or Subsidiary), subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance.

B. **Automatic Option Grant Program** shall mean the automatic option grant program in effect under the Plan.

C. **Board** shall mean the Corporation's Board of Directors.

D. **Change in Control** shall mean a change in ownership or control of the Corporation effected through either of the following transactions:

(i) the acquisition, directly or indirectly by any person or related group of persons (other than the Corporation or a person that directly or indirectly controls, is controlled by, or is under common control with, the Corporation), of beneficial ownership (within the meaning of Rule 13d-3 of the 1934 Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities pursuant to a tender or exchange offer made directly to the Corporation's stockholders which the Board does not recommend such stockholders to accept, or

(ii) a change in the composition of the Board over a period of thirty-six (36) consecutive months or less such that a majority of the Board members ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who either (A) have been Board members continuously since the beginning of such period or (B) have been elected or nominated for election as Board members during such period by at least a majority of the Board members described in clause (A) who were still in office at the time the Board approved such election or nomination.

E. **Code** shall mean the Internal Revenue Code of 1986, as amended.

F. **Common Stock** shall mean the Corporation's common stock.

G. **Corporate Transaction** shall mean either of the following stockholder-approved transactions to which the Corporation is a party:

(i) a merger or consolidation in which securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction, or

(ii) the sale, transfer or other disposition of all or substantially all of the Corporation's assets in complete liquidation or dissolution of the Corporation.

H. **Corporation** shall mean E*TRADE Group, Inc. and any corporate successor to all or substantially all of the assets or voting stock of E*TRADE Group, Inc. which shall by appropriate action adopt the Plan.

I. **Discretionary Option Grant Program** shall mean the discretionary option grant program in effect under the Plan.

J. **Director Fee Option Grant Program** shall mean the special stock option grant in effect for non-associate Board members under Article Six of the Plan.

K. **Eligible Director** shall mean a non-associate Board member eligible to participate in the Automatic Option Grant Program in accordance with the eligibility provisions of Article One.

L. **Exercise Date** shall mean the date on which the Corporation shall have received written notice of the option exercise.

M. **Fair Market Value** per share of Common Stock on any relevant date shall be determined in accordance with the following provisions:

A-1.

(i) If the Common Stock is at the time traded on the Nasdaq National Market, then the Fair Market Value shall be the average of the high and low selling prices per share of Common Stock on the date in question, as the price is reported by the National Association of Securities

Dealers on the Nasdaq National Market or any successor system. If there is no average of the high and low selling prices per share for the Common Stock on the date in question, then the Fair Market Value shall be the average of the high and low selling prices per share on the last preceding date for which such quotation exists.

(ii) If the Common Stock is at the time listed on any Stock Exchange, then the Fair Market Value shall be the average of the high and low selling prices per of Common Stock on the date in question on the Stock Exchange determined by the Plan Administrator to be the primary market for the Common Stock, as such price is officially quoted in the composite tape of transactions on such exchange. If there is no average of the high and low selling prices per share for the Common Stock on the date in question, then the Fair Market Value shall be the average of the high and low selling prices per share on the last preceding date for which such quotation exists.

(iii) For purposes of any option grants made on the Underwriting Date, the Fair Market Value shall be deemed to be equal to the price per share at which the Common Stock is to be sold in the initial public offering pursuant to the Underwriting Agreement.

(iv) For purposes of any option grants made prior to the Underwriting Date, the Fair Market Value shall be determined by the Plan Administrator, after taking into account such factors as it deems appropriate.

N. **Hostile Take-Over** shall mean a change in ownership of the Corporation effected through the acquisition, directly or indirectly, by any person or related group of persons (other than the Corporation or a person that directly or indirectly controls, is controlled by, or is under common control with, the Corporation) of beneficial ownership (within the meaning of Rule 13d-3 of the 1934 Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities pursuant to a tender or exchange offer made directly to the Corporation's stockholders which the Board does not recommend such stockholders to accept.

O. **Incentive Option** shall mean an option which satisfies the requirements of Code Section 422.

P. **Involuntary Termination** shall mean the termination of the Service of any individual which occurs by reason of:

(i) such individual's involuntary dismissal or discharge by the Corporation for reasons other than Misconduct, or

(ii) such individual's voluntary resignation following (A) a change in his or her position with the Corporation which materially reduces his or her level of responsibility, (B) a reduction in his or her level of compensation (including base salary, fringe benefits and participation in any corporate-performance based bonus or incentive programs) by more than fifteen percent (15%) or (C) a relocation of such individual's place of employment by more than fifty (50) miles, provided and only if such change, reduction or relocation is effected by the Corporation without the individual's consent.

Q. **Misconduct** shall mean the commission of any act of fraud, embezzlement or dishonesty by the Optionee or Participant, any unauthorized use or disclosure by such person of confidential information or trade secrets of the Corporation (or any Parent or Subsidiary), or any other intentional misconduct by such person adversely affecting the business or affairs of the Corporation (or any Parent or Subsidiary) in a material manner. The foregoing definition shall not be deemed to be inclusive of all the acts or omissions which the Corporation (or any Parent or Subsidiary) may consider as grounds for the dismissal or discharge of any Optionee, Participant or other person in the Service of the Corporation (or any Parent or Subsidiary).

R. **1934 Act** shall mean the Securities Exchange Act of 1934, as amended.

S. **Non-Statutory Option** shall mean an option not intended to satisfy the requirements of Code Section 422.

A-2.

T. **Optionee** shall mean any person to whom an option is granted under the Discretionary Option Grant, Salary Investment Option Grant, Automatic Option Grant or Director Fee Program.

U. **Parent** shall mean any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation, provided each corporation in the unbroken chain (other than the Corporation) owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

V. **Participant** shall mean any person who is issued shares of Common Stock under the Stock Issuance Program.

W. **Permanent Disability or Permanently Disabled** shall mean the inability of the Optionee or the Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or to be of continuous duration of twelve (12) months or more. However, solely for purposes of the Automatic Option Grant and Director Fee Option Grant Programs, Permanent Disability or Permanently Disabled shall mean the inability of the non-associate Board member to perform his or her usual duties as a Board member by reason of any medically determinable physical or mental impairment expected to result in death or to be of continuous duration of twelve (12) months or more.

X. **Plan** shall mean the Corporation's 1996 Stock Incentive Plan, as set forth in this document.

Y. **Plan Administrator** shall mean the particular entity, whether the Primary Committee, the Board or the Secondary Committee, which is authorized to administer the Discretionary Option Grant and Stock Issuance Programs with respect to one or more classes of eligible persons, to the extent such entity is carrying out its administrative functions under those programs with respect to the persons under its jurisdiction.

Z. **Plan Effective Date** shall mean May 31, 1996, the date on which the Plan was adopted by the Board.

AA. **Predecessor Plan** shall mean the Corporation's pre-existing 1993 Stock Option Plan (which is the successor to the 1983 Employee Incentive Stock Option Plan) in effect immediately prior to the Plan Effective Date hereunder.

BB. **Primary Committee** shall mean the committee of two (2) or more non-associate Board members appointed by the Board to administer the Discretionary Option Grant and Stock Issuance Programs with respect to Section 16 Insiders and to administer the Salary Investment Option Grant Program solely with respect to the selection of the eligible individuals who may participate in such program.

CC. **Salary Investment Option Grant Program** shall mean the salary investment option grant program in effect under the Plan.

DD. **Secondary Committee** shall mean a committee of one (1) or more Board members appointed by the Board to administer the Discretionary Option Grant and Stock Issuance Programs with respect to eligible persons other than Section 16 Insiders.

EE. **Section 12 Registration Date** shall mean the date on which the Common Stock was first registered under Section 12(g) of the 1934 Act.

FF. **Section 16 Insider** shall mean an officer or director of the Corporation subject to the short-swing profit liabilities of Section 16 of the 1934 Act.

GG. **Service** shall mean the performance of services for the Corporation (or any Parent or Subsidiary) by a person in the capacity of an Associate, a non-associate member of the board of directors or a consultant or independent advisor, except to the extent otherwise specifically provided in the documents evidencing the option grant or stock issuance.

HH. **Stock Exchange** shall mean either the American Stock Exchange or the New York Stock Exchange.

II. **Stock Issuance Agreement** shall mean the agreement entered into by the Corporation and the Participant at the time of issuance of shares of Common Stock under the Stock Issuance Program.

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JJ. **Stock Issuance Program** shall mean the stock issuance program in effect under the Plan.

KK. **Subsidiary** shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, provided each corporation (other than the last corporation) in the unbroken chain owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

LL. **Take-Over Price** shall mean the greater of (i) the Fair Market Value per share of Common Stock on the date the option is surrendered to the Corporation in connection with a Hostile Take-Over or (ii) the highest reported price per share of Common Stock paid by the tender offeror in effecting such Hostile Take-Over. However, if the surrendered option is an Incentive Option, the Take-Over Price shall not exceed the clause (i) price per share.

MM. **Taxes** shall mean the Federal, state and local income and employment tax liabilities incurred by the holder of Non-Statutory Options or unvested shares of Common Stock in connection with the exercise of those options or the vesting of those shares.

NN. **10% Stockholder** shall mean the owner of stock (as determined under Code Section 424(d)) possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Corporation (or any Parent or Subsidiary).

OO. **Underwriting Agreement** shall mean the agreement between the Corporation and the underwriter or underwriters who managed the initial public offering of the Common Stock.

PP. **Underwriting Date** shall mean August 15, 1996, which is the date on which the Underwriting Agreement was executed and priced in connection with an initial public offering of the Common Stock.

A-4.

MENLO OAKS CORPORATE CENTER

STANDARD BUSINESS LEASE

(4200 BOHANNON DRIVE)

BASIC LEASE INFORMATION

Effective Date: August 18, 1998

Landlord: MENLO OAKS PARTNERS, L.P., a Delaware limited partnership

Landlord's Address: 4400 Bohannon Drive
Suite 260
Menlo Park, CA 94025
Attn: Mr. J. Marty Brill, Jr.
Phone: (650) 329-9030
Fax: (640) 329-0129

Tenant: E*TRADE GROUP, INC., a Delaware corporation

Tenant's Address:

Before Commencement Date: 2400 Geng Road
Palo Alto, CA 94303
Attn: Vice President of Corporate Services
Phone: (650) 842-2500
Fax: (650) 842-2552

After Commencement Date: 4500 Bohannon Drive
Menlo Park, CA 94025
Attn: Vice President of Corporate Services

Premises: Approximately forty-six thousand two hundred fifty-five (46,255) rentable square feet of space in the Building, as more particularly shown on Exhibit A attached hereto.

Building: That certain office building located within the Project, commonly known as "4200 Bohannon Drive," consisting of approximately forty-six thousand two hundred fifty-five (46,255) rentable square feet of space.

Lot: That certain real property located within the Project on which the Building is located, as more particularly described in Exhibit B, attached hereto.

Phase: A portion of the Project, consisting of the Lot, all of the improvements located thereon and all appurtenances thereto. The Phase includes approximately ninety-two thousand eight hundred sixty-nine (92,869) rentable square feet of space in two (2) buildings located thereon (including the Building).

Project: That certain business office park located in Menlo Park, California, comprised of three (3) separate phases and seven (7) office buildings and including approximately three hundred seventy-four thousand one hundred thirty-nine (374,139) rentable square feet of space. The Project is commonly known as "Menlo Oaks Corporate Center."

Term: Ten (10) years

Commencement Date: The earlier of (i) the date on which Tenant commences its business operations in the Premises or (ii) November 15, 1998.

Base Rent (Initial): One Hundred Forty-Five Thousand Seven Hundred Three and 25/100 Dollars (\$145,703.25) per month, subject to adjustment pursuant to Section 4.2

Security Deposit: One Hundred Ninety-Eight Thousand Five Hundred Seventy-Eight and 96/100 Dollars (\$198,578.96)

Tenant's Building Percentage Share: One hundred percent (100%)

Tenant's Phase Percentage Share: Forty-nine and 807/1000ths percent (49.807%)

Tenant's Project Percentage Share: Twelve and 46/100 percent (12.46%)

Default Percentage: One hundred twenty-five percent (125%)

Permitted Use:	For general office purposes, software research and development, data processing and incidental uses thereto and no other use whatsoever.
Business Hours:	Twenty-four (24) hours a day; seven (7) days a week
Non-Exclusive Parking:	Forty-nine and 807/1000ths percent (49.807%) of the available parking spaces in the Phase. The Phase includes approximately 414 parking spaces.
Tenant Improvements:	
Base Allowance:	Two Hundred Thirty-One Thousand Two Hundred Seventy-Five Dollars (\$231,275.00)
Additional Allowance:	Four Hundred Sixty-Two Thousand Five Hundred Fifty Dollars (\$462,550.00)
Adjustment for Overage:	Monthly Base Rent shall be increased One and One-Half Cents (\$0.015) for each Dollar of Additional Allowance provided by Landlord.
Brokers:	
Landlord's Broker:	None
Tenant's Broker:	Tory Corporate Real Estate Advisors, Inc. (dba The Staubach Company)
Exhibits:	Exhibit A—Diagram of Premises Exhibit B—Legal Description of Lot Exhibit C—Work Letter Exhibit D—Commencement Date Memorandum Exhibit E—Rules and Regulations Exhibit F—4400 Bohannon Expansion Option Space Exhibit G—Landlord's Sign Criteria

MENLO OAKS CORPORATE CENTER STANDARD BUSINESS LEASE

THIS MENLO OAKS CORPORATE CENTER STANDARD BUSINESS LEASE (this "Lease"), dated as of this 18th day of August, 1998 (the "Effective Date"), is entered into by and between **MENLO OAKS PARTNERS, L.P.**, a Delaware limited partnership ("Landlord"), and E*Trade Group, Inc., a Delaware corporation ("Tenant"), on the terms and conditions set forth below.

1. DEFINITIONS. The following terms shall have the meanings set forth below:

1.1. Building. The term "Building" shall have the meaning set forth in the Basic Lease Information.

1.2. Building Common Areas. The Areas and facilities within the Building provided and designated by Landlord for the general use, convenience or benefit of Tenant and other tenants and occupants of the Building (e.g., common stairwells, stairways, hallways, shafts, elevators, restrooms, janitorial telephone and electrical closets, pipes, ducts, conduits, wires and appurtenant fixtures servicing the Building).

1.3. Commencement Date. The term "Commencement Date" shall have the meaning set forth in Section 3.

1.4. Common Areas. The term "Common Areas" shall mean the Building Common Areas, the Phase Common Areas and the Project Common Areas.

1.5. Lot. The term "Lot" shall mean the land upon which the Building is located, as more particularly described in Exhibit B, attached hereto.

1.6. Phase. The term "Phase" have the meaning set forth in the Basic Lease Information.

1.7. Phase Common Areas. The areas and facilities within the Phase provided and designated by Landlord for the general use, convenience or benefit of Tenant and other tenants and occupants of the Phase (e.g., uncovered and unreserved parking areas, walkways and accessways).

1.8. Premises. The term "Premises" shall have the meaning set forth in the Basic Lease Information.

1.9. Project. The term "Project" shall have the meaning set forth in the Basic Lease Information.

1.10. Project Common Areas. The term "Project Common Areas" shall mean the areas and facilities within the Project provided and designated by Landlord for the general use, convenience or benefit of Tenant and other tenants and occupants of the Project (e.g., walkways, traffic aisles, accessways, utilities and communications conduits and facilities).

1.11. Rentable Area. The term "Rentable Area" shall mean the rentable area of the Premises, Building, Phase and Project as reasonably determined by Landlord. The parties agree that for all purposes under this Lease, the Rentable Area of the Premises, Building, Phase and Project shall be deemed to be the number of rentable square feet identified in the Basic Lease Information.

1.12. Tenant's Building Percentage Share. The term "Tenant's Building Percentage Share" shall mean the percentage specified in the Basic Lease Information. If the Rentable Area of the Premises or the Rentable Area of the Building is changed, then Tenant's Building Percentage Share shall be adjusted to a percentage equal to the Rentable Area of the Premises divided by the Rentable Area of the Building.

1.13. Tenant's Phase Percentage Share. The term "Tenant's Phase Percentage Share" shall mean the percentage specified in the Basic Lease Information. If the Rentable Area of the Premises or the Rentable Area of the Phase is changed, then Tenant's Phase Percentage Share shall be adjusted to a percentage equal to the Rentable Area of the Premises divided by the Rentable Area of the Phase.

1.14. Tenant's Project Percentage Share. The term "Tenant's Project Percentage Share" shall mean the percentage specified in the Basic Lease Information. If the Rentable Area of the Premises or the Rentable Area of the Project is changed, then Tenant's Percentage Project Share shall be adjusted to a percentage equal to the Rentable Area of the Premises divided by the Rentable Area of the Project.

1.15. Term. The term "Term" shall have the meaning described in Section 3.

2. PREMISES.

2.1. Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, together with the right in common to use the Common Areas, for the Term.

2.2. Condition Upon Delivery. Tenant acknowledges that it has had an opportunity to thoroughly inspect the Premises and, subject to Landlord's obligations under Section 8.1, Tenant accepts the Premises in its existing "as is" condition, with all faults and defects and without any representation or warranty of any kind, express or implied.

2.3. Reserved Rights. Landlord reserves the right to do the following from time to time:

(a) Changes. To install, use, maintain, repair, replace and relocate pipes, ducts, shafts, conduits, wires, appurtenant meters and mechanical, electrical and plumbing equipment and appurtenant facilities for service to other parts of the Building, Phase or Project above the ceiling surfaces, below the floor surfaces and within the walls of the Premises and in the central core areas of the Building and in the Building Common Areas, and to install, use, maintain, repair, replace and relocate any pipes, ducts, shafts, conduits, wires, appurtenant meters and mechanical, electrical and plumbing equipment and appurtenant facilities servicing the Premises, which are located either in the Premises or elsewhere outside of the Premises;

(b) Boundary Changes. To change the boundary lines of the Lot or the Project;

(c) Facility Changes. To alter or relocate the Common Areas or any facility within the Project;

(d) Parking. To designate and/or redesignate specific parking spaces in the Phase or the Project for the exclusive or non-exclusive use of specific tenants in the Phase or the Project;

(e) Services. To install, use, maintain, repair, replace, restore or relocate public or private facilities for communications and utilities on or under the Building, Phase and/or Project; and

(f) Other. To perform such other acts and make such other changes in, to or with respect to the Common Areas, Building, Phase and/or Project as Landlord may reasonably deem appropriate.

2.4. Work Letter. Landlord and Tenant shall each perform the work required to be performed by it as described in the Work Letter attached hereto as Exhibit C. Landlord and Tenant shall each perform such work in accordance with the terms and conditions contained therein.

3. TERM

3.1. Commencement of Term. The term of this Lease (the "Term") shall be for the period of time specified in the Basic Lease Information unless sooner terminated as hereinafter provided. The Term shall commence on the "Commencement Date" and shall continue in full force and effect for the period specified as the Term or until this Lease is terminated as otherwise provided herein.

3.2. Commencement Date Memorandum. Following the date on which Landlord delivers possession of the Premises to Tenant or the Commencement Date, Landlord may prepare and deliver to Tenant a commencement date memorandum (the "Commencement Date Memorandum") in the form of Exhibit D, attached hereto, subject to such changes in the form as may be required to insure the accuracy thereof. The Commencement Date Memorandum shall certify the date on which Landlord delivered possession of the Premises to Tenant and the dates upon which the Term commences and expires. Tenant's failure to execute and deliver to Landlord the Commencement Date Memorandum within five (5) days after Tenant's receipt of the Commencement Date Memorandum shall be conclusive upon Tenant as to the matters set forth in the Commencement Date Memorandum.

4. RENT

4.1. Base Rent. The monthly base rent ("Base Rent") shall be the amount set forth in the Basic Lease Information, subject to adjustment pursuant to Section 4.2. Tenant shall pay the Base Rent to Landlord in advance upon the first day of each calendar month of the Term, at Landlord's address or at such other place designated by Landlord in a notice to Tenant, without any prior demand therefor and without any deduction, abatement or setoff whatsoever. If the Term shall commence or end on a day other than the first day of a calendar month, then Tenant

shall pay, on the Commencement Date and first day of the last calendar month, a pro rata portion of the Base Rent, prorated on a per diem basis, with respect to the portions of the fractional calendar month included in the Term. Concurrently with executing this Lease, Tenant shall pay to Landlord the Base Rent due for the first full calendar month during the Term along with the Security Deposit as provided in Section 4.5 below.

4.2. Adjustment to Base Rent. The Base Rent shall be adjusted as provided in the Rider attached hereto and incorporated herein by

reference.

4.3. Additional Rent. All charges required to be paid by Tenant hereunder, including payments for insurance, Impositions, Operating Expenses and any other amounts payable hereunder, shall be considered additional rent ("Additional Rent") for the purposes of this Lease, and Tenant shall pay Additional Rent to Landlord upon written demand by Landlord or otherwise as provided in this Lease. The term "Rent" shall mean Base Rent and Additional Rent.

4.4. Late Payment. If any installment of Rent is not paid, Tenant shall pay to Landlord a late payment charge equal to five percent (5%) of the amount of such delinquent payment of Rent in addition to the installment of Rent then owing, regardless of whether or not a notice of default or notice of termination has been given by Landlord. This provision shall not relieve Tenant from payment of Rent at the time and in the manner herein specified.

4.5. Interest. In addition to the imposition of a late payment charge pursuant to Section 4.3 above, any Rent that is not paid due shall bear interest from the date due until the date paid at the rate (the "Interest Rate") that is the lesser of twelve percent (12%) per annum or the maximum rate permitted by law. Landlord's acceptance of any interest payments on any past due Rent shall not constitute a waiver by Landlord of Tenant's default with respect to the amount of Rent past due or prevent Landlord from exercising any of the rights and remedies available to Landlord under this Lease or at law.

4.6. Security Deposit. Upon executing this Lease, Tenant shall deliver to Landlord cash (the "Security Deposit") in the amount specified as the Security Deposit in the Basic Lease Information. The Security Deposit shall secure the performance of all of Tenant's obligations under this Lease, including Tenant's obligation to pay Rent and other monetary amounts, to maintain the Premises and repair damages thereto, and to surrender the Premises to Landlord upon termination of this Lease in the condition required pursuant to Section 8 below. Landlord may use and commingle the Security Deposit with other funds of Landlord. If Tenant fails to perform Tenant's obligations hereunder, Landlord may, but without any obligation to do so, apply all or any portion of the Security Deposit towards fulfillment of Tenant's unperformed obligations. If Landlord does so apply all or any portion of the Security Deposit, Tenant, upon written demand by Landlord, shall immediately pay to Landlord a sufficient amount in cash to restore the Security Deposit to the full original amount. Tenant's failure to pay to Landlord a sufficient amount in cash to restore the Security Deposit to its original amount within five (5) days after receipt of such demand shall constitute an Event of Default. Tenant shall not be entitled to interest on the Security Deposit. Within thirty (30) days after the expiration or earlier termination of this Lease, if Tenant has then performed all of Tenant's obligations hereunder, Landlord shall return the Security Deposit to Tenant. If Landlord sells or otherwise transfers Landlord's rights or interest under this Lease, Landlord deliver the Security Deposit to the transferee, whereupon Landlord shall be released from any further liability to Tenant with respect to the Security Deposit.

5. IMPOSITIONS

5.1. Tenants Obligations. Tenant shall pay to Landlord, as Additional Rent, Tenant's Phase Percentage Share of Impositions for the Phase during each year of the Term (prorated for any partial calendar year during the Term).

5.2. Definition of Impositions. The term "Impositions" shall include all transit charges, housing fund assessments, real estate taxes and all other taxes relating to the Premises, Building, Lot and Phase of every kind and nature whatsoever, including any supplemental real estate taxes attributable to any period during the Term; all taxes which may be levied in lieu of real estate taxes; and all assessments, assessment bonds, levies, fees, penalties (if a result of Tenant's delinquency) and other governmental charges (including, but not limited to, charges for parking, traffic and any storm drainage/flood control facilities, studies and improvements, water and sewer service studies and improvements, and fire services studies and improvements); and all amounts necessary to be expended because of governmental orders, whether general or special, ordinary or extraordinary, unforeseen as well as foreseen, of any kind and nature for public improvements, services, benefits or any other purpose, which are assessed, based upon the

use or occupancy of the Premises, Building, Lot and/or Phase, or levied, confirmed, imposed or become a lien upon the Premises, Building, Lot and/or Phase, or become payable during the Term, and which are attributable to any period within the Term.

5.3. Limitation. Nothing contained in this Lease shall require Tenant to pay any franchise, estate, inheritance, succession or transfer tax of Landlord, or any income, profits or revenue tax or charge upon the net income of Landlord from all sources; provided, however, that if at any time during the Term under the laws of the United States Government or the State of California, or any political subdivision thereof, a tax or excise on rent, or any other tax however described, is levied or assessed by any such political body against Landlord on account of Rent, or any portion thereof, Tenant shall pay one hundred percent (100%) of any said tax or excise as Additional Rent.

5.4. Installment Election. In the case of any Impositions which may be evidenced by improvement or other bonds or which may be paid in annual or other periodic installments, Landlord shall elect to cause such bonds to be issued or such assessment to be paid in installments over the maximum period permitted by law.

5.5. Estimate of Tenant's Share of Impositions. Prior to the commencement of each calendar year during the Term, or as soon thereafter as reasonably practicable, Landlord shall notify Tenant in writing of Landlord's estimate of the amount of Impositions which will be payable by Tenant for the ensuing calendar year. On or before the first day of each month during the ensuing calendar year, Tenant shall pay to Landlord in advance, one-twelfth (1/12th) of the estimated amount; provided, however, if Landlord fails to notify Tenant of the estimated amount of Tenant's share of Impositions for the ensuing calendar year prior to the end of the current calendar year, Tenant shall be required to continue to pay to Landlord each month in advance Tenant's estimated share of Impositions on the basis of the amount due for the immediately prior month until ten (10) days after Landlord notifies Tenant of the estimated amount of Tenant's share of Impositions for the ensuing calendar year. If at any time it appears to Landlord that Tenant's share of Impositions payable for the current calendar year will vary from Landlord's estimate, Landlord may give notice to Tenant of Landlord's revised estimate for the year, and subsequent payments by Tenant for the year shall be based on the revised estimate.

5.6. Annual Adjustment. Within one hundred twenty (120) days after the close of each calendar year during the Term, or as soon after the one hundred twenty (120) day period as reasonably practicable, Landlord shall deliver to Tenant a statement of the adjustment to the Impositions for the prior calendar year. If, on the basis of the statement, Tenant owes an amount that is less than the estimated payments for the prior

calendar year previously made by Tenant, Landlord shall apply the excess to the next payment of Impositions due. If, on the basis of the statement, Tenant owes an amount that is more than the amount of the estimated payments made by Tenant for the prior calendar year, Tenant shall pay the deficiency to Landlord within thirty (30) days after delivery of the statement. The year end statement shall be binding upon Tenant unless Tenant notifies Landlord in writing of any objection thereto within thirty (30) days after Tenant's receipt of the year end statement. In addition, if, after the end of any calendar year or any annual adjustment of Impositions for a calendar year, any Impositions are assessed or levied against the Premises, Building or Phase that are attributable to any period within the Term (e.g., supplemental taxes or escaped taxes), Landlord shall notify Tenant of its share of such additional Impositions and Tenant shall pay such amount to Landlord within ten (10) days after Landlord's written request therefor.

5.7. Personal Property Taxes. Tenant shall pay or cause to be paid, not less than ten (10) days prior to delinquency, any and all taxes and assessments levied upon all of Tenant's trade fixtures, inventories and other personal property in, on or about the Premises. When possible, Tenant shall cause Tenant's personal property to be assessed and billed separately from the real or personal property of Landlord.

5.8. Taxes on Tenant Improvements. Notwithstanding any other provision hereof, Tenant shall pay to Landlord the full amount of any increase in Impositions during the Term resulting from any and all alterations and tenant improvements of any kind whatsoever placed in, on or about or made to the Premises, Building, Phase or Project for the benefit of, at the request of, or by Tenant.

6. INSURANCE

6.1. Landlord. Landlord shall maintain "Special Form" property insurance (or its equivalent if "Special Form" property insurance is not available) including vandalism and malicious mischief coverage for the full replacement cost of the Building (but excluding any equipment, fixtures, alterations, improvements, additions or personal property of Tenant or any alterations, additions or improvements made by or at the request of Tenant to the

Premises, other than those tenant improvements owned by Landlord). Such property insurance shall include endorsements for sprinkler leakage, inflation, building ordinance coverage and such other endorsements as selected by Landlord, together with rental value insurance against loss of Rent for a period of twelve (12) months commencing on the date of loss. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, including, without limitation, liability insurance and hazardous materials, earthquake/volcanic action, flood and/or surface water, boiler and machinery comprehensive coverages in such amounts, with such deductibles and upon such terms as Landlord shall determine. Upon Tenant's written request, Landlord shall deliver to Tenant certificates evidencing the coverage required under this Section 6.1. Landlord, either directly or through its agent, may maintain any of the insurance required to be maintained by Landlord pursuant to this Section 6.1 under one or more "blanket policies", insuring other parties and/or other locations, so long as the amounts and coverages required under this Section 6.1 are not diminished as a result thereof.

6.2. Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times the following insurance:

(a) Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than, providing coverage for, among other things, blanket contractual liability, premises, products/completed operations and personal and advertising injury coverage;

(b) Automobile Liability Insurance. Comprehensive automobile liability insurance having a combined single limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence, and insuring Tenant against liability for claims arising out of ownership, maintenance or use of any owned, hired, borrowed or non-owned automobiles;

(c) Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by Tenant in the conduct of its operations on the Premises (including the all states endorsement and, if applicable, the volunteers endorsement), together with employer's liability insurance coverage in the amount of at least Five Million Dollars (\$5,000,000.00);

(d) Property Insurance. "Special Form" property insurance (or its equivalent if "Special Form" property insurance is not available), including vandalism and malicious mischief, boiler and machinery comprehensive form, if applicable, and endorsement for earthquake sprinkler damage, each covering damage to or loss of Tenant's personal property, fixtures and equipment, including electronic data processing equipment ("EDP Equipment"), media and extra expense, and all alterations, additions and improvements made by or at the request of Tenant to the Premises other than those tenant improvements owned by Landlord. EDP Equipment, media and extra expense shall be covered for perils insured against in the so-called "EDP Form". If the property of Tenant's invitees is to be kept in the Premises, warehouse's legal liability or bailee customers insurance for the full replacement cost of such property;

(e) Business Insurance. Business insurance in an amount not less than the annual Base Rent and Additional Rent payable by Tenant hereunder for the then current calendar year, and

(f) Additional Insurance. Any such other insurance as Landlord or Landlord's lender may reasonably require.

6.3. General.

(a) Insurance Companies. Insurance required to be maintained by Tenant shall be written by companies licensed to do business in California and having a "General Policyholders Rating" of at least A:X or better (or such higher rating as may be required by a lender having a lien on the Lot) as set forth in the most current issue of "Best's Insurance Guide" or "Best's Key Rating Guide."

(b) Increased Coverage. Landlord, upon written notice to Tenant, may require Tenant to increase the amount of any insurance coverage maintained by Tenant under this Section 6 to the amount of insurance coverage that landlords of similar buildings located in Menlo Park and Palo Alto customarily require tenants to maintain.

(c) Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance with the additional insured endorsement and the primary insurance endorsement(s) attached for all insurance required to be maintained by Tenant, no later than seven (7) days prior to the Commencement Date or such earlier date that Tenant takes possession of the Premises. Tenant shall, at least thirty (30) days prior to expiration of the policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days' prior written notice to the parties named as additional insureds in this Lease. If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and cost resulting from said failure.

(d) Additional Insureds. Landlord, any property management company of Landlord for the Premises and any designated by Landlord shall be named as additional insurers under all of the policies required to be maintained by Tenant under this Section 6. The policies required to be maintained by Tenant under this Section 6 shall provide for severability of interest.

(e) Primary Coverage. All insurance to be maintained by Tenant shall be primary, without right of contribution from Landlord's insurance. Any umbrella liability policy or excess liability policy (which shall be in "following form") shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of insurance maintained by Tenant shall not limit Tenant's liability under this Lease.

(f) Waiver of Subrogation. Landlord and Tenant waive any right to recover against the other for damages covered by insurance or which would have been covered by insurance had the applicable party maintained the insurance required to be maintained by that party under the terms of this Lease. This provision is intended to waive fully, and for the benefit of Landlord or Tenant, as applicable, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverages obtained by Landlord and Tenant pursuant to this Lease shall include, without limitation, waiver of subrogation endorsements.

6.4. Tenant's Indemnity. Tenant shall indemnify, protect and defend by counsel reasonably satisfactory to Landlord and hold harmless Landlord and Landlord's officers, directors, shareholders, employees, partners, members, lenders and successors and assigns (collectively, the "Indemnified Parties" and each, an "Indemnified Party") from and against any and all claims, demands, causes of action, judgments, losses, costs, liabilities, damages (including punitive and consequential damages) and expenses, including attorneys' fees and costs (collectively, "Claims") arising from any cause whatsoever in the Premises, including Claims caused in whole or in part by the act, omission or negligence of the Indemnified Party (but excluding Claims caused by an Indemnified Party's willful or criminal misconduct). In addition, Tenant shall further indemnify, protect and defend by counsel reasonably satisfactory to Landlord and hold harmless the Indemnified Parties from and against any and all Claims arising from (i) Tenant's use or occupancy of the Premises, the conduct of Tenant's business or any activity, work or things done, permitted or suffered by Tenant in or about the Premises, (ii) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, and/or (iii) any acts, omissions or negligence of Tenant or any of Tenant's agents, contractors, employees or invitees. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property in, upon or about the Premises arising from any cause; and Tenant hereby waives all claims in respect thereof against Landlord. The provisions of this Section 6.4 shall survive the expiration or earlier termination of this Lease.

6.5. Exemption of Landlord from Liability. Neither Landlord nor any other Indemnified Party shall be liable to Tenant for any injury to Tenant's business or loss of income therefrom, loss or damage to property, or injury or death to any persons, including any loss, damage or injury attributable in whole or in part to the act, omission or negligence of any Indemnified Party (but excluding any loss, damage or injury to the extent caused by the willful or criminal misconduct of such Indemnified Party, whether such loss, damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, and whether said loss, damage or injury results from conditions arising upon the Premises, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, As a material part of Landlord's consideration in exchange for entering into this Lease, Tenant assumes all risk of such loss, damage and injury.

7. OPERATING EXPENSES

7.1. Operating Expenses. Tenant shall pay to Landlord, as Additional Rent during each year of the Term (prorated or any partial calendar year during the Term), (i) Tenant's Building Percentage Share of all Operating Expenses attributable to the ownership, operation, repair and/or maintenance of the Building, (ii) Phase Percentage Share of all Operating Expenses attributable to the ownership, operation, repair and/or maintenance of the Phase and (iii) Tenant's Project Percentage Share of all Operating Expenses attributable to the ownership, operation, repair and/or maintenance of the Project, each as determined by Landlord. Landlord shall not collect any Operating Expense from Tenant more than once.

7.2. Definition of Operating Expenses. The term "Operating Expenses" shall include all expenses and costs of every kind and nature which Landlord shall pay or become obligated to pay because of or in connection with the ownership, operation, repair and/or maintenance of the Building, Phase and/or Project, the surrounding property, and the supporting facilities, including, without limitation, (i) premiums for insurance maintained by Landlord pursuant to this Lease and all costs incidental thereto, (ii) wages, salaries and related expenses and benefits of all employees engaged in operation, maintenance and security of the Building, Phase and/or Project; (iii) costs for all supplies, materials and rental equipment used in the operation of the Building, Phase and/or Project; (iv) all maintenance, janitorial, security and service costs; (v) all management fees; (vi) legal and accounting expenses, including the cost of audits; (vii) costs for repairs, replacements, uninsured damage or deductibles on property insurance, and general maintenance of the Building, Phase and Project, including service areas, elevators, mechanical rooms, exterior surfaces and all component parts thereof (but excluding any repairs or replacements paid for out of insurance proceeds or by other parties and alterations attributable solely to tenants of the Building other than Tenant); (viii) the cost of any capital improvements made to the Building, Phase or Project, amortized over such reasonable period as Landlord shall determine, together with interest upon the unamortized balance at the or such other higher rate as may have been paid by Landlord on funds borrowed for the purpose of constructing the capital improvements; (ix) all charges for heat, water, gas, electricity, sewer, air conditioning, emergency telephone service, trash removal and other utilities used or supplied to the Building, Phase and/or Project (and not separately metered and billed to individual tenants); and (x) all business license, permit and inspection fees.

7.3. Prorated Expenses. Any Operating Expenses attributable to a period which falls only partially within the Term shall be prorated

between Landlord and Tenant so that Tenant shall pay only that proportion thereof attributable to the period that falls within the Term.

7.4. Payment at End of Term. Any amount payable by Tenant which would not otherwise be due until after the termination of this Lease, shall, if the exact amount is uncertain at the time that this Lease terminates, be paid by Tenant to Landlord upon such termination in an amount to be estimated by Landlord with an adjustment to be made once the exact amount is known.

7.5. Estimates of Tenant's Share of Operating Expense. Prior to the commencement of each calendar year during the Term, or as soon thereafter as is reasonably practicable, Landlord shall notify Tenant in writing of Landlord's estimate of the amount of Operating Expenses which will be payable by Tenant for the ensuing calendar year. On or before the first day of each month during the ensuing calendar year Tenant shall pay to Landlord, in advance, one-twelfth (1/12) of the estimated amount; provided however, if Landlord fails to notify Tenant of the estimated amount of Tenant's share of Operating Expenses for the ensuing calendar year prior to the end of the current calendar year, Tenant shall be required to continue to pay to Landlord each month in advance Tenant's estimated share of Operating Expenses on the basis of the amount due for the immediately prior month until ten (10) days after Landlord notifies Tenant of the estimated amount of Tenant's share of Operating Expenses for the ensuing calendar year. If at any time it appears to Landlord that Tenant's share of Operating Expenses payable for the current calendar year will vary from Landlord's estimate, Landlord may give notice to Tenant of Landlord's revised estimate for the calendar year, and subsequent payments by Tenant for the calendar year shall be based on the revised estimate.

7.6. Annual Adjustment. Within one hundred twenty (120) days after the close of each calendar year during the Term, or as soon after the one hundred twenty (120) day period as practicable, Landlord shall deliver to Tenant a statement of the adjustment to the Operating Expenses for the prior calendar year. If, on the basis of the statement, Tenant owes an amount that is less than the estimated payments for the prior calendar year previously made by Tenant, Landlord shall apply the excess to the next payment of Operating Expenses due. If, on the basis of the statement, Tenant owes an amount that is more than the amount of estimated payments made by the Tenant for

the prior calendar year, Tenant shall pay the deficiency to Landlord within thirty (30) days after delivery of the statement. The year end statement shall be binding upon Tenant unless Tenant notifies Landlord in writing of any objection thereto within ninety (90) days after Tenant's receipt of the year end statement. In addition, if, after the end of any calendar year or any annual adjustment of Operating Expenses for a calendar year, Operating Expenses are incurred or billed to Landlord that are attributable to any period within the Term (e.g., sewer district flow fees), Landlord shall notify Tenant of its share of such additional Operating Expenses and Tenant shall pay such amount to Landlord within ten (10) days after Landlord's written request therefor.

7.7. Less Than Full Occupancy. In the event the Building, Phase or Project are not fully occupied during any year of the Term, an adjustment shall be made in computing Operating Expenses for such year so that the same shall be computed for such year as though the Building, Phase and Project had been fully occupied during such year.

7.8. Special Services.

(a) Utilities. In the event Landlord provides additional utilities, heating, air conditioning, trash removal and/or cleaning services to Tenant beyond such standard services related to the operation and management similar business office parks located in Menlo Park/Palo Alto areas, or at times other than during Business Hours (as defined in the Basic Lease Information), Tenant shall pay Landlord's reasonable charge for such special services as Additional Rent. Any cleaning of lunchrooms, cafeterias, conference rooms, etc., shall be on a special services basis (except with respect to the removal of trash from trash receptacles or cleaning incidental to normal cleaning).

(b) Meters. Landlord shall have the right, at Tenant's sole cost and expense, to install separate metering for electricity, water or gas to the Premises or to separately charge Tenant for any quantity of such utilities consumed by Tenant beyond the amounts customarily consumed by tenants in the Project as reasonably determined by Landlord. Landlord may also charge Tenant for costs of sanitary sewer or trash removal occasioned by Tenant's excessive consumption of such services. All such charges shall be reasonably determined by Landlord and promptly paid by Tenant to Landlord as Additional Rent.

8. REPAIRS AND MAINTENANCE

8.1. Landlord Repairs and Maintenance. Landlord shall maintain those portions of the Building, Lot, Phase and Project that are owned by Landlord and not leased to tenants in the Project or required to be maintained by any tenants in the Project consistent with the standards applied by landlords of similar Class A business office parks located in the Menlo Park and Palo Alto areas.

8.2. Tenant Repairs and Maintenance. Tenant, at Tenant's sole cost and expense, shall at all times during the Term keep, maintain and preserve the Premises and all parts, components, systems, fixtures, hardware and finishes of and in the Premises in a first class, clean, safe and sanitary order, condition and repair, excepting only insured casualty to the extent of the insurance proceeds received by Landlord. Tenant shall comply with all applicable manufacturer's specifications and recommendations and best industry practices in connection with cleaning, protecting, servicing, maintaining and repairing the Premises and all of the parts, components, systems, fixtures, hardware and finishes in the Premises in order to preserve and achieve the maximum aesthetic and economically serviceable life of the Premises and the improvements contained therein. All repairs, replacements and restorations made by Tenant shall be performed promptly as required, in a good and workmanlike manner, employing materials of equal or better quality, serviceability and utility to those items or parts being replaced, with surface finishes (including color, texture and general appearance) comparable and compatible with adjacent surfaces, to the reasonable satisfaction of Landlord and in compliance with all applicable federal, state or local laws, ordinances, regulations and orders and the requirements of any insurer of the Building. Tenant shall, at Tenant's own expense, immediately replace all glass in the Premises that may be broken during the Term with glass at least equal to the specification and quality of the glass being replaced. Upon expiration of the Term, Tenant shall surrender the Premises to Landlord in the same condition as received, reasonable wear and tear, damage by fire or other insured casualty to the extent of insurance proceeds received by Landlord excepted. The term "reasonable wear and tear" as used herein shall mean wear and tear which manifests itself solely through normal intensity of use and passage of time consistent with the employment of commercially prudent measures to protect finishes and components from damage and excessive wear, the application of regular and appropriate preventative maintenance practices and procedures, routine cleaning and servicing, waxing, polishing, adjusting, repair, refurbishment and replacement at a standard of appearance and utility and as often as appropriate for Class A corporate and professional office occupancies in the Palo Alto/Menlo Park office market. The term "reasonable wear and tear"

would thus encompass the natural fading of painted surfaces, fabric and materials over time, and carpet wear caused by normal foot traffic. The term "reasonable wear and tear" shall not include any damage or deterioration that could have been prevented by Tenant's employment of ordinary prudence, care and diligence in the occupancy and use of the Premises and the performance of all of its obligations under this Lease. Items not considered reasonable wear and tear hereunder include the following for which Tenant shall bear the obligation for repair and restoration (except to the extent caused by the gross negligence or willful misconduct of Landlord or its employees or agents), (i) excessively soiled, stained, worn or marked surfaces or finishes; (ii) damage, including holes in building surfaces (e.g., cabinets, doors, walls, ceilings and floors) caused by the installation or removal of Tenant's trade fixtures, furnishings, decorations, equipment, alterations, utility installations, security systems, communications systems (including cabling, wiring and conduits), displays and signs; (iii) damage to any component, fixture, hardware, system or component part thereof within the Premises, and any such damage to the Building, Phase or Project, caused by Tenant or its agents, contractors or employees, and not fully recovered by Landlord from insurance proceeds. Tenant shall not commit or allow any waste or damage to be committed on any portion of the Premises, Building, Phase or Project.

8.3. Failure to Maintain, Repair or Restore. The timely performance by Tenant of Tenant's duties to maintain, repair and restore the Premises is essential to the preservation of Landlord's property value and the security interests of Landlord's mortgagee. If, upon expiration of the Term, Tenant has failed to fully perform its obligations under this Section 8 or Sections 9 or 11.2, Landlord shall have the right, but not the obligation, to perform any obligation of Tenant (notice to Tenant) as provided in Section 19.16 hereof, and Tenant shall reimburse Landlord for all costs incurred by Landlord related thereto (including overtime or premium time labor charges as determined by Landlord in its sole discretion). Tenant shall pay to Landlord all costs, fees and penalties owing, due, paid or payable by Landlord to any lender or mortgagee as a result of Tenant's failure to perform its obligations under this Section 8 or Sections 9 or 11.2, and any fees, penalties, loss, costs, expenses or liabilities whether paid or accrued by Landlord as a result of Landlord's failure to timely deliver all or a portion of the Premises for occupancy by one or more successor or replacement tenants to the extent such failure is due to Tenant's failure to perform hereunder. In addition, if Tenant fails to fully perform its obligations pursuant to this Section 13 or Sections 9 or 11.2 by the end of the Term, then for each day required by Landlord to perform such obligations (or each day that would reasonably be required by Landlord to perform such obligations if Landlord elected to do so), Tenant shall pay to Landlord as liquidated damages an amount equal to one thirtieth (1/30th) of the product of (i) the Default Percentage (as stated in the Basic Lease Information) and (ii) the monthly Rent due under this Lease during the last month of the Term (hereinafter referred to as the "Liquidated Damages Amount"). The Liquidated Damages Amount is intended to compensate Landlord for any loss of rent incurred by Landlord during the period of time required by Landlord to perform Tenant's unperformed obligations under this Section 8 and Sections 9 and 11.2 (or that would reasonably be required by Landlord to perform such obligations had Landlord elected to do so). Landlord and Tenant agree that Landlord's actual damages for loss of rents or opportunity as a result of Tenant's failure to complete its obligations pursuant to this Section 8 and Sections 9 and 11.2 would be difficult or impossible to determine because, inter alia, where a tenant has failed to perform such obligations, it is difficult for a landlord effectively to market that tenant's premises to prospective tenants, and the Liquidated Damages Amount is the best estimate of the amount of damages Landlord would suffer in the nature of loss of rent or opportunity for any such failure by Tenant. Nothing contained in this paragraph shall limit Landlord's other remedies pursuant to this Lease or by law with respect to losses other than loss of rent or opportunity, or waive or affect any of Tenant's indemnity obligations under this Lease and Landlord's rights to enforce those indemnity obligations. The payment of the Liquidated Damages Amount as liquidated damages is not intended as a forfeiture or penalty within the meaning of California Civil Code Section 3275 or 3369, but is intended to constitute liquidated damages to Landlord pursuant to California Civil Code Section 1671.

8.4. Inspection of Premises. Landlord and Landlord's agents, at all reasonable times, may enter the Premises to perform any construction related to the Premises, Building or Phase, to inspect, clean or repair the same, to inspect the performance by Tenant of the terms and conditions contained in this Lease, to affix reasonable signs and displays, to show the Premises to prospective purchasers, tenants and lenders, to post notices of non-responsibility and similar notices, and for all other purposes as Landlord shall reasonably deem necessary.

8.5. Liens. Tenant shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered on behalf of Tenant and shall keep the Premises, Building, Phase and Project free and clear of all mechanic's and materialmen's liens in connection therewith. Landlord shall have the right to post or keep posted on the Premises, or in the immediate vicinity thereof, any notices of nonresponsibility for any construction, alteration or repair of the Premises by Tenant. If any such lien is filed, Landlord may, but shall not be required to,

take such action or pay such amount as may be necessary to remove such lien; and, Tenant shall pay to Landlord as Additional Rent any such amounts expended by Landlord within five (5) days after Tenant receives Landlord's written request for payment.

9. FIXTURES, PERSONAL PROPERTY AND ALTERATIONS

9.1. Fixtures and Personal Property. Tenant, at Tenant's sole cost and expense, may install any necessary trade fixtures, equipment and furniture in the Premises, provided that such items are installed and are removable without affecting the structural integrity, character or utility of the Building. Landlord reserves the right to approve or disapprove of any curtains, draperies, shades, paint or other interior improvements that are visible from outside the Premises on wholly aesthetic grounds. Such improvements or replacement items must be submitted for Landlord's written approval prior to installation, or Landlord may remove or replace such items at Tenant's sole cost and expense. The trade fixtures, equipment and furniture shall remain Tenant's property and shall be removed by Tenant prior to the expiration of this Lease. If Tenant fails to remove Tenant's trade fixtures, equipment and furniture prior to the termination of this Lease, Landlord may keep and use the foregoing items or remove and dispose any or all of those items at Tenant's expense, and cause Tenant's trade fixtures, equipment and furniture to be stored or sold in accordance with applicable law. Prior to expiration of the Term or earlier termination of this Lease, Tenant shall repair, at Tenant's sole cost and expense, all damage caused to the Building or Premises as a result of the installation, operation, use or removal of Tenant's trade fixtures, equipment, furniture, or unauthorized improvements and replacements, and restore the Building and the Premises to their condition at the commencement of the Term.

9.2. Alterations. Tenant shall deliver to Landlord full and complete plans and specifications of all such alterations, additions or improvements, and no such work shall be commenced by Tenant until Landlord has given its written approval thereof. Landlord does not expressly or implicitly covenant or warrant that any plans or specifications submitted by Tenant are safe or that the same comply with any applicable laws, ordinances, etc. Further, Tenant shall indemnify and hold harmless Landlord from any loss, cost or expense, including attorneys' fees and costs,

incurred by Landlord as a result of any defects in design, materials or workmanship resulting from Tenant's alterations, additions or improvements to the Premises. All other alterations, additions and improvements shall remain the property of Tenant until termination of this Lease, at which time they shall be and become the property of Landlord. All alterations, additions, improvements, repairs and restoration by Tenant hereinafter required or permitted shall be done in a good and workmanlike manner, incorporating materials of quality equal to or better than those replaced, with finishes comparable to and compatible with adjacent finishes within the Premises and the Building and in compliance with all applicable laws, ordinances, bylaws, regulations and orders of any federal, state, county, municipal or other public authority and of the insurers of the Building. In addition, all of Tenant's alterations, additions and improvements shall be constructed in such a manner so as to (i) not unreasonably disturb or otherwise interfere with the use and occupancy of any other tenant of the Building, Phase or Project, (ii) protect by appropriate means and measures all components of the Premises, Building, Phase and Project from soiling or damage associated with Tenant's work, and (iii) not impose any additional expense or delay upon Landlord in the construction of improvements to, or maintenance or operation of, the Building, Phase and/or Project. Tenant shall reimburse Landlord for reviewing and approving or disapproving plans and specifications for any alterations proposed by Tenant. Tenant shall require that any contractors used by Tenant carry a commercial liability insurance policy covering bodily injury in the amounts of Two Million Dollars (\$2,000,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence, and covering property damage in the amount of Two Million Dollars (\$2,000,000.00). Landlord may increase the amount of insurance coverage required pursuant to this Section to reflect inflation, industry cost and recovery experience over time. Landlord may require proof of such insurance prior to commencement of any work on the Premises.

10. USE AND COMPLIANCE WITH LAWS

10.1. General Use and Compliance with Laws. Tenant shall only use the Premises for the Permitted Use (as set forth in the Basic Lease Information) and for no other use whatsoever without the prior written consent of Landlord. Tenant, at Tenant's sole cost and expense, shall comply with all of the requirements of any recorded covenants, conditions and restrictions, and any requirements of municipal, county, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the Premises, Building, Phase, and/or Project, including any occupancy permit for the Premises, and secure any necessary permits therefor. Tenant, in Tenant's use and occupancy of the Premises, shall not subject the Premises to any use which would tend

to damage any portion thereof, nor overload the common facilities of the Building, Phase or Project to the detriment of other tenants' enjoyment thereof.

10.2. Signs. Tenant shall not install any sign in or on the Premises, Building, Phase or Project without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Any sign placed by or erected by Landlord for the benefit of Tenant in or on the Premises, Building, Phase or Project shall be installed at Tenant's sole cost and expense and, except in the interior of the Premises, shall contain only Tenant's name, or the name of any affiliate of Tenant actually occupying the Premises, and no advertising matter. No such sign shall be erected until Tenant has obtained Landlord's prior written approval of the location, material, size, design and content thereof and all necessary governmental and other permit and approvals therefor. Landlord shall have the right, in Landlord's sole and absolute discretion, to object to any sign proposed by Tenant. Tenant shall remove all of Tenant's signs prior to the expiration of the Term or earlier termination of this Lease and shall return the Premises, Building, Phase and Project to their condition existing immediately prior to the placement or erection of said sign or signs. If Tenant places or installs any monument or exterior signs in or on the Building, Phase and/or Project, and at any time thereafter Tenant less than fifty percent (50%) of the original Rentable Area of the Premises (as a result of Tenant having assigned its interest in this Lease, Tenant shall immediately remove all such signs and restore the area of the Building, Phase and/or Project where Tenant's signs were previously located to their condition prior to Tenant's installation or placement of such signs.

10.3. Parking Access. In addition to the general obligation of Tenant to comply with laws and without limitation thereof, Landlord shall not be liable to Tenant nor shall this Lease be affected if any parking privileges appurtenant to the Premises are impaired by reason of any moratorium, initiative, referendum, statute, regulation or other governmental decree or action which could in any manner prevent or limit the parking rights of Tenant hereunder. Any governmental charges or surcharges or other monetary obligations imposed relative to parking rights with respect to the Premises, Building, Phase or Project shall be considered as Impositions and shall be payable by Tenant under the provisions of Section 5. Tenant is allocated the use of a percentage of the parking spaces contained in the Phase on a non-exclusive basis as provided in the Basic Lease Information. Tenant shall not permit any on street parking, unauthorized parking upon private property, or parking in excess of Tenant's allocation by Tenant's employees, agents or invitees.

10.4. Floor Load. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor is designed to carry.

11. HAZARDOUS MATERIALS.

11.1. Definitions.

(a) **Hazardous Materials.** The term "Hazardous Materials" shall mean any substance that: (A) now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or (B) is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation.

(b) **Environmental Requirements.** The term "Environmental Requirements" shall mean all present and future federal, state and local laws, ordinances, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials.

(c) **Environmental Losses.** The term "Environmental Losses" shall mean all costs and expenses, damages, including foreseeable and unforeseeable consequential damages, fines and penalties incurred in connection with any violation of and compliance with Environmental Requirements, and all losses of any kind attributable to the diminution of value, loss of use or adverse effect on the marketability or use of any portion of the Premises, Building, Phase or Project.

11.2. Tenant's Covenants. Tenant shall not use, install, handle, generate, store, dispose, discharge, release, abate or transport any Hazardous Materials on or about the Premises, Building, Phase or Project without Landlord's prior written consent, which consent may be granted, denied or conditioned upon compliance with

Landlord's requirements, all in Landlord's sole and absolute discretion. Notwithstanding the foregoing, Tenant may use and store at the Premises normal quantities of those Hazardous Materials customarily used in the conduct of general office activities, such as copier fluids and cleaning supplies ("Permitted Hazardous Materials") without Landlord's prior written consent, provided that Tenant's use, storage and disposal of all Hazardous Materials shall at all times comply with all Environmental Requirements. At the expiration or termination of this Lease, Tenant shall promptly remove from the Premises, Building, Phase and Project all Hazardous Materials used, installed, handled, generated, stored, disposed, discharged, released, abated or transported by Tenant on or under the Premises, Building, Phase or Project. Tenant shall keep Landlord fully and promptly informed of Tenant's use, installation, handling, generation, storage, disposal, discharge, release, abatement or transportation of any Hazardous Materials other than Permitted Hazardous Materials. Tenant shall be responsible and liable for compliance with all of the provisions of this Section 11 by Tenant's agents, employees, contractors, licensees, assignees, sublessees, transferees, representatives, guests, customers, invitees and visitors, and all of Tenant's obligations under this Section 11 (including its indemnification obligations under Section 11.5 below) shall survive the expiration or termination of this Lease.

11.3. Compliance. Tenant shall, at Tenant's sole cost and expense, promptly take all actions required by any governmental agency or entity in connection with or as a result of Tenant's use, installation, handling, generation, storage, disposal, discharge, release, abatement or transportation of any Hazardous Materials on or about the Premises, Building, Phase or Project, including inspecting and testing, performing all cleanup, removal and remediation work required with respect to those Hazardous Materials, complying with all closure requirements and post-closure monitoring, and filing all required reports or plans. All of the foregoing work shall be performed in a good, safe and workmanlike manner by consultants qualified and licensed to undertake such work and in a manner that will not unreasonably interfere with any other tenants' quiet enjoyment of the Building, Phase and/or Project or Landlord's use, operation, leasing and sale of the Project or any portion thereof. Tenant shall deliver to Landlord, prior to delivery to any governmental agency, or promptly after receipt from any governmental agency, copies of all permits, manifests, closure or remedial action plans, notices and all other documents relating to Tenant's use, installation, handling, generation, storage, disposal, discharge, release, abatement or transport of any of Hazardous Materials on or about the Premises, Building, Phase or Project. If any lien attaches to the Premises, Building, Phase or Project in connection with or as a result of Tenant's use, installation, handling, generation, storage, disposal, discharge, release, abatement or transport of any Hazardous Materials, and Tenant does not cause the same to be released, by payment, bonding or otherwise, within ten (10) days after the attachment thereof, Landlord shall have the right, but not the obligation, to cause the lien to be released and any sums expended by Landlord in connection therewith shall be payable by Tenant on demand.

11.4. Landlord's Rights. Landlord shall have the right, but not the obligation, to enter the Premises upon forty-eight (48) hours, prior written notice to Tenant, except in instances in which Landlord, in its reasonable discretion, deems an emergency or a breach by Tenant of the terms and conditions of this Section 11 to exist in which no prior notice shall be required, (i) to confirm Tenant's compliance with the provisions of this Section 11, and (ii) to perform Tenant's obligations under this Section 11 if Tenant has failed to do so or commence to do so within five (5) days after written notice to Tenant. Landlord shall also have the right to engage qualified Hazardous Materials consultants to inspect the Premises, Building, Phase and/or Project and review Tenant's use, installation, handling, generation, storage, disposal, discharge, release, abatement or transport of any Hazardous Materials, including review of all permits, reports, plans and other documents, the costs of which shall be reimbursed by Tenant to Landlord on demand. Tenant shall pay to Landlord on demand the all costs incurred by Landlord in performing Tenant's obligations under this Section 11. Landlord shall not be responsible for any interference caused by Landlord's entry on the Premises.

11.5. Tenant's Indemnification. Tenant agrees to indemnify, protect and defend with counsel acceptable to Landlord and hold harmless Landlord, its partners or members, and its or their partners, members, directors, officers, shareholders, employees and agents from all Environmental Losses and all other claims, actions, losses, damages, liabilities, costs and expenses of every kind, including attorneys', experts' and consultants' fees and costs, that are incurred at any time and arising from or in connection with Tenant's use, installation, handling, generation, storage, disposal, discharge, release, abatement or transport of any Hazardous Materials at or about the Premises, Building, Phase and Project, or Tenant's failure to comply in full with all Environmental Requirements with respect to the Premises, Building, Phase and Project.

12. DAMAGE AND DESTRUCTION

12.1. Obligation to Rebuild.

12.2. Right to Terminate. Landlord shall have the option to terminate this Lease if the Premises or the Building is destroyed or damaged by fire or other casualty, regardless of whether the casualty is insured against under this Lease, if Landlord reasonably determines that (i) there are insufficient insurance proceeds to pay all of the costs of the repair or restoration or (ii) the repair or restoration of the cannot be completed within days after the date of the casualty. If Landlord elects to exercise the right to terminate this Lease as a result of a casualty, Landlord shall exercise the right by giving Tenant written notice of its election to terminate this Lease within forty-five (45) days after the date of the casualty, in which event this Lease shall terminate fifteen (15) days after the date of the notice.

12.3. Limited Obligation to Repair. Landlord's obligation, should Landlord elect or be obligated to repair or rebuild, shall be limited to the shell of the Building and any tenant improvements owned by Landlord. Tenant, at its sole cost and expense, shall replace or fully repair all trade fixtures and equipment owned by Tenant in the Premises and all improvements, additions and alterations constructed by or at the request of Tenant in the Premises (other than any tenant improvements owned by Landlord) and existing at the time of the damage or destruction.

12.4. Abatement of Rent. In the event of any damage or destruction to the Premises that is not caused by Tenant's negligence or the negligence of Tenant's agents, employees or invitees, the Base Rent shall be temporarily abated proportionately to the degree the Premises are rendered untenable as a result of the damage or destruction, but only to the extent of any proceeds received by Landlord from rental abatement insurance. Such abatement shall commence on the date of the damage or destruction and continue through the period required by Landlord to substantially complete the repair and restoration of the Premises or until such time as the Premises are tenable for the operation of Tenant's

business, whichever is earlier. Except for the rent abatement provided above, Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the Premises, damage to Tenant's personal property or any inconvenience occasioned by any damage, repair or restoration.

12.5. Damage Near End of Term and Extensive Damage. In addition to right to terminate this Lease under Section 12.2, shall have the right to terminate this Lease upon thirty (30) days' prior written notice to if the Premises or Building is substantially destroyed or damaged during the last twelve (12) months of the Term. in writing of its election to terminate this Lease under this Section 12.5, if at all, within forty-five (45) days after Landlord determines that the Premises or Building has been substantially destroyed. If to terminate this Lease, the repair of the Premises or Building shall be governed by Sections 12.1 and 12.3.

12.6. Insurance Proceeds. If this Lease is terminated, Landlord may keep all the insurance proceeds resulting from the damage, except for those proceeds that specifically insured Tenant's personal property and trade fixtures (if any).

12.7. Waiver. With respect to any destruction which Landlord is obligated to repair or elects to repair under the terms of this Section 12, Tenant waives all of its rights to terminate this Lease pursuant to rights presently or hereafter accorded by law to tenants, including the provisions of Section 1932, Subdivision 2, and Section 1933, Subdivision 4, of the California Civil Code.

13. EMINENT DOMAIN

13.1. Total Consideration. If the whole of the Premises is acquired or condemned by eminent domain, inversely condemned or sold in lieu of condemnation, for any public or quasi-public use or purpose ("Condemned"), then this Lease shall terminate as of the date of title vesting in such proceeding, and Rent shall be adjusted as of the date of such termination. Tenant shall immediately notify Landlord of any such occurrence.

13.2. Partial Condemnation. If any portion of the Premises is Condemned, and such partial condemnation renders the Premises unusable for the business of Tenant, as reasonably determined by Landlord, or if a substantial portion of the Building is Condemned, as reasonably determined by Landlord, then this Lease shall terminate as of the date of title vesting in such proceeding and Rent shall be adjusted as of the date of termination. If such condemnation is not sufficiently extensive to render the Premises unusable for the business of Tenant, as reasonably determined by, then Landlord shall promptly restore the Premises to a condition comparable to its

condition immediately prior to such condemnation less the portion thereof lost in such condemnation, and this Lease shall continue in full force and effect, except that after the date of title vesting the Base Rent shall be proportionately reduced as reasonably determined by Landlord. Notwithstanding the foregoing, in restoring the Premises to their original condition, Landlord shall not be required to expend an amount greater than the product of (i) Tenant's Building Percentage Share and (ii) the total amount of any condemnation proceeds for the Building received by Landlord. If any parking areas are Condemned, Landlord has the option, but not the obligation, to supply Tenant with other parking areas.

13.3. Landlord's Award. If the Premises are wholly or partially Condemned, then, subject to the provision of Section 13.4 below, Landlord shall be entitled to the entire award paid in connection with such condemnation, and Tenant waives any right or claim to any part thereof from Landlord or the condemning authority.

13.4. Tenant's Award. Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all costs which Tenant might incur in moving Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment to a new location.

13.5. Temporary Condemnation. If the whole or any part of the Premises shall be Condemned for any temporary public or quasi-public use or purpose, this Lease shall remain in effect and Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Term. If a temporary condemnation remains in force at the expiration or earlier termination of this Lease, Tenant shall pay to Landlord an amount equal to the reasonable cost of performing any obligations required of Tenant by this Lease with respect to the surrender of the Premises, including, without limitation, repairs and maintenance, and upon such payment Tenant shall be excused from any such obligations. If a temporary condemnation is for an established period which extends beyond the Term and such temporary condemnation renders the Premises unusable for the business of Tenant, as reasonably determined by this Lease shall terminate as of the date of occupancy by the condemning authority, and the damages shall be as provided in Sections 13.3 and 13.4 and Rent shall be adjusted as of the date of occupancy.

13.6. Notice and Execution. Landlord shall notify Tenant in writing immediately upon service of process in connection with any condemnation or potential condemnation. Tenant shall immediately execute and deliver to Landlord all instruments that may be required to effectuate the provisions of this Section 13.

14. DEFAULT

14.1. Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" on the part of Tenant with or without notice from Landlord:

- (a) Abandonment. Tenant's abandonment of the Premises;
- (b) Payment. Tenant's failure to pay any installment of Base Rent, Additional Rent or other sums due and payable hereunder by the date such payment is due;
- (c) Performance. Tenant's failure to perform any of Tenant's covenants, agreements or obligations under this Lease (other than a failure to pay Rent or other sums), which default has not been cured within thirty (30) days after written notice thereof from Landlord;
- (d) Assignment. A general assignment by Tenant for the benefit of its creditors;
- (e) Bankruptcy. The commencement of a case or proceeding by Tenant or any of Tenant's creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any law relating to bankruptcy, insolvency or other relief of debtors;

(f) Receivership. The appointment of a receiver or other custodian to take possession of all or substantially all of Tenant's assets or this leasehold;

(g) Insolvency, Dissolution, Etc. Tenant shall become insolvent or unable to pay its debts, or shall fail generally to pay its debts as they become due; or any court shall enter a decree or order directing the winding up or liquidation of Tenant or of all or substantially all of its assets; or Tenant shall take any action toward the dissolution or winding up of its affairs or the cessation or suspension of its use of the Premises;

(h) Attachment. The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets or this leasehold;

(i) Failure to Comply. Tenant's failure to comply with the provisions contained in Sections 16.1 and 16.3; and

An Event of Default shall constitute a default by Tenant under this Lease. In addition, any notice required to be given by Landlord under this Lease shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Civil Code of Procedure. Tenant shall pay to Landlord the amount of Two Hundred Fifty Dollars (\$250.00) for each notice of default given to Tenant under this Lease, which amount is the amount the parties reasonably estimate will compensate Landlord for the cost of giving such notice of default.

14.2. Landlord's Remedies. Upon an Event of Default, Landlord shall have the following remedies, in addition to all other rights and remedies provided by law, equity, statute or otherwise provided in this Lease, to which Landlord may resort cumulatively or in the alternative:

(a) Continue Lease. Landlord may continue this Lease in full force and effect, and this Lease shall continue in full force and effect so long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect Rent when due. In such event, Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations), or any successor statute.

(b) Terminate Lease. Landlord may terminate Tenant's right to possession of the Premises at any time by giving written notice to that effect. Upon termination of this Lease, Landlord shall have the right, at Tenant's sole cost and expense, to remove all of Tenant's personal property from the Premises and store Tenant's personal property on Tenant's behalf. Landlord shall have the right to recover from Tenant: (1) the worth at the time of award of unpaid Rent and other sums due and payable which had been earned at the time of termination; plus (2) the worth at the time of award of the amount by which the unpaid Rent and other sums due and payable which would have been payable after termination until the time of award exceeds the amount of the Rent loss that Tenant proves could have been reasonably avoided; plus (3) the worth at the time of award of the amount by which the unpaid Rent and other sums due and payable for the balance of the Term after the time of award exceeds the amount of the Rent loss that Tenant proves could be reasonably avoided; plus (4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which, in the ordinary course of things, would be likely to result therefrom.

(c) Definition. The "worth at the time of award" of the amounts referred to in Subsections 14.2(b)(1), (2) and (3) is defined in California Civil Code Section 1951.2.

(e) Cumulative. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

(f) No Waiver. Landlord's failure to insist upon the strict performance of any term hereof or to exercise any right or remedy upon a default by Tenant under this Lease shall not constitute a waiver of any such term or default. In addition, Landlord's acceptance of Rent shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent accepted, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepts such Rent. Efforts by Landlord to mitigate the damages caused by Tenant's breach of this Lease shall not be construed to be a waiver of Landlord's right to recover damages under this Section 14. Nothing in this Section 14 affects the right of Landlord to indemnification by Tenant in accordance with the terms of this Lease for any liability arising prior to the termination of this Lease for personal injuries or property damage.

15. ASSIGNMENT AND SUBLETTING

15.1. Assignment and Subletting; Prohibition. Tenant shall not assign, mortgage, pledge or otherwise transfer this Lease, in whole or in part (each hereinafter referred to as an "assignment"), nor sublet or permit

occupancy by any party other than Tenant of all or any part of the Premises (each hereinafter referred to as a "sublet" or "subletting"), without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld. No assignment or subletting by Tenant shall relieve Tenant of any obligation under this Lease, including Tenant's obligation to pay Base Rent and Additional Rent hereunder. Any purported assignment or subletting contrary to the provisions of this Lease without Landlord's prior written consent shall be void. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for obtaining Landlord's consent to any subsequent assignment or subletting. Landlord may consent to any subsequent assignment or subletting, or any amendment to or modification of this Lease with the assignees of Tenant, without notifying Tenant or any successor of Tenant, and without obtaining its or their consent thereto, and such action shall not relieve Tenant or any successor of Tenant of any liability under this Lease. As Additional Rent hereunder, Tenant shall reimburse Landlord for all reasonable legal fees and other expenses incurred by Landlord in connection with any request by Tenant for consent to an assignment or subletting.

15.2. Information to be Furnished. If Tenant desires at any time to assign its interest in this Lease or sublet the Premises, Tenant shall

first notify Landlord of its desire to do so and shall submit in writing to Landlord: (i) the name of the proposed assignee or subtenant; (ii) the nature of the proposed assignee's or subtenant's business to be conducted in the Premises; (iii) the terms and provisions of the proposed assignment or sublease, including the date upon which the assignment shall be effective or the commencement date of the sublease (hereinafter referred to as the "Transfer Effective Date") and a copy of the proposed form of assignment or sublease; and (iv) such financial information, including financial statements, and other information as Landlord may reasonably request concerning the proposed assignee or subtenant.

15.3. Landlord's Election. At any time within _____ days after Landlord's receipt of the information specified in Section 15.2, Landlord may, by written notice to Tenant, elect to (i) terminate this Lease as to the space in the Premises that Tenant proposes to sublet; (ii) terminate this Lease as to entire Premises (available only if Tenant proposes to assign all of its interest in this Lease), (iii) consent to the proposed assignment or subletting by Tenant; or (iv) withhold its consent to the proposed assignment or subletting by Tenant.

15.4. Termination. If Landlord elects to terminate this Lease with respect to all or a portion of the Premises pursuant to Section 15.3(i) or (ii) above, this Lease shall terminate effective as of the Transfer Effective Date.

15.5. Withholding Consent. Without limiting other situations in which it may be reasonable for Landlord to withhold its consent to any proposed assignment or sublease, Landlord and Tenant agree that it shall be reasonable for Landlord to withhold its consent in any one (1) or more of the following situations: (1) in Landlord's reasonable judgment, the proposed subtenant or assignee or the proposed use of the Premises would detract from the status of the Building as a first-class office building, generate vehicle or foot traffic, parking or occupancy density materially in excess of the amount customary for the Building or the Project or result in a materially greater use of the elevator, janitorial, security or other Building services (e.g., HVAC, trash disposal and sanitary sewer flows) than is customary for the Project; (2) in Landlord's reasonable judgment, the creditworthiness of the proposed subtenant or assignee does not meet the credit standards applied by Landlord in considering other tenants for the lease of space in the Project on comparable terms, or Tenant has failed to provide Landlord with reasonable proof of the creditworthiness of the proposed subtenant or assignee; (3) the proposed assignee or subtenant is a governmental entity, agency or department or the United States Post Office; or (4) the proposed subtenant or assignee is a then existing or prospective tenant of the Project. If Landlord fails to elect either of the alternatives within the _____ day period referenced in Section 15.3, it shall be deemed that Landlord has refused its consent to the proposed assignment or sublease.

15.6. Bonus Rental. If, in connection with any assignment or sublease, Tenant receives rent or other consideration, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in case of the sublease of a portion of the Premises, in excess of such Rent fairly allocable to such portion, Tenant shall pay to Landlord, as Additional Rent hereunder, fifty percent (50%) of the excess of each such payment of Rent or other consideration received by Tenant promptly after Tenant's receipt of such Rent or other consideration. To the extent that a subtenant or assignee pays costs or expenses normally paid by a landlord in connection with a lease of commercial office property located in Menlo Park or Palo Alto, or a sublandlord in connection with a sublease of office space in Menlo Park or Palo Alto, or the subtenant purchases goods or services from sublandlord or an affiliate of sublandlord for an amount in excess of the fair market value for such goods or

services, such costs incurred or amounts expended shall be deemed to be "other consideration" for purposes of calculating excess Rent due to Landlord hereunder.

15.7. Scope. The prohibition against assigning or subletting contained in this Section 15 shall be construed to include a prohibition against any assignment or subletting by operation of law. If this Lease is assigned, or if the underlying beneficial interest of Tenant is transferred, or if the Premises or any part thereof is sublet or occupied by anybody other than Tenant, Landlord may collect rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent due herein and apportion any excess rent so collected in accordance with the terms of Section 15.6, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of the provisions regarding assignment and subletting, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the further performance, by Tenant of covenants on the part of Tenant herein contained. No assignment or subletting shall affect the continuing primary liability of Tenant (which, following assignment, shall be joint and several with the assignee), and Tenant shall not be released from performing any of the terms, covenants and conditions of this Lease.

15.8. Executed Counterparts. No sublease or assignment shall be valid, nor shall any subtenant or assignee take possession of the Premises, until a fully executed counterpart of the sublease or assignment has been delivered to Landlord and Landlord, Tenant and the applicable assignee or subtenant have entered into a consent to assignment or sublease in a form acceptable to Landlord.

15.9. Transfer of a Majority Interest. If Tenant is a non-publicly traded corporation, the transfer (as a consequence of a single transaction or any number of separate transactions) of fifty percent (50%) or more of a controlling interest or the beneficial ownership interest of the voting stock of Tenant issued and outstanding as of the Effective Date shall constitute an assignment hereunder for which Landlord's prior written consent is required. If Tenant is a partnership, limited liability company, trust or an unincorporated association, the transfer of a controlling or majority interest therein shall constitute an assignment hereunder for which Landlord's prior written consent is required.

15.10. Indemnity. If Landlord reasonably withholds its consent to any proposed assignment or sublease, Tenant shall indemnify, protect, defend and hold harmless Landlord against and from any and all loss, liability, damages, costs and expenses (including attorneys' fees and disbursements) resulting from any claims that may be made against Landlord by the proposed assignee or sublessee or by any brokers or any persons claiming a commission or similar compensation in connection with the proposed assignment or sublease. Notwithstanding any contrary provision of law, including, without limitation, California Civil Code Section 1995.310, the provisions of which Tenant hereby waives, Tenant shall have no right to terminate this Lease, in the event Landlord is determined to have unreasonably withheld or delayed its consent to a proposed sublease or assignment.

15.11. Waiver. Notwithstanding any assignment or sublease, or any indulgences, waivers or extensions of time granted by Landlord to any assignee or sublessee, or failure by Landlord to take action against any assignee or sublessee, Tenant waives notice of any default of any assignee or sublessee and agrees that Landlord may, at its option, proceed against Tenant without having taken action against or joined such assignee or sublessee, except that Tenant shall have the benefit of any indulgences, waivers and extensions of time granted to any such assignee or sublessee.

15.12. Release. Whenever Landlord conveys its interest in the Phase and/or Building, Landlord shall be automatically released from the further performance of covenants on the part of Landlord herein contained, and from any and all further liability, obligations, costs and expenses, demands, causes of action, claims or judgments arising from or growing out of, or connected with this Lease after the effective date of said release. The effective date of Tenant's release shall be the date the assignee executes an assumption agreement pursuant to which the assignee expressly agrees to assume all of Landlord's obligations, duties, responsibilities and liabilities with respect to this Lease. If requested, Tenant shall execute a form of release and such other documentation as may be required to further effect the provisions of this Section 15.

16. ESTOPPEL, ATTORNMEN AND SUBORDINATION

16.1. Estoppel. Within ten (10) days after Landlord's written request, Tenant shall execute and deliver to Landlord, in recordable form, a certificate to Landlord and any existing or proposed mortgagee or purchaser certifying, among other things, (i) that this Lease is unmodified and in full force and effect or, if modified, stating the nature of the modification and certifying that this Lease, as so modified, is in full force and effect, (ii) the date to

which the Rent and other charges have been paid in advance, if any; (iii) that to Tenant's knowledge, there are no uncured defaults on the part of Landlord or Tenant under this Lease, or if there are uncured defaults on the part of Landlord or Tenant, stating the nature of the uncured defaults; (iv) that Tenant has no right to purchase, option or right of first refusal to purchase all or any portion of the Building, Phase or Project; and (v) any other statement or provision reasonably requested by Landlord or any existing or proposed mortgagee or prospective purchaser. Any such certificate may be relied upon by Landlord and any mortgagee, beneficiary, ground or underlying lessor, purchaser or prospective purchaser or mortgagee of the Project, Phase and/or Building or any interest therein. Tenant's failure to timely deliver said statement shall be conclusive upon Tenant that: (i) this Lease is in full force and effect, without modification except as may be represented by Landlord; (i i) there are no uncured defaults in Landlord's performance and Tenant has no right of offset, counterclaim or deduction against Rent hereunder; (iii) Tenant has no right to purchase, option or right of first refusal to purchase all or any portion of the Building, Phase or Project, and (iv) no more than one month's Base Rent has been paid in advance. In addition, Tenant hereby irrevocably appoints Landlord as its agent and attorney-in-fact to execute, acknowledge and deliver any such certificate in the name of and on behalf of Tenant if Tenant fails to execute, acknowledge and deliver any such certificate within ten (10) days after Landlord's written request therefor.

16.2. Attornment. In the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage or deed of trust made by Landlord or its successors or assigns that encumbers the Phase or the Building, or any part thereof, or in the event of a termination of any ground lease, if any, Tenant, if so requested, shall attorn to the purchaser upon such foreclosure or sale or upon any grant of a deed in lieu of foreclosure and recognize such purchaser as Landlord under this Lease.

16.3. Subordination. This Lease is subject and subordinate to all ground and underlying leases, mortgages and deeds of trust which now or may hereafter encumber the Phase, Building or Premises, and to all renewals, modifications, consolidations, replacements and extensions thereof. Within ten (10) days after Landlord's written request therefor, Tenant shall execute any and all documents required by Landlord, the lessor under any ground or underlying lease ("Lessor"), or the holder or holders of any mortgage or deed of trust ("Holder"), in order to make this Lease subordinate to the lien of any lease, mortgage or deed of trust, as the case may be. In addition, if Lessor or Holder desires to make this Lease prior and superior to the ground lease, mortgage or deed of trust, then, within seven (7) days after Landlord's written request, Tenant shall execute, have acknowledged and deliver to Landlord any and all documents or instruments, in the form presented to Tenant, which Landlord, Lessor or Holder deems necessary or desirable to make this Lease prior and superior to the lease, mortgage or deed of trust.

17. NOTICES. All notices required to be given hereunder shall be in writing and given by United States registered or certified mail, postage prepaid, return receipt requested; personal delivery; electronic mail (e.g., facsimile); or any commercial overnight courier service (e.g., FedEx); and sent to the appropriate address indicated in the Basic Lease Information or at such other place or places as either Landlord or Tenant may, from time to time, respectively, designate in a written notice given to the other. Notices that are sent by electronic mail shall be deemed to have been given upon receipt. Notices which are mailed shall be deemed to have been given when seventy-two (72) hours have elapsed after the notice was deposited in the United States mail, registered or certified, postage prepaid, addressed to the party to be served. Notices that are sent by commercial overnight courier shall be deemed to have been given on the next business day after the notice was delivered to the commercial overnight courier.

18. SUCCESSORS BOUND. This Lease and each of the covenants and conditions contained herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives and assigns, subject to the provisions hereof. Whenever in this Lease a reference is made to Landlord, such reference shall be deemed to refer to the person in whom the interest of Landlord shall be vested, and Landlord shall have no obligation hereunder as to any claim arising after the transfer of its interest in the Premises. Any successor or assignee of Tenant who accepts an assignment or the benefit of this Lease and enters into possession or enjoyment hereunder shall thereby assume and agree to perform and be bound by the covenants and conditions contained in this Lease. Nothing contained herein shall be deemed in any manner to give a right of assignment to Tenant without the written consent of Landlord.

19. MISCELLANEOUS

19.1. Waiver. No waiver of any default or breach of any covenant by either party hereunder shall be implied from any omission by either party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and said

waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein by either party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party shall not be deemed to waive or render unnecessary a party's consent or approval to or of any subsequent similar acts.

19.2. Easements. Landlord reserves the right to grant easements on the Phase and dedicate for public and private use portions thereof without Tenant's consent; provided, however, that no such grant or dedication shall materially interfere with Tenant's use of the Premises. From time to time, and upon Landlord's demand, Tenant shall execute, acknowledge and deliver to Landlord, in accordance with Landlord's instructions, any and all documents, instruments, maps or plats necessary to effectuate Tenant's covenants hereunder.

19.4. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

19.5. Limitation of Landlord's Liability. The obligations of Landlord under this Lease do not constitute personal obligations of the individual partners, members, directors, officers or shareholders of Landlord, and Tenant shall look solely to the real estate that and to no other assets of Landlord for satisfaction of any liability in respect of this Lease and will not seek recourse against the individual partners, members, directors, officers or shareholders of Landlord or any of their personal assets for such satisfaction.

19.6. Time. Time is of the essence of every provision hereof.

19.7. Attorneys' Fees. In any action or proceeding which Landlord or Tenant brings against the other party in order to enforce its respective rights hereunder or by reason of the other party failing to comply with all of its obligations hereunder, whether for declaratory or other relief, the unsuccessful party therein agrees to pay all costs incurred by the prevailing party therein, including reasonable attorneys' fees, to be fixed by the court, and said costs and attorneys' fees shall be made a part of the judgment in said action. A party shall be deemed to have prevailed in any action (without limiting the definition of prevailing party) if such action is dismissed upon the payment by the other party of the amounts allegedly due or the performance of obligations which were allegedly not performed, or if such party obtains substantially the relief sought by such party in the action, regardless or whether such action is prosecuted to judgment.

19.8. Captions and Section Numbers. The captions, section numbers and table of contents appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent or such sections or sections of this Lease nor in any way affect this Lease.

19.9. Severability. If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall, to any extent, be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Lease, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

19.10. Applicable Law. This Lease, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

19.11. Submission of Lease. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of or option for leasing the Premises. This document shall become effective and binding only upon execution and delivery hereof by Landlord and Tenant. No act or omission of any employee or agent of Landlord or of Landlord's broker or agent shall alter, change or modify any of the provisions in this Lease.

19.12. Holding Over. Should Tenant, or any of its successors in interest, hold over in the Premises, or any part thereof, after the expiration of the Term unless otherwise agreed to in writing, such holding over shall constitute and be construed as tenancy from month-to-month only, at a monthly rent equal to the greater of (i) the Base Rent owed during the final year of the Term, as the same may have been extended, together with the Additional Rent due under this Lease, or (ii) fair market rent for the Premises, as reasonably determined by Landlord. The inclusion of the preceding sentence shall not be construed as Landlord's permission for Tenant to

hold over. In addition, Tenant shall indemnify, protect, defend and hold harmless Landlord for all losses, expenses and damages, including any consequential damages incurred by Landlord, as a result of Tenant failing to surrender the Premises to Landlord and vacate the Premises by the end of the Term.

19.13. Rules and Regulations. At all times during the Term, Tenant shall comply with the rules and regulations for the Building, Phase and Project set forth in Exhibit D, attached hereto, and all amendments as Landlord may reasonably adopt.

19.14. No Nuisance. Tenant shall conduct its business and control its agents, employees, invitees and visitors in such a manner as not to create any nuisance, or interfere with, annoy or disturb any other tenant in the Building, Phase or Project, or Landlord in its operation of the Building, Phase and Project.

19.15. Broker. Tenant warrants that it has had no dealings with any real estate broker or agent other than the broker(s) referenced in the Basic Lease Information ("Broker") in connection with the negotiation of this Lease, and that it knows of no other real estate broker or agent who is entitled to any commission or finder's fee in connection with this Lease. Tenant agrees to indemnify, protect, defend and hold harmless Landlord from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, attorneys' fees and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of Tenant's dealings with any real estate broker or agent other than Broker.

19.16. Landlord's Right to Perform. Upon Tenant's failure to perform any obligation of Tenant hereunder, including without limitation, payment of Tenant's insurance premiums, charges of contractors who have supplied materials or labor to the Premises, etc., Landlord shall have the right to perform such obligation of Tenant on behalf of Tenant and/or to make payment on behalf of Tenant to such parties. Tenant shall reimburse Landlord for the reasonable cost of Landlord's performing such obligation on Tenant's behalf, including reimbursement of any amounts that may be expended by Landlord, plus interest at the Interest Rate.

19.17. Nonliability. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the rental herein reserved be abated by reason of, (i) the interruption of use of the Premises as a result of the installation of any equipment in

connection with the use, operation or maintenance of the Premises, Building, Phase and/or Project, (ii) any failure to furnish or delay in furnishing any services required to be provided by Landlord when such failure or delay is caused by accident or any condition beyond the reasonable control of Landlord or by the making of necessary repairs or improvements to the Premises, Building, Phase or Project, or (iii) the limitation, curtailment, rationing or restriction on use of water or electricity, gas or any other form of energy or any other service or utility whatsoever serving the Premises, Building, Phase or Project. Landlord shall use reasonable efforts to remedy any interruption in the furnishing of such services.

19.18. Financial Statements. Within ten (10) days after Landlord's written request, Tenant shall deliver to Landlord Tenant's most current quarterly and annual financial statements audited by Tenant's certified public accountant or, if audited financial statements are not available, Tenant shall deliver to Landlord, Tenant's financial statements certified to be true and correct by Tenant's chief financial officer. Tenant's annual financial statements shall not be dated more than twelve (12) months prior to the date of Landlord's request.

19.19. Entire Agreement. This Lease sets forth all covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises, Building, Phase and Project, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Tenant other than as are herein set forth. Except as otherwise provided in this Lease, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by Landlord and Tenant.

19.20. Addendum. The Addendum attached hereto is incorporated herein by reference. If no Addendum, state "none" in the following space:

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above-written.

"Landlord"

"Tenant"

MENLO OAKS PARTNERS L.P.,
Delaware limited partnership

E*TRADE GROUP, INC.
a Delaware corporation

By: AM Limited Partners, a California
limited partnership, its General Partner

By: /s/ Len Purkis

Name: Len Purkis
Its: EVP & COO

By: Amarok Menlo, Inc., a California
corporation, its General Partner

By: /s/ Kathy Levinson

Name: Kathy Levinson
Its: President & COO

By: /s/ J. Marty Brill, Jr.

Name: J. Marty Brill, Jr.
Its: President

**ADDENDUM TO MENLO OAKS CORPORATE CENTER LEASE
(4200 Bohannon Drive)**

THIS ADDENDUM TO MENLO OAKS CORPORATE CENTER LEASE (this "Addendum") is entered into by and between Menlo Oaks

Partners, L.P., a Delaware limited partnership ("Landlord"), and E*TRADE GROUP, INC., a Delaware corporation ("Tenant"). This Addendum is made a part of that certain Menlo Oaks Corporate Center Lease (the "Lease"), entered into between Landlord and Tenant concurrently herewith, pursuant to which Landlord leases to Tenant that certain building commonly known as 4200 Bohannon Drive, located in Menlo Park, California. Capitalized terms used herein and not defined herein shall have the meanings set forth in the Lease.

Section 1.3:

On page 1, line 2, in place of the deleted language, insert "the Basic Lease Information".

Section 2.3(d):

On page 2, line 2, after the word "Project", insert "; provided, however, Landlord shall not designate any parking spaces in the area located between the Building and the 4500 Bohannon Building (defined herein) for the exclusive use of any tenant in the Project other than Tenant so long as Tenant occupies at least ninety percent (90%) of the rentable square feet in the Building and the 4500 Bohannon Building."

Section 2.3:

At the end of this Section, insert "Landlord shall use commercially reasonable efforts in exercising its rights under this Section 2.3 so as not to materially impair Tenant's access to or use of the Premises."

Section 2.5:

At the end of Section 2.4, insert the following Section:

"2.5 Parking. Tenant shall have the right to use up to forty-nine and 807/1000ths percent (49.807%) of the available parking spaces in the Phase on a non-exclusive basis. The Phase includes approximately four hundred fourteen (414) parking spaces. At Tenant's written request, Landlord shall designate up to six (6) of the parking spaces allocated for Tenant's use and located near the Building as "visitor parking".

Section 3.3:

At the end of Section 3.2, insert the following Section:

"3.3 Delivery of Possession. Landlord shall deliver possession of the Premises to Tenant within one (1) business day after the Effective Date, in a broom clean condition with all building systems in working order and the roof in water-tight condition."

Section 4.4:

On page 3, line 1, in place of the deleted language, insert "within three (3) business days after Tenant's receipt of written notice from Landlord that such installment of Rent is past due".

Section 4.5:

On page 3, line 2, in place of the deleted word, insert "within three (3) business days after Tenant's receipt of written notice from Landlord that such installment of Rent is past".

Section 4.6:

On page 4, line 3, in place of the deleted word, insert "will".

On page 4, line 4, after the word "transferee", insert "or the transferee will assume in writing Landlord's obligation to return the Security Deposit to Tenant in accordance with the terms of this Lease."

Section 5.6:

At the end of this Section, insert "Landlord shall furnish Tenant with copies of tax bills for the prior calendar year within ten (10) days after Tenant's written request."

Section 6.1:

On page 5, line 9, after the word "action", insert "covering the Building, the Tenant Improvements and all other improvements made by Tenant to the Premises (if available at commercially reasonable rates)".

Section 6.2(a):

On page 5, line 2, in place of the deleted language, insert "Five Million Dollars (\$5,000,000.00) per occurrence and Ten Million Dollars (\$10,000,000.00) aggregate".

On page 5, line 5, after the word "coverage", add a period and insert "Tenant may satisfy the insurance requirement pursuant to this Section 6.2 (a) in combination with an umbrella policy."

Section 6.2(b):

On page 5, line 1, before the word "Comprehensive", insert "Solely with respect to the Project".

On page 5, line 4, after the word "automobiles", add a period and insert "Tenant may satisfy the insurance requirement pursuant to this Section 6.2(b) in combination with an umbrella policy".

Section 6.2 (c):

On page 5, line 5, after the amount "(\$5,000,000)", insert "in the state of California. Tenant may satisfy the insurance requirement with respect to the employer's liability insurance in combination with an umbrella policy".

Section 6.2 (d):

On page 6, line 6, in place of the deleted language, add a period and insert "Tenant shall maintain full replacement cost property insurance with respect to all of the alterations, improvements and additions made by Tenant in the Premises or the Building (including the Tenant Improvement Work). Tenant's property insurance with respect to such alterations, improvements and additions shall provide that all claims made thereunder shall be adjusted by Landlord and all proceeds payable thereunder shall be paid to Landlord. Tenant shall maintain, at a minimum, actual value insurance with respect to the EDP Equipment."

Section 6.2(e):

On page 6, line 1, in place of the first deletion, insert "Interruption".

On page 6, line 1, in place of the second deletion, insert "interruption".

Section 6.3 (d):

On page 6, line 2, in place of the deleted language, insert "mortgagee, ground lessee, partner, agent or affiliate of Landlord".

On page 6, line 3, after the word "Section 6", insert ", except workers' compensation insurance and business interruption insurance".

Section 6.3 (f):

On page 7, line 1, after the word "The", insert "property insurance".

Section 6.4:

On page 7, line 2, in place of the deleted word, insert "property manager".

On page 7, line 8, after the word "misconduct", insert "or Environmental Losses (defined in Section 11.1) not covered by Sections 11.3 and 11.5 of this Lease".

On page 7, line 15, after the word "cause", insert "excluding any loss, damage or injury to the extent caused by the willful or criminal misconduct of any Indemnified Party".

Section 6.5:

On page 7, line 8, in place of the deleted language, insert "or Building".

Section 7.2:

On page 7, line 8, after the word "fees", insert "(not to exceed in any year three percent (3%) of the annual Base Rent due for such year)".

On page 8, line 1, in place of the deleted language, insert "rate equal to the Prime Rate plus one percent (1%) (with the term "Prime Rate" defined as the reference rate (or its equivalent) announced publicly in San Francisco, California, from time to time by Wells Fargo Bank, N.A. or, if Wells Fargo Bank, N.A. ceased to exist, the largest bank, in terms of assets, headquartered in California)".

At the end of this Section, insert "Notwithstanding anything to the contrary contained in this Lease, Operating Expenses chargeable to Tenant shall not include the following:

1. The cost of any capital repairs, replacements and/or improvements made to the structural portions of the Building or the Phase, including the structural walls of the Building, the Building foundation and the structural portions of the roof (but excluding the roof membrane);
2. The cost of providing any service direct to and paid directly by any other tenant of the Project (excluding such tenant's share of Operating Expenses);
3. The cost of any items for which Landlord is reimbursed by insurance proceeds, condemnation awards, a tenant of the Project or otherwise (excluding any payment by a tenant of that tenant's share of Operating Expenses), to the extent so reimbursed;
4. Any real estate brokerage commission or other costs incurred in procuring tenants, or any fee in lieu of commission;
5. Payments of principal or interest on mortgages or ground lease payments (if any);
6. Costs incurred by Landlord due to the violation by Landlord or any tenant of the terms and conditions of any lease of space in the Building, Phase or Project, or any law, code, regulation, ordinance or the like (except to the extent attributable to Tenant's acts or omissions);
7. Landlord's general corporate overhead and general and administrative expenses;

8. Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord (other than in the parking facility for the Phase or the Project); and

9. Costs incurred to (i) comply with laws relating to the removal of any Hazardous Material (as that term is defined in Section 11) of such nature that a federal, state or municipal governmental authority, if it then had knowledge of the presence of such Hazardous Material, in the state and under the conditions that the Hazardous Material then existed in or on the Building, Phase or Project, would have then required the removal of such Hazardous Material or other remedial or containment action with respect thereto, and (ii) remove, remedy, contain or treat any Hazardous Material which is brought onto the Building, Phase or Project after the date hereof by Landlord or any other tenant of the Project, and which is of such a nature, at that time, that a federal, state or municipal governmental authority, if it then had knowledge of the presence of such Hazardous Material, in the state and under the conditions that it then existed in or on the Building, Phase or Project, would have then required the removal of such Hazardous Material or other remedial or containment action with respect thereto."

Section 7.8 (a):

At the end of this Section, insert "Tenant shall arrange and provide for its own janitorial services in the Building."

Section 7.8 (b):

At the end of this Section, insert "Landlord represents to Tenant that the Building is separately metered for electricity, gas and water."

Section 7.9:

At the end of Section 7.8, add the following Section:

7.9 Tenant's Audit Rights. Tenant shall have ninety (90) days after Tenant receives the year end statement of the adjustment to the Operating Expenses for the prior calendar year to notify Landlord in writing of Tenant's desire to conduct, at Tenant's sole cost and expense, an audit of Landlord's books and records relating to the prior calendar year. Any such audit must be conducted by Tenant or its agent during regular business hours at the offices of Landlord or the offices of Landlord's designated agent and must be completed within one hundred fifty (150) days after Tenant receives the applicable year end statement. The person or entity performing the audit or review of Landlord's books and records on Tenant's behalf or at Tenant's request may not be compensated for the audit or review on a contingency fee basis. If Landlord objects to the findings of Tenant's audit, Landlord and Tenant shall attempt to resolve their disagreement concerning the amount of Tenant's proportionate share of

Operating Expenses within the next thirty (30) days. If Landlord and Tenant are unable to agree upon the amount of Tenant's proportionate share of Operating Expenses (after Tenant has completed its audit), the parties shall submit the matter to binding arbitration before a single neutral arbitrator having experience in real estate valuation, property management or accounting or, alternatively, the arbitrator may be a retired judge or justice of a California Superior Court or Court of Appeal. The matter shall be decided by arbitration in accordance with the applicable arbitration statutes and the then existing Commercial Arbitration Rules of the American Arbitration Association. Any party may initiate the arbitration procedure by delivering a written notice of demand for arbitration to the other party. Within thirty (30) days after the other party's receipt of written notice of demand for arbitration, the parties shall attempt to select a qualified arbitrator who is acceptable to all parties. If the parties are unable to agree upon an arbitrator who is acceptable to all parties, either party may request the American Arbitration Association to appoint the arbitrator in accordance with its Commercial Arbitration Rules. The provisions of California Code of Civil Procedure Section 1283.05 or its successor section(s) are incorporated in and made a part of this Lease with respect to any arbitration requested in accordance with the provisions contained in this Section. Depositions may be taken and discovery may be obtained in any arbitration proceeding requested pursuant to this Section in accordance with the provisions of California Code of Civil Procedure Section 1283.05 or its successor section(s). Arbitration hearing(s) shall be conducted in Santa Clara County California. Any relevant evidence, including hearsay, shall be admitted by the arbitrator if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law; however, the arbitrator shall apply California law relating to privileges and work product. In rendering his or her award, the arbitrator shall set forth the reasons for his or her decision. The fees and expenses of the arbitrator shall be paid in the manner allocated by the arbitrator. This agreement to arbitrate any dispute concerning the findings of Tenant's audit shall be specifically enforceable under the prevailing arbitration law. Judgment on the award rendered by the arbitration may be entered in any court having jurisdiction thereof. If, subsequent to Tenant's audit, the parties determine that Landlord has overstated Tenant's percentage share of the Operating Expenses by more than five percent (5%) during the applicable calendar year, Landlord shall reimburse Tenant for the reasonable cost of the audit."

Section 8.1:

At the end of this Section, insert "Specifically, Landlord shall maintain the structural portions of the Building, including the structural elements of the walls, floor slabs and roof; the heating, ventilating and air conditioning system in the Building (the "Building HVAC"); the elevator; the plumbing and electrical systems in the Common Areas (with Tenant maintaining the plumbing and electrical systems in the Premises); the Common Area parking lots in the Phase; the exterior of the Building, including the exterior glass; and the foundation. If the existing Building HVAC breaks or malfunctions during the Term, then, to the extent it is commercially reasonable to do so, Landlord shall repair the existing Building HVAC as opposed to replacing the existing Building HVAC. Landlord shall notify Tenant in writing prior to replacing the existing Building HVAC. Landlord shall be responsible for ensuring that the Building HVAC and the elevators are in working order on January 1, 2000."

Section 8.2:

On page 9, line 4, after the word "Landlord", insert "and those items or components of the Building that Landlord is obligated to repair pursuant to Section 8.1. "

On page 9, line 14, after the word "all", insert "interior".

At the end of this Section, insert "Tenant is responsible for the proper maintenance and servicing of fire extinguishers and fire protection equipment in the Premises. Notwithstanding anything to the contrary contained in this Section, Tenant shall not be required to remove any of the Tenant Improvements (defined in the Work Letter) constructed by Tenant as part of the Tenant Improvement Work (defined in the Work Letter)."

Section 8.3:

On page 10, line 3, in place of the deleted language, insert "upon three (3) business days prior written".

On page 10, line 11, after the word "Term," insert "and Tenant fails to perform such obligations within three (3) business days after written notice to Tenant,".

Section 8.4:

On page 10, line 1, after the word "times", insert "after prior notice to Tenant (except in the event of an emergency whereupon no prior notice is required)".

On page 10, line 4, after the word "tenants", insert "(during the last fifteen (15) months during the Term)".

On page 10, line 5, in place of the deleted language, insert "Tenant at all times shall maintain personnel on the Premises twenty-four (24) hours a day who are authorized to provide Landlord access to the Premises in accordance with the provisions of this Section 8.4."

Section 8.5:

On page 10, line 6, after the word "lien", insert "if Tenant does not post a bond sufficient to remove the lien in accordance with California law within twenty (20) days after Tenant is notified of the existence of the lien".

Section 9.2:

On page 11, line 1, in place of the deleted language, insert "Tenant shall not make or allow to be made any alterations, additions or improvements to the Premises, either at the inception of this Lease or subsequently during the Term, without obtaining the prior written consent of Landlord. Landlord shall not unreasonably withhold its consent to any non-structural alterations, additions or improvements provided that the proposed non-structural alterations, additions or improvements do not require changes or modifications to the Building systems and are consistent with the use of the Premises as first class office space as reasonably determined by Landlord. Landlord shall have the right to withhold its consent to all other alterations, additions or improvements in Landlord's sole and absolute discretion. Landlord shall respond to any request by Tenant to make any alteration, addition or improvement to the Premises within ten (10) business days after Landlord's receipt of Tenant's written request."

On page 11, line 23, in place of the second deletion, insert "all reasonable third-party costs incurred by Landlord in".

On page 11, line 25, after the first occurrence of the word "Tenant", insert "; provided, however, Landlord shall not charge Tenant for costs incurred by Landlord in reviewing Tenant's plans for the Tenant Improvement Work (as defined in the Work Letter)."

At the end of this Section, insert "Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right, without the consent of, but with notice to, Landlord, to make nonstructural alterations within the Premises costing, in the aggregate, less than Twenty-Five Thousand Dollars (\$25,000.00) in any twelve (12) month period, provided that the non-structural alterations proposed by Tenant do not (i) diminish the use of the Premises as first class office space as reasonably determined by Landlord and (ii) affect the structure of the Building or the Building systems. Tenant shall provide Landlord with as built drawings of any such alterations. If requested in writing by Tenant at the time Tenant requests Landlord's consent to any proposed alteration, addition or improvement (or, if Landlord's consent is not required, at the time Tenant notifies Landlord of any proposed alteration, addition or improvement), Landlord shall notify Tenant as to whether Tenant will be required to remove the proposed alteration, addition or improvement and restore the Premises to its original condition at the end of the Term."

Section 10.2:

On page 12, line 8, in place of the deleted word, insert "leases".

On page 12, line 9, in place of the deleted language, insert "or Tenant's lease as to all or a portion of the Premises being terminated".

On page 12, line 12, at the end of the sentence, insert "The provisions of this Section shall not pertain to any interior signage of Tenant that is not visible from the outside of the Premises."

At the end of this Section, insert "Notwithstanding anything to the contrary contained in this Section, Tenant shall have the right to install (i) a directional sign on the existing directional signs located within the Phase Common Areas, (ii) a sign on the entry wall adjacent to the main entrance of the Building ("Entry Wall Signs"), and (iii) a sign on the exterior of the Building facing Highway 101 (but only if Tenant has not installed exterior signage

on the 4500 Bohannon Building (defined in Section 27) facing Highway 101). Tenant's right to install the signage referenced in the preceding sentence is subject to Landlord's prior review and approval of Tenant's proposed signage, including the size, color, design and exact proposed location of Tenant's signage, which approval shall not be unreasonably withheld provided that the signage is in accordance with Landlord's written sign criteria. A copy of Landlord's written sign criteria is attached hereto as Exhibit G. Landlord approves in advance text reading "E*TRADE" on Tenant's Building signage so long as the text is black in color; provided, however, the text on Tenant's monument signs in the Phase and Tenant's Entry Wall Signs may contain the colors contained in Tenant's current logo. Tenant Shall obtain all of the necessary governmental permits and approvals required to install Tenant's signs in the Project and all of Tenant's signs shall comply with all laws, ordinances and regulations and any of the conditions, covenants and restrictions recorded against the Phase."

Section 11.5:

On page 13, line 5, after the word "Tenant's", insert "and Tenant's employees', agents', representatives' and contractors".

Section 12.1:

On page 14, line 1, in place of the deleted language, insert "If the Premises and/or the Building are damaged or destroyed, then, subject to the provisions of this Section 12 and provided that neither party terminates this Lease pursuant to this Section 12, (i) Landlord shall promptly and diligently repair or restore the Premises and/or the Building (excluding the Tenant Improvements and all other alterations, additions and improvements made by Tenant to the Premises) and (ii) Tenant shall promptly and diligently repair or restore all of the Tenant Improvements and all other alterations, additions and improvements made by Tenant to the Premises."

Section 12.2:

On page 14, line 4, in place of the deleted language, insert "portions of the Premises or the Building which Landlord is obligated to repair".

On page 14, line 5, in place of the deleted number, insert "two hundred seventy (270)".

On page 14, line 8, after the word "notice.", insert the following:

"In addition, Tenant shall have the right to terminate this Lease upon thirty (30) days' prior written notice to Landlord if the Premises or the Building is destroyed or damaged by fire or other casualty and either (i) Landlord reasonably determines that the repair or restoration of the portion of the Premises or the Building which Landlord is obligated to repair or restore cannot be completed within two hundred seventy (270) days from after the date of the casualty or (ii) Landlord fails to substantially complete the repair or restoration of the portion of the Premises or the Building which Landlord is obligated to repair or restore by the two hundred seventieth (270th) day from after the date of the casualty (hereinafter referred to as the "Outside Completion Date"). The Outside Completion Date shall be extended for an additional ninety (90) days in the event Landlord fails to substantially complete the repair or restoration of the portion of the Premises or the Building which Landlord is obligated to repair or restore for any reason not within Landlord's reasonable control, including, without limitation, inclement weather, labor disputes, or any default by Landlord's contractor or architect under their agreement with Landlord with respect to the repair or restoration of the Premises or the Building). In addition, the Outside Completion Date shall be extended one day for each day that Landlord is delayed in completing the repair or restoration work due to any interference by Tenant or Tenant's contractors with Landlord's repair or restoration work. Tenant shall exercise its right to terminate this Lease pursuant to subsection (i) above, if at all, by written notice to Landlord within thirty (30) days after Landlord notifies Tenant of Landlord's estimate of the time required to complete the repair or restoration of the portion of the Premises or the Building which Landlord is obligated to repair or restore. Tenant shall exercise its right to terminate this Lease pursuant to subsection (ii) above, if at all, by written notice to Landlord within ten (10) days after the expiration of the Outside Completion Date. Notwithstanding the foregoing, if at any time Landlord reasonably determines that Landlord cannot substantially complete the repair or restoration of the Premises by the Outside Completion Date, Landlord shall notify Tenant in writing and Tenant shall have ten (10) days from the date Tenant receives such written notice in which to terminate this Lease by written notice to Landlord.

If neither party exercises its right to terminate this Lease, then (i) Landlord shall promptly commence the process of obtaining all of the necessary permits and approvals for the repair or restoration of the portion of the Premises or the Building which Landlord is obligated to repair or restore as soon as reasonably practicable, and

thereafter prosecute the repair or restoration of the Premises or the Building diligently to completion, and (ii) Tenant shall promptly commence the process of obtaining all of the necessary permits and approvals for the repair or restoration of the Tenant Improvements and any other alterations, additional or improvements made by Tenant to the Premises as soon as reasonably practicable, and thereafter prosecute the repair or restoration of the Tenant Improvements and other improvements to completion. Tenant shall not interfere with Landlord's repair and restoration work and may commence Tenant's repair or restoration work in the Premises only to the extent that Tenant's work does not interfere with Landlord's repair or restoration work."

At the end of this Section, insert "Notwithstanding the foregoing, if Landlord elects to terminate this Lease as a result of there being insufficient insurance proceeds to pay for all of the costs of the repair or restoration, Tenant shall have the right to vitiate Landlord's termination by (i) notifying Landlord in writing within thirty (30) days after Landlord notifies Tenant of its election to terminate this Lease of Tenant's election to pay for the difference between the cost of restoring the Premises or the Building, as applicable, and the amount of the insurance proceeds available to Landlord for the repair or restoration of the Premises or the Building, and (ii) delivering to Landlord within thirty (30) days after Tenant notifies Landlord of its election to pay for any shortfall in insurance proceeds an amount equal to the difference between the cost of repairing or restoring the Premises or the Building, as reasonably estimated by Landlord, and the amount of insurance proceeds available to Landlord for the repair or restoration of the Premises or the Building, as applicable.

Section 12.3:

At the end of this Section, insert "If Landlord receives any proceeds from either Landlord's or Tenant's insurance carrier attributable to the cost of repairing or restoring the Tenant Improvements or any other alterations, additions or improvements made by Tenant in the Premises that are not owned by Landlord, then Landlord shall reimburse Tenant out of those proceeds an amount equal to the amount expended by Tenant in repairing or restoring the alterations, additions or improvements in the Premises. Notwithstanding the foregoing, if either party terminates this Lease as a result of a casualty or for any other reason, all of the insurance proceeds with respect to the Tenant Improvements and any other alterations, additions or improvements made by Tenant to the Premises shall belong to Landlord."

Section 12.5:

On page 14, line 1, in place of the deleted word, insert "Landlord's and Tenant's"

On page 14, line 2, in place of the deleted word, insert "either party".

On page 14, line 3, in place of the deleted word, insert "the other party".

On page 14, line 4, in place of the deleted language, insert "The party electing to terminate this Lease shall notify the other party".

On page 14, line 6, in place of the deleted language, insert "neither party elects".

Section 13.2:

On page 15, line 6, in place of the deleted language, insert "Tenant".

Section 13.4:

On page 15, line 2, after the word "right", insert "such as".

Section 13.5:

On page 15, line 9, in place of the deleted word, insert "Tenant".

Section 14.1 (c):

On page 16, line 3, after the word "Landlord", insert "; provided, however, if such default cannot be cured within thirty (30) days, Tenant shall not be in default of this Lease so long as Tenant has commenced such cure within the thirty (30) day period and is diligently pursuing the cure to completion (but in no event longer than ninety (90) days from the date Landlord notifies Tenant of the default)."

Section 14.1 (j):

At the end of Section 14.1(i), add the following Section:

"(j) 4500 Bohannon Lease. An Event of Default (as that term is defined in the 4500 Bohannon Lease) on the part of the tenant under the 4500 Bohannon Lease."

Section 14.1:

On page 16, in the last sentence in this Section, after the word "Lease", insert "if the notice of default was drafted for Landlord by Landlord's attorneys."

Section 15.1:

On page 17, line 5, after the word "withheld", insert "or delayed".

At the end of this Section, insert "Notwithstanding anything to the contrary contained in Section 15.1, Tenant shall have the right to assign this Lease or sublet all or a portion of the Premises without Landlord's consent (but with thirty (30) days' prior written notice to Landlord) to (i) an Affiliate or (ii) any entity resulting from a merger or consolidation with Tenant (each hereinafter referred to as a "Permitted Assignee"). For purposes of this Section 15, an "Affiliate" is defined as (i) an entity that directly or indirectly controls, is controlled by or is under common control with Tenant or (ii) an entity at least a majority of whose economic interest is owned by Tenant; and "control" means the power to direct the management of such entity through voting rights, ownership or contractual obligations. No assignment or subletting by Tenant shall relieve Tenant of any obligation under this Lease, including Tenant's obligation to pay Base Rent and Additional Rent hereunder."

Section 15.3:

On page 17, line 1, in place of the deleted number, insert "ten (10) business".

On page 17, line 3, after the word "sublet", insert "if the term of such sublet is for greater than five (5) years or ends during the last year of the Term or the proposed sublessee is an existing tenant or subtenant in the Project."

At the end of this Section, insert "Notwithstanding anything to the contrary contained in Section 15.3, Landlord shall not have the right to terminate this Lease as to all or any portion of the Premises pursuant to the terms and conditions contained in this Section 15.3 in connection with an assignment by Tenant of its interest in this Lease to a Permitted Assignee or Tenant's sublease of all or a portion of the Premises to a Permitted Assignee."

Section 15.5:

On page 18, line 15, after the word "Project.", insert "For purposes of this Section 15.5, the term "prospective tenant" shall mean any prospective lessee of space in the portion of the Project owned by Landlord with whom or which Landlord has been in contact concerning the prospective lessee's interest in the space within thirty (30) of Tenant's contact with such prospective lessee or the date on which Tenant requests Landlord's consent to the proposed sublease or assignment."

On page 18, line 16, in place of the deleted number, insert "ten (10) business".

Section 15.6:

On page 18, line 10, after the word "Also", insert "and Tenant is not entitled to deduct those costs pursuant to this Section 15.6 prior to calculating the amount of any excess rent or other consideration payable to Landlord in accordance with the terms of this Section 15.6,"

At the end of this Section, insert "Notwithstanding anything to the contrary contained in Section 15.6, in calculating the amount of the excess rent or other consideration due to Landlord in connection with any assignment or sublease by Tenant, Tenant shall be entitled to deduct from the total amount of rent or other consideration paid to Tenant (prior to determining Landlord's share of any excess rent or other consideration) the total

amount of (i) any attorneys' fees and brokerage commissions paid by Tenant in connection with the assignment or sublease and (ii) the cost of installing a demising wall in connection with the partitioning of the Premises for multiple occupancy. In addition, further notwithstanding anything to the contrary contained in Section 15.6, Landlord shall not be entitled to

any excess rent or consideration in connection with Tenant's assignment of its interest in this Lease to a Permitted Assignee or Tenant's sublease of all or a portion of the Premises to a Permitted Assignee."

Section 15.12:

On page 19, line 4, after the word "release", insert "; provided, however, Landlord shall be released from its obligation to refund the Security Deposit to Landlord in accordance with the terms of this Lease only if Landlord delivers the Security Deposit to the transferee or the transferee assumes in writing liability for returning the Security Deposit to Tenant in accordance with the terms of this Lease."

Section 15.13:

At the end of Section 15.12, add the following Sections'

"15.13. Additional Space. During the Term, Tenant shall not sublease (as a sublessee) any additional space within the Project or take an assignment of any lease of additional space within the Project which would result in Tenant having subleased or, as a result of one or more assignments, leased in the aggregate more than fifty (50,000) rentable square feet of space in the Project without Landlord's prior written consent, which may be withheld by Landlord in its sole and absolute discretion. Notwithstanding the foregoing, if Tenant (i) exercises its option pursuant to Section 26 and leases the 4400 Bohannon Expansion Option Space and (ii) exercises its option under the 4500 Bohannon Lease and leases all of the First Expansion Option Space (defined in the 4500 Bohannon Lease), then, from the later of the commencement of Tenant's lease of the 4400 Bohannon Expansion Option Space or the commencement of Tenant's lease of a ny increment of the First Expansion Option Space, Tenant shall not occupy or sublease any additional space in the Project, as a result of one or more assignment or sublease of, in the aggregate, more than thirty thousand (30,000) rentable square feet of space without Landlord's prior written consent, which may be withheld by Landlord in its sole and absolute discretion.

15.14 Landlord Estoppel Certificate. Within ten (10) days after Tenant's written request, Landlord shall execute and deliver to Landlord, in recordable form, a certificate to Tenant certifying, among other things, (i) that this Lease is unmodified and in full force and effect or, if modified, stating the nature of the modification and certifying that this Lease, as so modified, is in full force and effect, (ii) the date to which the Rent and other charges have been paid in advance, if any; and (iii) that to Landlord's actual knowledge, there are no uncured defaults on the part of Tenant under this Lease, or if there are uncured defaults on the part of Tenant, stating the nature of the uncured defaults. Any such certificate may be relied upon by Tenant."

Section. 16.1:

On page 20, line 9, after the number "ten (10)", insert "business".

Section 16.3:

At the end of this Section, insert "Tenant's obligations under this Lease are conditioned upon Tenant's receipt of an executed nondisturbance agreement from all current mortgagees (as of the date of this Lease) whose liens are secured by the Phase within sixty (60) days after the date of this Lease. The nondisturbance agreement, among other things, shall provide that Tenant's possession of the Premises shall not be disturbed in the event of a foreclosure so long as Tenant is not in default under this Lease, and that this Lease shall remain in full force and effect, without materially increasing Tenant's obligations and duties under this Lease or materially diminishing Tenant's rights and privileges under this Lease. Tenant shall subordinate Tenant's interest in the Premises, Building and Phase and this Lease to any future mortgagee or ground lessor provided that such mortgagee or ground lessor agrees to provide Tenant with a nondisturbance agreement on the terms set forth above."

Section 19.5:

On page 21, line 3, in place of the deleted language, insert "constitutes the Phase".

Section 19.12:

On page 22, line 3, in place of the deleted word, insert "one hundred fifty percent (150%) of".

On page 22, line 7, after the word "addition,", insert "if Tenant fails to vacate and surrender the Premises to Landlord after the end of the Term within ten (10) days after written notice from Landlord".

Section 19.15:

At the end of this Section, insert "Landlord shall pay to Tenant's Broker a leasing commission in connection with this Lease in accordance with the terms and conditions set forth in a separate written agreement entered into between Landlord and Tenant's Broker."

Section 19.17:

At the end of this Section, insert "Notwithstanding anything to the contrary contained in this Section, if in the event of any interruption in utilities or services to the Premises that (i) substantially interferes with Tenant's use of the Premises for Tenant's business, as reasonably determined by Tenant, for more than five (5) continuous days, and (ii) are not the result of Tenant's negligence or willful misconduct, the Rent due

under this Lease shall abate (but only to the extent of any proceeds received by Landlord from rental abatement insurance) for each successive day that the interruption continues until the utilities or services are restored."

Sections 20 – 26:

The following Sections are incorporated into the Lease:

20. Early Entry. Upon the execution and delivery of this Lease, Tenant may, at Tenant's sole risk and cost, enter upon the Premises prior to the Commencement Date for the purposes of performing Tenant's Work (as defined in the Work Letter) subject to Tenant complying with each of the following terms and conditions during such early entry period: (i) Tenant shall comply with all of the terms and conditions contained in this Lease, except for Tenant's obligation to pay Base Rent, Impositions and Operating Expenses; (ii) Tenant shall indemnify, protect, defend and hold harmless Landlord and all other Indemnified Parties from all claims and losses, and exempt Landlord and the other Indemnified Parties from any liability, all as more particularly provided in Sections 6.4 and 6.5; (iii) Tenant shall comply with all of the requirements contained in this Lease with respect to the type and amounts of insurance required to be maintained by Tenant and provide Landlord with evidence satisfactory to Landlord that Tenant has obtained such insurance; and (iv) Tenant shall pay for all utility services supplied to the Premises and/or used by Tenant.

21. Adjustments to Base Rent. The monthly Base Rent shall be increased on each anniversary of the Commencement Date during the Term by an amount equal to three and one-half percent (3.5%) of the amount of the then existing monthly Base Rent.

25. Extension Options

25.1 Options to Extend. Tenant shall have two (2) options to extend the Term for a period of five (5) years each (hereinafter referred to as the "First Extension Term" and "Second Extension Term," respectively, and each, an "Extension Term"), provided that at the time Tenant's Extension Notice (defined below) is given and at the time the Extension Term is to commence (i) no Event of Default by Tenant exists and (ii) E-Trade Group, Inc. or a Permitted Assignee of E-Trade Group, Inc. is in occupancy of at least ninety percent (90%) of the Building, the 4500 Bohannon Building and any other space leased to Tenant pursuant to this Lease or the 4500 Bohannon Lease. Tenant shall exercise such option, if at all, by written notice ("Tenant's Extension Notice") to Landlord not later than fifteen (15) months, nor earlier than eighteen (18) months, prior to the expiration of the original Term (as such Term may be extended pursuant to Section 26) or the First Extension Term, as the case may be. Tenant may exercise its option to extend the Term for an Extension Term only if Tenant concurrently exercises its right to extend the term of the 4500 Bohannon Lease for an equal period of time in accordance with the terms and conditions contained therein. Tenant's failure to deliver Tenant's Extension Notice to Landlord in a timely manner shall be deemed a waiver of Tenant's option to extend the Term and Tenant's extension option, and any future option to extend the Term, shall lapse and be of no force or effect.

25.2 Exercise of Option.

(a) First Extension Term. If Tenant exercises its extension option for the First Extension Term, the Term shall be extended for an additional period of five (5) years on all of the terms and conditions of this Lease, except (i) Tenant's options to further extend the Term shall be reduced in number by one, (ii) Landlord shall not be required to pay to Tenant any tenant improvement allowance or inducement and (iii) the monthly Base Rent for the first year of the First Extension Term shall be the greater of (A) the "Initial Fair Market Rent" prevailing at the commencement of the First Extension Term or (B) the monthly Base Rent in effect at the end

of the original Term. The Base Rent due during the First Extension Term shall be increased annually by the Average Annual Percentage (defined below), if any.

(b) Second Extension Term. If Tenant exercises its extension option for the Second Extension Term, the Term shall be extended for an additional period of five (5) years on all of the terms and conditions of this Lease, except (i) Tenant shall have no further options to extend the Term of this Lease, (ii) Landlord shall not be required to pay to Tenant any tenant improvement allowance or inducement and (iii) the monthly Base Rent for the first year of the Second Extension Term shall be the greater of (A) the "Initial Fair Market Rent" prevailing at the commencement of the Second Extension Term or (B) the monthly Base Rent in effect at the end of the First Extension Term. The Base Rent due during the Second Extension Term shall be increased annually by the Average Annual Percentage, if any.

(c) Real Estate Commission. Tenant shall be responsible for all brokerage costs and/or finder's fees associated with Tenant's exercise of its option to extend the Term made by parties claiming through Tenant. Landlord shall be responsible for all brokerage costs and/or finder's fees associated with Tenant's exercise of its option to extend the Term made by parties claiming through Landlord.

25.3 Determination of Fair Market Rent.

(a) Agreement on Rent. For the purposes of this Section, the "Initial Fair Market Rent" means the monthly base rent (i.e., rent other than operating expenses, taxes and insurance premiums), expected to prevail as of the commencement of an Extension Term for the first year of that Extension Term with respect to leases of office space within buildings located in the "Designated Area" (defined as the Menlo Park and Palo Alto areas other than the Sand Hill Road area, Stanford Research Park and the Palo Alto central business district) of a quality and with interior improvements, parking, site amenities, building systems, location, identity and access all comparable to that of the Premises, for a term equal to the Extension Term. The term "Average Annual Percentage" shall mean the average annual percentage increase in the monthly base rent (i.e., rent other than operating expenses, taxes and insurance premiums) expected to prevail as of the commencement of that particular Extension Term with respect to leases of office space within buildings located in the Designated Area of a quality and with interior improvements, parking, site amenities, building systems, location, identity and access all comparable to that of the Premises, for a term equal to the Extension Term). Within fifteen (15) days after Landlord's receipt of Tenant's Extension Notice, by written notice to Tenant ("Landlord's Rent Notice"), Landlord shall advise Tenant as to Landlord's determination of the Initial Fair Market Rent and Average Annual Percentage. If Tenant disagrees with Landlord's determination, Tenant shall advise Landlord as to Tenant's determination of Initial Fair Market Rent and Average Annual Percentage by written notice ("Tenant's Rent Notice") within fifteen (15) days after Tenant's receipt of Landlord's Rent Notice. If Tenant fails to deliver Tenant's Rent Notice to Tenant within the time period provided above, Tenant shall be bound by Landlord's determination of the Initial Fair Market Rent and Average Annual Percentage as set forth in Landlord's Rent Notice. If Tenant shall timely deliver to Landlord Tenant's Rent Notice, Landlord and Tenant shall attempt in good faith to reach agreement as to the Initial Fair Market Rent and Average Annual Percentage within fifteen (15) days

after Landlord's receipt of Tenant's Rent Notice.

(b) Selection of Appraisers. If Landlord and Tenant are unable to agree as to the amount of the Initial Fair Market Rent and Average Annual Percentage within the aforementioned fifteen (15) day period as evidenced by a written amendment to this Lease executed by them, then, within ten (10) days after the expiration of the fifteen (15) day period, Landlord and Tenant shall each, at its sole cost and by giving notice to the other party, appoint a competent and disinterested real estate appraiser with membership in the Appraisal Institute and M.A.I. designation and with at least five (5) years' full-time commercial appraisal experience in the Menlo Park and Palo Alto areas to determine the Initial Fair Market Rent and Average Annual Percentage. If either Landlord or Tenant does not appoint an appraiser within ten (10) days after the other party has given notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and shall determine the Initial Fair Market Rent and Average Annual Percentage. If Landlord and Tenant as stated in this Section appoint two (2) appraisers, they shall attempt to select a third appraiser meeting the qualifications stated in this Section within ten (10) days. If they are unable to agree on the third appraiser, either Landlord or Tenant, by giving ten (10) days' notice to the other party, can apply to the then president of the real estate board of the county in which the Building is located, or to the Presiding Judge of the Superior Court of the county in which the Building is located, for the selection of a third appraiser who meets the qualifications stated in this paragraph. Landlord and Tenant each shall bear one-half (1/2) of the cost of appointing the third appraiser and of paying the third appraiser's fee. The third

appraiser, however selected, shall be a person who has not previously acted in any capacity for either Landlord or Tenant.

(c) Value Determined By Three (3) Appraisers. The appraisers shall determine the Initial Fair Market Rent and Average Annual Percentage by using the "Market Comparison Approach" with the relevant market being office buildings located in the Designated Area. Within thirty (30) days after the selection of the third appraiser, Landlord's appraiser shall arrange for the simultaneous delivery to Landlord of written appraisals from each of the appraisers and the three (3) appraisals shall be added together and their total divided by three (3); the resulting quotients shall be the Initial Fair Market Rent and Average Annual Percentage. If, however, the low appraisal and/or the high appraisal of either the Initial Fair Market Rent or the Average Annual Percentage are/is more than ten percent (10%) lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If only one (1) appraisal is disregarded, the remaining two (2) appraisals shall be added together and their total divided by two (2); the resulting quotients shall be the Initial Fair Market Rent and Average Annual Percentage. If both the low appraisal and the high appraisal of either the Initial Fair Market Rent or the Average Annual Percentage are disregarded as stated in this Section, the middle appraisal shall be the Initial Fair Market Rent or Average Annual Percentage, as applicable.

25.4 Notice to Landlord and Tenant. After the monthly Base Rent for an Extension Term has been set, Landlord and Tenant immediately shall execute an amendment to the Lease stating the monthly Base Rent.

26. Option to Expand.

26.1 Expansion Option Provided that (i) no Event of Default by Tenant exists under the terms of this Lease at the time Tenant exercises its option to expand the Premises or at the time Tenant is to commence occupancy of the space in question, (ii) E-Trade Group, Inc. or a Permitted Assignee occupies at least ninety percent (90%) of the Building, the 4500 Bohannon Building and all other space leased to Tenant pursuant to this Lease and the 4500 Bohannon Lease, and (iii) Tenant has a financial net worth of at least Five Hundred Million Dollars (\$500,000,000.00) at the time Tenant exercises its Expansion Option or otherwise delivers to Landlord the additional security deposit required pursuant to Section 26.6 below, Tenant shall have the option (the "Expansion Option") to lease the space (the "4400 Bohannon Expansion Option Space") listed on Exhibit E, attached hereto, upon the terms and conditions contained in this Section 26.

26.2 Exercise of Expansion Option. Tenant shall exercise the Expansion Option by written notice to Landlord no earlier June 1, 1999 and no later than August 31, 1999.

Notwithstanding the foregoing, if the tenant that currently leases the 4400 Bohannon Expansion Option Space defaults on its obligations under its lease and Landlord either terminates the existing tenant's lease or enters into a lease termination agreement with the existing tenant (in lieu of bringing an unlawful detainer action against the existing tenant) which results in the 4400 Bohannon Expansion Option Space becoming available for lease prior to August 31, 2000 (hereinafter referred to as an "Early Termination Event"), then Tenant shall exercise its Expansion Option to lease the 4400 Bohannon Expansion Option Space (if at all) within forty-five (45) days after Landlord notifies Tenant in writing of the date that the 4400 Bohannon Expansion Option Space has become or will become available for lease; provided, however, in no event will Tenant be required to exercise its Expansion Option more than twelve (12) months prior to the date the 4400 Bohannon Expansion Option Space becomes available for lease. If Tenant fails to exercise the Expansion Option with respect to the 4400 Bohannon Expansion Option Space within the time period provided above, the Expansion Option shall expire, and Tenant and Landlord shall have no further rights or obligations under this Section with respect to the 4400 Bohannon Expansion Option Space.

26.3 Terms of Lease. Landlord shall lease the 4400 Bohannon Expansion Option Space to Tenant on all the same terms and conditions contained in this Lease except (i) Landlord shall not be required to pay to Tenant any tenant improvement allowance or inducement, (ii) the term of Tenant's lease of the 4400 Bohannon Expansion Option Space shall be for ten (10) years, commencing on the date on which Landlord delivers to possession of the 4400 Bohannon Expansion Option Space to Tenant (subject to extension pursuant to Section 26.5), (iii) Tenant may not place or install exterior signage on the building in which the 4400 Bohannon Expansion Option Space is located, (iv) Tenant shall deliver to Landlord concurrently with Tenant's execution of an amendment to this Lease to include the 4400 Bohannon Expansion Option Space or Tenant's execution of a new lease for the 4400 Bohannon Expansion Option Space (which Tenant shall execute within thirty (30) days after Tenant exercises its Expansion Option and receives the proposed amendment or lease from Landlord) a security deposit for the 4400 Bohannon Expansion Option Space in an amount equal to the last monthly installment of Base Rent due for the 4400

Bohannon Expansion Option Space, (v) the monthly Base Rent per rentable square foot for the 4400 Bohannon Expansion Option Space shall be an amount equal to monthly Base Rent per rentable square foot of the existing Premises in effect at the commencement of the term of the 4400 Bohannon Expansion Option Space, less (1) the amount of the monthly Base Rent per rentable square foot attributable to the Additional Allowance

(if any) and (2) the amount of the monthly Base Rent per rentable square foot attributable to the Base Allowance (which the parties agree to be an amount equal to Seven and One-Half Cents (\$0.075) per rentable square foot, increased by three and one-half percent (3.5%) per annum beginning on the Commencement Date and ending on the commencement date of the term of the 4400 Bohannon Expansion Space), subject to further increases thereafter in the same percentages and on the same dates as the remainder of the Premises pursuant to Section 4.2, and (vi) Tenant shall lease the 4400 Bohannon Expansion Option Space in its "as is" condition, except Landlord shall deliver the 4400 Bohannon Expansion Option Space to Tenant in broom clean condition, with building systems in good working condition and the roof in water right condition.

26.4 Delivery of 4400 Bohannon Expansion Option Space. If Tenant exercises its Expansion Option, Landlord shall use commercially reasonable efforts to deliver possession of the 4400 Bohannon Expansion Option Space to Tenant within five (5) days after Landlord recovers possession of the 4400 Bohannon Expansion Option Space. Tenant's obligation to pay Rent to Landlord for the 4400 Bohannon Expansion Option Space shall commence on the forty-fifth (45th) day after Landlord delivers possession of the 4400 Bohannon Expansion Option Space to Tenant; provided, however, if Landlord delivers possession of the 4400 Bohannon Expansion Option Space to Tenant prior to August 31, 2000, Tenant's obligation to pay Rent to Landlord for the 4400 Bohannon Expansion Option Space shall commence on the forty-fifth (45th) day after Landlord delivers possession of the 4400 Bohannon Expansion Option Space to Tenant; provided, however, if Landlord delivers possession of the 4400 Bohannon Expansion Option Space to Tenant prior to August 31, 2000 as a result of an Early Termination Event, Tenant's obligation to pay Rent to Landlord for the 4400 Bohannon Expansion Option Space shall commence on the sixtieth (60th) day after Landlord delivers possession of the 4400 Bohannon Expansion Option Space to Tenant.

26.5 Extension of Term. If Tenant exercises its option under the 4500 Bohannon Lease to lease an increment of First Expansion Option Space (defined therein) or Tenant exercises its option under this Lease to lease the 4400 Bohannon Expansion Option Space, the Term with respect to the Premises, any increment of First Expansion Option Space for which Tenant has exercised its expansion option and the 4400 Bohannon Expansion Option Space (provided that Tenant has exercised its Expansion Option with respect to such space) shall be extended until the tenth (10th) year after the latest commencement date of Tenant's lease of any increment of First Expansion Option Space (for which Tenant has exercised its expansion option) or Tenant's lease of the 4400 Bohannon Expansion Option Space.

26.6 Additional Security Deposit.

(a) **Amount.** If Tenant does not have a financial net worth of at least Five Hundred Million Dollars (\$500,000,000.00) at the time Tenant exercises its Expansion Option, Tenant may still exercise its Expansion Option provided that Tenant delivers to Landlord concurrently with Tenant's execution of an amendment to this Lease to include the 4400 Bohannon Expansion Option Space as part of the Premises or Tenant's execution of a new lease for the 4400 Bohannon Expansion Option Space (which shall occur no later than thirty (30) days after Tenant's execution of its Expansion Option), an additional security deposit (the "Additional Security Deposit") in an amount equal to the difference between (i) Forty-Five Dollars (\$45.00) per rentable square foot of the 4400 Bohannon Expansion Option Space and (ii) the amount of the security deposit due with respect to the 4400 Bohannon Expansion Option Space pursuant to Section 26.3. If Tenant's financial net worth falls below Five Hundred Million Dollars (\$500,000,000.00) at any time after Tenant exercises its Expansion Option, then Tenant shall deliver to Landlord within twenty (20) days after Landlord's written request the Additional Security Deposit. Alternatively, if Tenant's financial net worth increases to Five Hundred Million Dollars (\$500,000,000.00) or more at any time after Tenant has delivered to Landlord the Additional Security Deposit, then, within twenty (20) days after Tenant's written request, Landlord shall return the Additional Security Deposit to Tenant or credit the Additional Security Deposit against the next installment of Rent due under this Lease.

(b) **Additional Remedy.** If Tenant's financial net worth falls below Five Hundred Million Dollars (\$500,000,000.00) at any time after Tenant exercises its Expansion Option, but prior to Tenant's lease of the 4400 Bohannon Expansion Option Space, and Tenant fails to deliver to Landlord the Additional Security Deposit required pursuant to Section 26.6(a), then, in addition to all other remedies available to Landlord under this Lease, Landlord may vitiate Tenant's exercise of its Expansion Option by written notice to Tenant and elect not to lease

the 4400 Bohannon Expansion Option Space to Tenant (whereupon Tenant shall have no further rights to lease the 4400 Bohannon Expansion Option Space).

(c) **Letter of Credit.** In lieu of a cash security deposit, Tenant may deliver to Landlord as the Additional Security Deposit an irrevocable standby letter of credit (the "Letter of Credit") naming Landlord as beneficiary, in the amount of the Additional Security Deposit. The Letter of Credit shall be issued by a major national bank located in San Francisco or a regional bank located in the San Francisco Bay Area ("Bank") reasonably satisfactory to Landlord and shall be upon such terms and conditions as Landlord may reasonably require. The Letter of Credit shall allow draws by Landlord upon sight draft accompanied by a statement from Landlord that it is entitled to draw upon the Letter of Credit and shall contain terms which allow Landlord to make partial and multiple draws up to the face amount of the Letter of Credit. If Tenant has not delivered to Landlord at least thirty (30) days prior to the expiration of the original Letter of Credit (or any renewal letter of credit) a renewal or extension thereof, Landlord shall have the right to draw down the entire amount of original Letter of credit (or renewal thereof) and retain the proceeds thereof as the security deposit. If and when Tenant would be entitled to request that Landlord return the security deposit to Tenant or apply the security deposit towards Tenant's obligation to pay Rent, Landlord shall, at Tenant's request, return to Tenant any Letter of Credit delivered to Landlord pursuant to this paragraph.

27 4500 Bohannon Lease. Concurrently with the execution of this Lease, Landlord and Tenant are entering into that certain lease (the "4500 Bohannon Lease") pursuant to which Landlord is leasing to Tenant approximately sixty-two thousand nine hundred twenty (62,920) rentable square feet of space in that certain building (the "4500 Bohannon Building") located in the Project. The obligations of Landlord and Tenant under this Lease are expressly conditioned upon Landlord and Tenant entering into the 4500 Bohannon Lease."

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date set forth below.

"Landlord"
MENLO OAKS PARTNERS L.P.,
a Delaware limited partnership

By: AM Limited Partners, a California limited partnership, its General Partner

By: Amarok Menlo, Inc., a California corporation, its General Partner

/s/: J. Marty Brill, Jr.
By:

Name: J. Marty Brill, Jr.
Its: President

"Tenant"
E*TRADE GROUP, INC.,
a Delaware corporation

By: /s/: Len Purkis

Name: Len Purkis
Its: EVP & CFO
/s/: Kathy Levinson

By:

Name: Kathy Levinson
Its: President & COO

Exhibit A

[FLOORPLAN APPEARS HERE]

Exhibit B

LEGAL DESCRIPTION

That certain real property situated in the City of Menlo Park, County of San Mateo, State of California, more particularly described as follows:

Parcel 1 of that Parcel map recorded December 28, 1984 in Book 55
of maps at page 52-53, San Mateo County Records.

Exhibit A

[FLOOR PLAN APPEARS HERE]

EXHIBIT C

WORK LETTER
(4200 Bohannon Drive)

This Work Letter sets forth Landlord's and Tenant's responsibilities, respectively, for the construction of certain tenant improvements in the Premises.

1. Defined Terms. Unless provided to the contrary herein, the following defined terms shall have the meanings set forth below and the remaining defined terms shall have the meanings set forth in the Lease:

Landlord's Representative: Michael E. Tamas

Tenant's Representative: JC Blakely

2. Landlord's Work. Tenant's Work.

3.1 Tenant Improvements. Tenant shall arrange for the construction of certain general purpose office improvements (the "Tenant Improvements") in the Premises. The Tenant Improvements shall be subject to Landlord's prior written approval (as provided below) and conform to Landlord's General Building Specifications, a copy of which is attached hereto as Schedule 1. The Tenant Improvements shall be constructed by Tenant's Contractor in accordance with plans and specifications prepared by Tenant's Architect (each as defined below). Tenant's construction of the Tenant Improvements is hereinafter referred to as the "Tenant Improvement Work."

3.2 Costs. Except for Landlord's obligation to pay to Tenant the Tenant Improvement Allowance pursuant to Section 4 below, Tenant shall be responsible for all costs incurred in connection with the construction of the Tenant Improvements, including (i) the cost of all labor, materials, equipment and fixtures supplied by Tenant's Contractor or any subcontractors or materialmen, (ii) fees paid to engineers, architects and interior design specialists for preparation of the Preliminary Plans and Working Drawings and all other services supplied to Tenant in connection with the Tenant Improvements, (iii) all taxes, fees, charges and levies by governmental agencies for authorizations, approvals, licenses or permits, (iii) fees paid to utility service providers for utility connections and installation of utility service meters, and (iv) all costs required to comply with any governmental requirements triggered as a result of Tenant's construction of the Tenant Improvements.

3.3 Tenant's Architect and Contractor. Tenant shall notify Landlord in writing of the name of the architect that Tenant proposes to use to prepare the plans and specifications and working drawings for the Tenant Improvements and the name of the contractor that Tenant proposes to use to construct the Tenant Improvements. In addition, Tenant shall deliver to Landlord any information reasonably requested by Landlord concerning the proposed architect or contractor. The architect and the contractor proposed by Tenant must each be approved by Landlord in writing, which approval may not be unreasonably withheld. The architect selected by Tenant and approved by Landlord in connection with the Tenant Improvement Work is hereinafter referred to as "Tenant's Architect". The contractor selected by Tenant and approved by Landlord in connection with the Tenant Improvement Work is hereinafter referred to as "Tenant's Contractor". Both Tenant's Architect and Tenant's Contractor must be licensed to do business in California. At Landlord's option, Tenant's Contractor shall be bondable.

3.4 Construction.

3.4.1 Preliminary Plans. Tenant shall arrange for Tenant's Architect to prepare preliminary plans and specifications (the "Preliminary Plans") of the proposed Tenant Improvements and submit the Preliminary Plans to Landlord for Landlord's review and approval. Landlord shall approve or disapprove of the Preliminary Plans by written notice to Tenant within five (5) business days after Landlord's receipt of the Preliminary Plans. Landlord shall not unreasonably withhold its approval of the Preliminary Plans. If Landlord disapproves the Preliminary Plans, Landlord's written notice to Tenant disapproving of the Preliminary Plans shall include (i) a description of the disapproved element of the Preliminary Plans, (ii) the reasons for Landlord's disapproval and (iii) at Landlord's option, suggested modifications to the Preliminary Plans. If Landlord disapproves of the Preliminary Plans, Tenant shall arrange for Tenant's Architect to revise the Preliminary Plans to address

Landlord's comments and/or incorporate Landlord's suggested modifications (if any) and resubmit the Preliminary Plans to Landlord for Landlord's review and approval. Landlord shall review the revised Preliminary Plans and approve or disapprove of the revised Preliminary Plans within three (3) business days after Landlord's receipt thereof in accordance with the procedure provided above. If Landlord fails to respond to Tenant's request for approval or disapproval of the Preliminary Plans within the time periods provided for above, such approval shall be deemed to have been given.

3.4.2 Working Drawings. Subject to obtaining Landlord's approval of the Preliminary Plans, Tenant shall arrange for Tenant's Architect to prepare working drawings and specifications, including architectural, mechanical, electrical, plumbing and other shop drawings (the "Working Drawings") for the Tenant Improvements. The Working Drawings shall be based on the Preliminary Plans approved by Landlord. Landlord shall approve or disapprove of the Working Drawings by written notice to Tenant within five (5) business days after Landlord's receipt of the Working Drawings. Landlord shall not unreasonably withhold its approval of the Working Drawings. If Landlord disapproves the Working Drawings, Landlord's written notice to Tenant disapproving of the Working Drawings shall include (i) a description of the disapproved element of the Preliminary Plans, (ii) the reasons for Landlord's disapproval and (iii) at Landlord's option, suggested modifications to the Working Drawings. If Landlord disapproves of the Working Drawings, Tenant shall arrange for Tenant's Architect to revise the Working Drawings to address Landlord's comments and/or incorporate Landlord's proposed changes and resubmit the Working Drawings to Landlord for Landlord's review and approval. Landlord shall review the revised Working Drawings and approve or disapprove of the revised Working Drawings within three (3) days after Landlord's receipt thereof in accordance with the procedure provided above. The Working Drawings which have been approved by Landlord are hereinafter referred to as the "Approved Working Drawings" If Landlord fails to respond to Tenant's request for approval or disapproval of the Working Drawings within the time periods provided for above, such approval shall be deemed to have been given.

3.4.3 Changes. Tenant, at its sole cost and expense, shall make all changes to the Approved Working Drawings that are required by law or any governmental agency. All changes to the Approved Working Drawings, including those required by law or any governmental agency, require Landlord's prior written approval, which approval shall not be unreasonably withheld. All changes to the Approved Working Drawings must be in writing and signed by both Landlord and Tenant prior to the change being made. Notwithstanding the foregoing, Tenant shall have the right, without the need for Landlord's prior written consent, to make changes to the Approved Working Drawings that cost less than Five Thousand Dollars (\$5,000.00) each, and less than Sixty Thousand Dollars (\$60,000.00) in the aggregate, provided that (a) such change does not materially adversely affect the use of the Premises as first class office space, (b) Tenant provides Landlord with prior written notice of such changes, and (c) such changes are otherwise performed in accordance with the terms of this Work Letter and in compliance with all governmental laws. If Landlord fails to respond to Tenant's written request for any change to the Approved Working Drawings within three (3) business days after Landlord's receipt thereof, the change order shall be deemed to have been approved by Landlord. Tenant shall be responsible for all additional costs attributable to changes to the Approved Working Drawings, including, without limitation, additional architectural fees and increases in construction costs of the Tenant Improvements.

3.4.4 Construction Contract. Tenant shall deliver to Landlord not less than five (5) days prior to the date Tenant commences the Tenant Improvement Work a copy of the construction contract entered into between Tenant and Tenant's Contractor with respect to the construction of the Tenant Improvements, along with Tenant's and Tenant's Contractor's estimate of the cost of constructing the Tenant Improvements.

3.4.5 Insurance. Prior to performing any work in the Premises or the Building, Tenant shall deliver to Landlord certificates evidencing that Tenant's Contractor has in force (i) a commercial liability insurance policy covering bodily injury in the amounts of Two Million Dollars (\$2,000,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence, and covering property damage in the amount of Two Million Dollars (\$2,000,000.00), and (ii) workers' compensation insurance in an amount reasonably acceptable to Landlord.

3.4.6 Time Limits. Tenant shall commence the construction of the Tenant Improvements by no later than January 1, 1999 and shall diligently proceed with the construction of the Tenant Improvements until completion. In any event, Tenant shall complete the Tenant Improvements in any portion of the Premises within six (6) months after the date Tenant demolishes the existing improvements in that portion of the

Premises. Tenant's failure to construct the Tenant Improvements in accordance with the terms of this Work Letter constitutes a default by Tenant under this Lease.

3.4.7 Lien Waivers. Upon completion of the Tenant Improvement Work, Tenant shall deliver to Landlord a release and waiver of lien executed by each contractor, including Tenant's Contractor, subcontractor and materialman concerning with the Tenant Improvement Work.

3.4.8 Cooperation. Landlord shall cooperate with (i) Tenant's Architect in completing the Preliminary Plans and the Working Drawings and (ii) Tenant's Contractor in completing the Tenant Improvements; provided, however, Landlord shall not be required to incur any unreimbursed additional expense in so doing.

3.4.9 Warranties. Tenant hereby warrants to Landlord that (i) the Tenant Improvements will be constructed in a good and workmanlike manner, by well-trained, adequately supplied workers, (ii) the Tenant Improvements and all equipment and material incorporated therein will strictly comply with the Approved Working Drawings, (iii) the Tenant Improvements shall strictly comply with all governmental and quasi-governmental rules regulations, laws and building codes, all private covenants, conditions and restrictions applicable to the construction of the Tenant Improvements and all requirements of Landlord's and Tenant's lenders and insurers, and (iv) the Tenant Improvements shall be free from all design, material and workmanship defects. At Landlord's written request, Tenant shall assign to Landlord all of Tenant's warranties received from Tenant's Contractor, Tenant's Architect or any materialman or supplier in connection with the Tenant Improvements.

3.4.10 Completion. Within ten (10) days after the Tenant's completion of the Tenant Improvements, Tenant shall deliver to Landlord a breakdown of the total costs incurred by Tenant in constructing the Tenant Improvements. All of the Tenant Improvements shall remain the property of Tenant until the termination of this Lease, at which time they shall be and become the property of Landlord.

4. Allowance.

4.1 Tenant Improvement Allowance. Landlord shall pay to Tenant upon the terms and conditions set forth in this Section 4 up to Six Hundred Ninety-Three Thousand Eight Hundred Twenty-Five Dollars (\$693,825.00) (the "Maximum Tenant Improvement Allowance") as a tenant improvement allowance (the "Tenant Improvement Allowance") toward the cost of designing, construction and installing the Tenant Improvements in the Building). The Tenant Improvement Allowance may be used by Tenant only to pay for the design and construction of general office improvements in the Building. The Tenant Improvement Allowance may not be used to pay for (i) any trade fixtures, furniture, furnishing, equipment (except electrical, mechanical, plumbing and HVAC systems which may be paid for out of the Tenant Improvement Allowance), decorations, signs, inventory or other personal property, (ii) rent for leased equipment or other personal property, (iii) interest or financing costs, (iv) utility and permit fees or (v) administrative or overhead costs and expenses paid or incurred by Tenant in connection with the construction of the Tenant Improvements.

4.2 Amount. Tenant shall notify Landlord in writing by January 1, 1999, of the amount of the Additional Allowance that Tenant will require from Landlord. If the total amount, of the Tenant Improvement Allowance (i.e., the sum of the Base Allowance and the amount of the Additional Allowance requested by Tenant) exceeds Two Hundred Thirty-One Thousand Two Hundred Seventy-Five Dollars (\$231,275.00) (the "Base Allowance"), the monthly Base Rent under this Lease shall be increased effective as of the Commencement Date by an amount equal to the product of (i) One and One-half Cents (\$0.015) and (ii) the difference between (x) the Tenant Improvement Allowance and (y) the Base Allowance. Tenant shall pay to Landlord on January 1, 1999 any additional Base Rent due to Landlord for the period commencing on the Commencement Date and ending on December 31, 1998, as a result of Tenant's election to request from Landlord a portion of the Additional Allowance. For purposes of this Lease, the "Additional Allowance" is defined as the positive difference between (i) the Maximum Tenant Improvement Allowance and (ii) the Base Allowance.

4.3 Payment of the Tenant Improvement Allowance. Landlord shall pay the Tenant Improvement Allowance to Tenant within thirty (30) days after Tenant's written request therefore, provided that (i) Tenant is not in default under the terms of this Lease after the expiration of any applicable cure period, (ii) Tenant has completed all of the Tenant Improvement Work in accordance with the Approved Working Drawings and this Work Letter, and (iii) Tenant has delivered to Landlord the following: (a) a copy of a "finalized" building permit issued by the City of Menlo Park or certificate of occupancy for the Premises, (b) a certificate Of completion issued

by Tenant's Architect, certifying that the Tenant Improvement Work has been completed in accordance with the Approved Working Drawings, (c) "as built" drawings for the Premises, (d) evidence that the total cost of the portion of the Tenant Improvement Work which may be paid for out of the Tenant Improvement Allowance is equal to or exceeds the amount of the Tenant Improvement Allowance required by Tenant, which evidence shall be in the form of copies of paid invoices and the applicable construction contracts, and (e) unconditional lien waivers from Tenant's Contractor and all subcontractors, materialmen and suppliers that have performed work or supplied materials in connection with the Tenant Improvement Work.

5. Default. Tenant's failure to timely commence or complete the Tenant Improvement Work or to comply with any of the other terms or conditions of this Work Letter shall constitute an Event of Default under the Lease.

6. Representatives.

6.1 Tenant's Representative. Tenant has designated Tenant's Representative as its sole representative with respect to the matters set forth in this Work Letter, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Work Letter. Tenant shall not change the Tenant's Representative without notice to Landlord.

6.2 Landlord's Representative. Landlord has designated Landlord's Representative as its sole representative with respect to the matters set forth in this Work Letter, who shall have full authority and responsibility to act on behalf of Landlord as required in this Work Letter. Landlord shall not change Landlord's Representative without notice to Tenant.

7. Indemnity. Tenant shall indemnify, protect and defend (with counsel satisfactory to Landlord) and hold harmless Landlord and all other Indemnified Parties from and against any and all suits, claims, actions, losses, costs or expenses (including claims for workers' compensation, attorneys' fees and costs) based on personal injury or property damage caused in, or contract claims (including, but not limited to claims for breach of warranty) arising from the performance of the Tenant Improvement Work. Tenant shall repair or replace (or, at Landlord's election, reimburse Landlord for the cost of repairing or replacing) any portion of the Building, Phase and/or Project, or item of Landlord's equipment or any of Landlord's real or personal property, damaged, lost or destroyed in the performance of the Tenant Improvement Work.

8. No Representations or Warranties. Notwithstanding anything to the contrary contained in the Lease or this Work Letter, Landlord's participation in the preparation of the Preliminary Plans and the Approved Working Drawings shall not constitute any representation or warranty, express or implied, that the Preliminary Plans or the Approved Working Drawings are in conformity with applicable governmental codes, regulations or rules. Tenant acknowledges and agrees that the Premises are intended for use by Tenant and the specification and design requirements for the Tenant Improvements are not within the special knowledge or experience of Landlord.

9. No Encumbrance. Tenant shall not mortgage, grant a security interest in or otherwise encumber all or any portion of the Tenant Improvements.

10. Landlord Delays. The Commencement Date shall be delayed one (1) day for each day that Landlord is late in responding to Tenant's request for approval of the Preliminary Plans and Working Drawings as provided above.

11. HVAC System. In the event Tenant elects to use a portion of the Premises for the operation of a data center, then, as part of the Tenant Improvement Work, Tenant shall install a HVAC system or unit in the Premises. Tenant's installation of the HVAC system or unit in the Premises shall be subject to Landlord's review and approval of Tenant's plans and specifications for the HVAC system or unit (to be included as part of Tenant's Preliminary Plans and Working Drawings). Landlord, by written notice to Tenant, may require Tenant to remove the HVAC system or unit at the end of the Term and repair any damage to the Premises due to Tenant's removal of the HVAC system or unit.

12. Conduit. Tenant shall have the right to install underground conduit in the Project to connect the various building in the Project that are leased by Tenant and the Generator, provided that Tenant complies with each of the following terms and conditions: (i) prior to installing additional conduit in the Phase, Tenant utilizes the existing conduit in the Phase to the extent the conduit can be used in a secure manner (excluding the Generator which will use its own dedicated conduit), (ii) Tenant installs additional conduit in the Phase only in

the location designated by Landlord; (iii) all of the terms and conditions contained in the Lease with respect to Tenant's construction of additional improvements in the Premises, including Landlord's right to approve Tenant's proposed plans, shall apply with respect to Tenant's installation of additional conduit in the Phase, and (iv) following Tenant's installation of additional conduit in the Phase, Tenant shall restore the landscaping, parking lots and other areas within the Project that are disturbed or affected as a result of Tenant's installation of additional conduit to their condition existing prior to Tenant's installation of additional conduit, including applying a seal coat and striping to the parking lot in the area where the additional conduit is placed so that the patched area, of the parking lot (resulting from the installation of the conduit) blends with and is not materially distinguishable from the remaining portion of the parking lot in the Phase as reasonably determined by Landlord.

13. Generator.

13.1 Right to Install Generators. Subject to the terms and conditions set forth below, Tenant shall have the right to install an above-ground emergency diesel generators (each, a "Generator") in the Project in an area not to exceed forty feet (40') by forty feet (40'). The Generator may not exceed fifteen feet (15') in height and shall be located within the area designated on Schedule 2, attached hereto (hereinafter referred to as the "Approved Generator Area"). Tenant shall designate the exact location of the Generator within the Approved Generator Area. Tenant may not install any underground storage tanks in connection with the installation or use of the Generator. Tenant's right to install and use the Generator within the Approved Generator Area is subject to (i) the rights of the holders of any pre-existing easements over, in or under the Project, and (ii) Tenant's compliance with all laws, including, without limitation, set-back restrictions, height restrictions and local noise ordinances or standards. If Tenant is unable to install the Generator in the Approved Generator Area for any reason, Landlord shall designate an alternative location within the Project for installation of the Generator.

13.2 Plans and Specifications. Tenant shall submit to Landlord for Landlord's review and approval plans and specifications and working drawings (the "Generator Plans") for the Generator, including plans for the installation of adequate screening for the Generator. Tenant shall submit to Landlord the Generator Plans for the first Generator that Tenant plans to install in the Approved Generator Area along with and at the same time as Tenant submits to Landlord the Preliminary Plans and Working Drawings. The time periods and procedure set forth in Section 3.4 with respect to Tenant's submission of the Preliminary Plans and Working Drawings to Landlord and Landlord's review and approval or disapproval of the Preliminary Plans and Working Drawings shall apply with respect to Tenant's submission to Landlord and Landlord's review and approval or disapproval of the Generator Plans.

13.3 Parking. If the number of parking spaces in the Project are at any time reduced due to the location of the Generator or Tenant's installation of the Generator, Tenant's right to use a portion of the available parking spaces in the Phase on a non-exclusive basis (as provided in the Lease) shall be reduced by a similar number of parking spaces.

13.4 Use: Testing. Tenant may use the Generator only in the event of an interruption in the supply of electricity to the Premises or

in performing scheduled testing or maintenance of the Generator. Tenant shall conduct all testing and maintenance of the Generator during business days after 6:00 p.m. and before 7:00 a.m. the next morning, and on weekends and holidays; provided, however, if an existing tenant, adjacent property owner or neighbor complains to Tenant or Landlord of the noise caused by the Generator, Tenant shall adjust Tenant's testing and maintenance schedule to address the complaint. In addition, Tenant may test the Generator during business hours (with each test lasting no more than thirty (30) minutes in duration) in the event of (i) anticipated severe inclement weather that could reasonably lead to a power outage, including, without limitation, thunderstorms, high winds and excessive rain, or (ii) emergency repairs to a Generator.

13.5 Removal. Tenant shall remove the Generator and restore the portion of the Project on which the Generator was located to its condition existing immediately prior to Tenant's installation of the Generator at the expiration or earlier termination of this Lease.

13.6 No Representations or Warranties. Landlord is not making any representation or warranty to Tenant regarding Tenant's ability to install the Generator in the Project in accordance with applicable governmental codes, regulations or rules. Tenant acknowledges that (i) Tenant is responsible for ensuring that the installation of the Generator in the Project is permitted under the applicable governmental codes, regulations or rules, and (ii) Tenant's ability to install the Generator in the Project is not a condition precedent to the obligations of Tenant under this Lease.

Schedule 2 Approved Generator Area

[SITE PLAN – MAP APPEARS HERE]

Schedule 1

MENLO OAKS CORPORATE CENTER GENERAL BUILDING SPECIFICATIONS

Page 1 of 2
June 30, 1998

1. Carpet	Manufactured by Designweave "New Sabre", 38oz. cut pile, glue down.	Throughout u.o.n.
2. Base	Burke 2 ½ inch top set base.	Throughout u.o.n.
3. Doors	Solid wood core door with Nevemar plastic laminate rustic quartered oak, full height 10'-0" door.	As indicated on plans.
4. Frames	Manufactured by Eclipse, painted aluminum, standard building finish.	As indicated on plans.
5. Hardware	Manufactured by Schlage, latchset (L-series 03A. Style: Lever) in brass. (Lockset not included u.o.n.)	As indicated on plans.
6. Suspended Ceiling System	USG Donn Fineline grid system. 2'X2" module size. Armstrong Tegular Cortega, Minatone 2X2 No. 704A, White.	Throughout u.o.n.
7. Lighting	2'X4' parabolume fixture (18 cell) with accent. Recessed incandescent light fixtures as indicated on plan.	1 each per 110 usable sq. ft.
8. Wall Finishes	Smooth wall gyp. board painted with light roller finish. Building standard 2 coats or paint to cover, Kelley Moore or Fuller O'Brien or equal, flat latex or latex eggshell enamel.	Throughout u.o.n.
9. Window Covering	Mini-blinds Building standard, Riviera #310. Sand.	Throughout u.o.n.
10. Vinyl Tiles	VCT: Azrock or equal	As indicated on plans.
11. Electrical Power	Duplex power receptacles: Wall mounted Typical Office. Conference Room. Open Office Area- Ceiling J-Box or base feed to electrified furniture partition.	2 duplex receptacles. 3 duplex receptacles. As indicated on plans.

12. Telephone/Data	Combination telephone and data receptacle, note all data receptacles shall be double gang size. Ring and pull wire – wall mounted. Typical Office and Conference Room. Open Office Area	1 receptacle. As indicated on plans.
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13. Glass	Glass sidelight adjacent to door; 2'-0' wide.	Location shown on space plan.
14. HVAC System	Existing variable volume system, or package units, with economizer cycle.	Throughout u.o.n.
15. Fire Sprinkler	Building standard, semi recessed pendant heads designed for normal office use (light hazard), chrome or white escutcheon.	Throughout u.o.n.

**MENLO OAKS CORPORATE CENTER
GENERAL BUILDING SPECIFICATIONS
TOILET CORES**

Schedule 1
Page 2 of 2
June 30, 1998

1. Wall Finishes/Ceiling	Smooth wall gypsum board with light roller finish. Two coats of paint to cover, Kelly Moore or Fuller O'Brien or equal, eggshell enamel. Ceiling height shall be 9'-0".
2. Wall Finishes – Wet Walls	Ceramic tile.
3. Flooring	Ceramic tile flooring.
4. Toilet Partitions	Ceiling hung with plastic laminate finish.
5. Fixtures	Water closets and urinals shall be wall mounted with flushometer valves.
6. Accessories	Bobrick semirecessed, brushed stainless steel finish. Provide floor drain at each toilet room.
7. Lavatories	Plastic laminate counters with bullnosed edges, covered splash and wall supported at each end. Vitreous china lavatory, counter mounted.
8. Lighting	Incandescent or fluorescent downlights and eggcrate softlitt lighting above lavatory.

Schedule 2

Approved Generator Area

[MAP APPEARS HERE]

EXHIBIT D

COMMENCEMENT DATE MEMORANDUM

E*TRADE GROUP, INC., a Delaware corporation ("Tenant"), and MENLO OAKS PARTNERS, L.P., a Delaware limited partnership ("Landlord"), entered into a Lease (the "Lease") dated August ____, 1998. Pursuant to the Lease, Landlord leases to Tenant and Tenant leases from Landlord space in Menlo Oaks Corporate Center in Menlo Park, California. Capitalized terms used herein and not defined herein shall have the same meanings as in the Lease.

Tenant hereby acknowledges and certifies to Landlord as follows:

- (1) Landlord delivered possession of the Premises to Tenant on ____, 1998;
- (2) The Commencement Date occurred on ____, 1998;
- (3) The Term will expire on ____; and
- (4) Tenant has accepted and is currently in possession of the Premises.

IN WITNESS WHEREOF, this Commencement Date Memorandum is executed this ____ day of ____, ____.

"Tenant" E*TRADE GROUP, INC.,
a Delaware corporation

By:

Name:

Its:

By:

Name:

Its:

EXHIBIT E

RULES AND REGULATIONS

1. The sidewalks, driveways, entrances, lobbies, stairways and public corridors shall be used only as a means of ingress and egress and shall remain unobstructed at all times. The enhance and exit doors of all buildings and suites are to be kept closed at all times except as required for orderly passage. Loitering in any part of the Building or the Project or obstruction of any means of ingress or egress to the Project or any building within the Project is not permitted.
 2. Plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no rubbish, newspapers, trash or other inappropriate substances of any kind shall be deposited therein. Personal articles, equipment and clothing shall not be left in restrooms, showers, locker rooms or Common Areas except and unless such articles are stored properly within a locker, and in no circumstance shall such articles remain overnight. Landlord may remove and dispose, at Tenant's expense, of any articles or property improperly stored or left in restroom, showers, locker rooms or other Common Areas.
 3. Walls, floors, windows, doors and ceilings shall not be defaced in any way and no one shall be permitted to mark, drive nails or screws or drill into, paint, or in any way mar any Building surface, except that pictures, certificates, licenses and similar items normally used in Tenant's business may be carefully attached to the walls by Tenant in a manner to be prescribed by Landlord. Upon removal of such items by Tenant any damage to the walls or other surfaces shall be repaired by Tenant. No article may be attached to or hung from ceilings, ceiling grids or light fixtures. Tenant is required to protect carpet within its Premises from damage by the use of chair mats or other means below desks and work stations, and by the use of moisture barriers ,under plants.
 4. No awning, shade, sign, advertisement, notice or other article shall be inscribed, coated, painted, displayed or affixed on, in or to any window, door or wall, or any other part of the outside or inside of the Building or Premises without the prior written consent of Landlord. No window displays or other public displays shall be pertained without the prior written consent of Landlord. Tenant shall not place anything against or near glass pardons or doors or windows which may appear unsightly from outside of the Premises. All tenant identification in the or on public corridor, lobby or other Common Area walls or doors will be installed by Landlord for Tenant with the cost borne by Tenant. No lettering or signs will be permitted on public corridor, lobby or other Common Area walls or doors except the name of Tenant, with the size, type and color of letters and the manner of attachment, style of display and location thereof to be prescribed by Landlord. The directory of the Building will be provided exclusively for the identification and location of tenant in the Building, and Landlord reserves the right to exclude all other information therefrom. All change requests for listing on the Building directory shall be submitted to the office of Landlord in writing. Landlord reserves the right to approve all listing requests. Any change requested by Tenant of Landlord of the name or names posted on directory, after initial posting, will be at the expense of Tenant.
 5. The weight, size and position of all safes and other unusually densely weighted or heavy objects used or placed in the Building shall be subject to approval by Landlord prior to installation and shall, in all cases be supported and braced as prescribed by Landlord and as otherwise required by law. The repair of any damage done to the Building or property therein by the installation, removal or maintenance of such safes or other unusually heavy objects shall be paid for by Tenant. Tenant shall bear the cost of any consultant services employed by Landlord in evaluating the placement, location or bracing of unusually heavy items.
 6. No improper or unusually loud noises, vibrations or odors are permitted inside or outside the Building. No person shall be permitted to interfere in any way with other tenants in the Project or those having business with them. No person will be permitted to bring or keep within the Building any animal, cycle or vehicle (whether motor driven or otherwise) except with the prior written consent of Landlord. Bicycles of Tenant and its employees, agents and invitees shall be stored only in designated bicycle racks outside of Buildings and in no other location. No person shall dispose of bash, refuse, cigarettes or other substances of any kind any place inside or outside of the Building except in the appropriate refuse containers provided therefor. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of alcohol or drugs or who shall do any act or violation of these rules and regulations.
 7. All keying of office doors, and all reprogramming of Security Access Cards will be at the expense of Tenant. Tenant shall not re-key any door without making prior arrangements with Landlord.
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8. Tenant will not install or use any window coverings except those provided by Landlord, nor shall Tenant use any part of the Building or Phase, other than the Premises, for storage or for any other activity which would detract from the appearance of the Building or the Project or interfere in any way with the use, or enjoyment, of the Building, Phase or Project, by other Tenants. No storage, staging, display or placing of any material, product or equipment outside of Tenant's Premises is permitted except as may be expressly approved in writing by Landlord.

9. Any Tenant or agent, employee or invites thereof using the Premises after the Building has closed or on non-business days shall lock any entrance doors to the Building used immediately after entering or leaving the Building. No device may be employed to prop or hold open any Building entrance or suite entrance door without the prior written consent of Landlord. No door or passageway may be obstructed.

10. The Building shall be open 7:00 a.m. to 6:00 p.m., Monday through Friday (holidays excepted). The hours during which the Building is open may be different than the Business Hours for the Building.

11. Tenant and Tenant's employees, agents, invitees, etc., shall not use more than Tenant's allocated share of the Building parking as provided in the Lease. Automobile parking shall only be in designated areas. Parking shall be nose in only (backing into parking stalls is prohibited), and entirely within painted parking spaces. Overnight parking and parking by Tenant or Tenant's agents or employees within areas marked visitor is prohibited. Landlord reserves the right to designate exclusive parking for tenants and visitors of the Project, and to require identification of Tenant's and Tenant's employees' vehicles. Vehicles owned or operated by Tenant and its employees, invitees and agents which are parked improperly shall be subject to tow at Tenant's expense. The servicing or repairing of vehicles on the Lot is prohibited. Tenant and its employees, agents and invitees shall obey all traffic signs in the Project. The vehicle speed limit within the Project is fifteen miles per hour (15 mph). Notwithstanding the foregoing, Tenant may park one (1) van in the Phase overnight.

12. All equipment of any electrical or mechanical nature shall be placed and maintained by Tenant in settings approved by Landlord and installed so as to absorb or prevent any vibration, noise, interference or annoyance to Landlord and others, and shall not overload any circuit, nor draw more power than has been previously allocated to Tenant.

13. No air conditioning, heating unit, antenna, electrical panel, alarm, phone system or other similar apparatus shall be installed or used by any Tenant without the prior written consent of Landlord. No modification of any building electrical, mechanical, plumbing or security system is permitted without the prior written consent of Landlord. Tenant is responsible for the proper maintenance and servicing of fire extinguishers and fire protection equipment within the Premises.

14. Tenant and its employees, agents and invitees may not dispose of any refuse or other waste material except within trash containers for the Building of which the Premises are a part, and then only in compliance with applicable law and regulations. Tenants may not place any articles within a trash enclosure other than within a trash bin. Tenants may not place any cardboard boxes within trash containers unless such boxes have been flattened. The cost of storage, handling, hauling and dumping of Tenant's trash in excess of quantities incident to similar office parks located in Menlo Park and Palo Alto shall be borne by Tenant. Tenant shall be responsible for closing and securing trash enclosure gates after Tenant or its agents, employees or invitees use the trash enclosure.

15. No hand trucks may be used in the Building Common Areas except those equipped with rubber tires and rubber side guards. Tenants shall not employ any elevator within any Building for the moving of products, equipment or other non-personnel purposes without first installing proper protective elevator pad (to be provided by Landlord)

16. Tenant shall notify Landlord immediately of any plumbing blockage, leak, electrical or equipment malfunction, broken Building glass, fire or other damage to the Premises or the Building.

17. Landlord shall have the right, exercisable without notice or without liability to Tenant, to change the name and address of the Building and to modify these Rules and Regulations.

18. Tenant shall protect dock areas and pavements from damage due to trucks and trailers.

19. Tenant shall not store trucks or trailers in the Project, nor park trucks or trailers in the automobile parking areas, traffic aisles, walkways or the public streets adjacent to the Project.

20. Tenant is encouraged to participate in local waste recycling programs when feasible.

21. Tenant shall employ warm spectrum fluorescent lights in ceiling fixtures wherever feasible.

22. Tenant shall employ water conservation measures in connection with Tenant's use of water.

23. Tenant shall coordinate with RIDES and SAMSTRANS in making carpool, vanpool and transit information available to employees. Tenant shall establish an on-site location for the sale of SAMTRANS and CALTRANS transit tickets.

24. Tenant shall employ vanpool and carpool parking spaces only for the purposes indicated.

25. Tenant is encouraged to establish flextime and/or staggered working hours for employees.

26. Tenant is encouraged to implement an employment program for local residents and to coordinate skill enhancement with local job training centers.

27. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in the Building are prohibited, and each tenant shall cooperate to prevent same.

28. Tenant shall be deemed to have read these Rules and Regulations and agrees to abide by these Rules and Regulations as a covenant of its lease of the Premises. Tenant shall inform all of Tenant's employees, agents and invitees of these Rules and Regulations and shall be responsible for the observance of all of these Rules and Regulations by Tenant's employees, agents and invitees.

29. Capitalized terms used in these Rules and Regulations and not defined herein shall have the meanings set forth in each tenant's lease of space in Menlo Oaks Corporate Center.

EXHIBIT F

4400 BOHANNON EXPANSION OPTION SPACE

Building Suite	Approximate Rentable Square Footage
4400 Bohannon Drive (see Exhibit 1)	23,241 rsf

Exhibit 1

[FLOOR PLAN APPEARS HERE]

[FLOOR PLAN APPEARS HERE]

Exhibit G

October 30, 1985
(Revised April 22, 1987)
(Revised March 22, 1988)

MENLO OAKS CORPORATE CENTER

On-Building Signage criteria

1. "On building signs" shall be limited to a maximum of two signs per building and shall be limited to one per elevation.
 2. Signage will be restricted to company logo or the spelling out of the company name.
 3. The size of the signage will not exceed 42" in height or 15' in length. The total square footage of the area of the outside boundaries of the signage will not exceed twenty-two (22) square feet.
 4. Signs may be constructed of plastic or metal and are to be firmly attached to the building concrete. The connection will be reviewed by an engineer.
 5. Signs may not protrude more than 6" from face of building concrete.
 6. Signage may be illuminated by internal backlit procedures which result in silhouette letters or logo (commonly thought of as "halo" effect around the signage). Translucent backlit signs will be discouraged. Lighting from the ground will also be discouraged. There are to be no exposed conduits or electrical appurtenances on the building facade.
 7. Signage design, lettering style and color are subject to review and approval of the building owner.
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SECOND AMENDMENT TO LEASE (4200 BOHANNON DRIVE)

THIS SECOND AMENDMENT TO LEASE (this "Amendment") dated as of September 30, 1999, is entered into between **MENLO OAKS PARTNERS, L.P.**, a Delaware limited partnership ("Landlord"), and **E*TRADE GROUP, INC.**, a Delaware corporation ("Tenant").

THE PARTIES ENTER INTO THIS AMENDMENT based upon the following facts, understandings and intentions:

A. Landlord and Tenant are parties to that certain Menlo Oaks Corporate Center Standard Business Lease (4500 Bohannon Drive) dated as of August 18, 1998, as amended by (i) that certain letter agreement dated January 18, 1999 and (ii) that certain Second Amendment to Lease (as amended, the "4500 Bohannon Lease"), pursuant to which Landlord leased to Tenant approximately sixty-two thousand nine hundred twenty (62,920) rentable square feet of space in the building known as 4500 Bohannon Drive, Menlo Park, California, as more particularly described in the 4500 Bohannon Lease.

B. In accordance with the terms of the 4500 Bohannon Lease, Tenant exercised its option to lease (i) approximately ten thousand nine hundred eighty-five (10,985) rentable square feet of additional space (the "First Increment Expansion Space") in the building known as 4600 Bohannon Drive, Menlo Park, California (the "4600 Bohannon Building"), and (ii) approximately fourteen thousand one hundred ninety-three (14,193) rentable square feet of additional space (the "Second Increment Expansion Space") in the 4600 Bohannon Building. As of the date of this Amendment, Tenant's lease of the First Increment Expansion Space and the Second Increment Expansion Space has not yet commenced.

C. Landlord and Tenant are also parties to that certain Menlo Oaks Corporate Center Standard Business Lease (4200 Bohannon Drive)

dated as of August 18, 1998, as amended by that certain letter agreement dated January 18, 1999 (as amended, the "Lease"), pursuant to which Landlord leased to Tenant approximately forty-six thousand two hundred fifty-five (46,255) rentable square feet of space (the "Premises") within the building known as 4200 Bohannon Drive, Menlo Park, California (the "4200 Bohannon Building"), as more particularly described in the Lease. The capitalized terms used in this Amendment and not otherwise defined herein shall have the same meanings given to such terms in the Lease.

D. The 4200 Bohannon Building is located within a portion of the Project ("Phase I") consisting of the real property (the "Phase I Lot") described in Exhibit B to the Lease, all of the Improvements located thereon and all appurtenances thereto. Phase I is referred to in the Lease as the "Phase," and the Phase I Lot is referred to in the Lease as the "Lot."

E. Pursuant to Section 26.1 of the Lease, Tenant has an option (the "Expansion Option") to lease from Landlord approximately twenty-three thousand two hundred forty-one (23,241) rentable square feet of additional space (the "Expansion Space") within the building known as 4400 Bohannon Drive, Menlo Park, California (the "4400 Bohannon Building"). The Expansion Space is more particularly described in the Lease. The Expansion Space is referred to in the Lease as the "4400 Bohannon Expansion Option Space."

F. The 4400 Bohannon Building is located within a portion of the Project ("Phase II") consisting of the real property (the "Phase II Lot") described in Exhibit A, attached hereto, all of the Improvements located thereon and all appurtenances thereto.

G. Tenant has exercised the Expansion Option with respect to the Expansion Space. In connection therewith, Landlord and Tenant now desire to amend the Lease to, among other things, extend the Term, expand the Premises to include the Expansion Space, and increase both the Base Rent and the percentage of Operating Expenses and Impositions for which Tenant is responsible under the Lease, as provided herein.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Expansion Space. Effective as of the date on which Landlord delivers possession of the Expansion Space to Tenant, in the condition required pursuant to Section 8 below (the "Expansion Space Delivery Date"), the Premises shall be expanded to include, in addition to the space presently leased to Tenant under the Lease, the Expansion Space. If the Expansion Space will become available for lease to Tenant prior to August 31,

2000, Landlord shall notify Tenant in writing of the date on which Landlord expects to deliver the Expansion Space to Tenant.

2. Definitions. Effective as of the Expansion Space Delivery Date, the following terms contained in the Lease shall have the meanings set forth below:

2.1. Premises. The term "Premises" as used in the Lease shall refer to the existing Premises and the Expansion Space.

2.2. Building. The term "Building" as used in the Lease shall refer to both the 4200 Bohannon Building and the 4400 Bohannon Building.

2.3. Lot. The term "Lot" as used in the Lease shall refer to both the Phase I Lot and the Phase II Lot.

2.4. Phase. The term "Phase" as used in the Lease shall refer to both Phase I and Phase II.

2.5. Building Common Areas. The term "Building Common Areas" as used in the Lease shall mean (i) the areas and facilities within the 4200 Bohannon Building provided and designated by Landlord for the general use, convenience or benefit of Tenant and other tenants of the 4200 Bohannon Building (e.g., common stairwells, stairways, hallways, shafts, elevators, restrooms, janitorial telephone and electrical closets, pipes, ducts, conduits, wires and appurtenant fixtures servicing the 4200 Bohannon Building) and (ii) the areas and facilities within the 4400 Bohannon Building provided and designated by Landlord for the general use, convenience or benefit of Tenant and other tenants of the 4400 Bohannon Building (e.g., common stairwells, stairways, hallways, shafts, elevators, restrooms, janitorial telephone and electrical closets, pipes, ducts, conduits, wires and appurtenant fixtures servicing the 4400 Bohannon Building).

2.6. Phase Common Areas. The term "Phase Common Areas" as used in the Lease shall mean (i) the areas and facilities within Phase I provided and designated by Landlord for the general use, convenience or benefit of Tenant and other tenants and occupants of Phase I (e.g., uncovered and unreserved parking areas, walkways and accessways) and (ii) the areas and facilities within Phase II provided and designated by Landlord for the general use, convenience or benefit of Tenant and other tenants and occupants of Phase II (e.g., uncovered and unreserved parking areas, walkways and accessways).

2.7. Tenant's Building Percentage Share. The term "Tenant's Building Percentage Share" as used in the Lease shall mean (i) one hundred percent with respect to Operating Expenses and other costs and expenses attributable to or incurred in connection with the ownership, operation, repair and/or maintenance of the 4200 Bohannon Building and (ii) fifty and 245/1000ths percent (50.245%) with respect to Operating Expenses and other costs and expenses attributable to or incurred in connection with the ownership, operation, repair and/or maintenance of the 4400 Bohannon Building. If the Rentable Area of the Premises or the Rentable Area of either the 4200 Bohannon Building or the 4400 Bohannon Building changes, then (i) Tenant's Building Percentage Share with respect to the 4200 Bohannon Building shall be adjusted to a percentage equal to the Rentable Area of the Premises in the 4200 Bohannon Building divided by the Rentable Area of the 4200 Bohannon Building and (ii) Tenant's Building Percentage Share with respect to the 4400 Bohannon Building shall be adjusted to a percentage equal to the Rentable Area of the Premises in the 4400 Bohannon Building divided by the Rentable Area of the 4400 Bohannon Building.

2.8. Tenant's Phase Percentage Share. The term "Tenant's Phase Percentage Share" as used in the Lease shall mean (i) forty-nine and 807/1000ths percent (49.807%) with respect to Operating Expenses and other costs and expenses attributable to or incurred in connection with the ownership, operation, repair and/or maintenance of Phase I and (ii) twenty-one and 288/1000ths percent (21.288%) with respect to Operating Expenses and other costs and expenses attributable to or incurred in connection with the ownership, operation, repair and/or maintenance of Phase II. If the Rentable Area of the Premises or the Rentable Area of either Phase I or Phase II changes, then (i) Tenant's Phase Percentage Share with respect to Phase I shall be adjusted to a percentage equal to the Rentable Area of the Premises in Phase I divided by the Rentable Area of Phase I and (ii) Tenant's Phase Percentage Share with respect to Phase II shall be adjusted to a percentage equal to the Rentable Area of the Premises in Phase II divided by the Rentable Area of Phase II.

2.9. **Rent.** The term "Rent" shall mean Base Rent, Additional Rent, Expansion Space Base Rent (defined in Section 4 hereof) and all other amounts payable by Tenant under the Lease.

2.10. **Base Rent.** For purposes of Sections 6.2(e), 7.2, 12.4, 13.2, 14.1, 15.1, 16.1, 19.12, 25.2(a) and (b) and 25.4 of the Lease, the term "Base Rent" shall mean both the Base Rent and the Expansion Space Base Rent.

3. Rentable Area. Landlord and Tenant agree that for all purposes under the Lease, (i) the Rentable Area of the Expansion Space shall be deemed to be the rentable square footage of the Expansion Space as stated in Recital E of this Amendment, (ii) the Rentable Area of the 4400 Bohannon Building as of the date of this Amendment shall be deemed to be forty-six thousand two hundred fifty-five (46,255) rentable square feet and (iii) the Rentable Area of Phase II shall be deemed to be one hundred nine thousand one hundred seventy-five (109,175) rentable square feet.

4. Expansion Space Base Rent. In addition to Tenant's obligation to pay to Landlord the Base Rent described in Section 4.1 of the Lease, Tenant shall pay to Landlord base rent with respect to Tenant's lease of the Expansion Space in the amount of Seventy-Three Thousand Nine Hundred Sixty-Eight and 47/100 Dollars (\$73,968.47) per month (the "Expansion Space Base Rent"). The Expansion Space Base Rent shall be increased on November 15, 2000, and on each November 15 thereafter during the Term by three and one-half percent (3.5%), regardless of whether the Expansion Space Delivery Date has occurred. Tenant's obligation to pay Expansion Space Base Rent to Landlord shall commence on the forty-fifth (45th) day after Expansion Space Delivery Date (hereinafter referred to as the "Expansion Space Rent Commencement Date") and continue thereafter during the Term; provided, however, if Landlord delivers possession of the Expansion Space to Tenant prior to August 31, 2000 as a result of an Early Termination Event, then the Expansion Space Rent Commencement Date shall occur on the sixtieth (60th) day after the Expansion Space Delivery Date. Tenant shall pay to Landlord the Expansion Space Base Rent in advance, on the Expansion Space Rent Commencement Date and on the first day of each calendar month thereafter, together with Tenant's payment to Landlord of the Base Rent described in Section 4.1 of the Lease, without deduction, abatement or setoff whatsoever. If the Expansion Space Rent Commencement Date or the last day of the Term is other than the first or last day of a calendar month, respectively, then the Expansion Space Base Rent for the partial calendar month in which the Expansion Space Rent Commencement Date or the end of the Term occurs shall be prorated on a per diem basis, based on the number of days in such calendar month.

5. Tenant's Project Percentage Share. Effective as of the Expansion Space Delivery Date, Tenant's Project Percentage Share shall be equal to the sum of (i) Tenant's Project Percentage Share immediately prior to the Expansion Space Delivery Date and (ii) six and 212/1000ths percent (6.212%).

6. Term. The Term shall be extended until the last day of the tenth (10th) year after the latest of (i) the commencement of Tenant's lease of the First Increment Expansion Space, (ii) the commencement of Tenant's lease of the Second Increment Expansion Space or (iii) the Expansion Space Delivery Date.

7. Parking. Effective as of the Expansion Space Delivery Date, Tenant shall: have the right to use twenty-one and 288/1000ths percent (21.288%) of the parking spaces in Phase II on a non-exclusive basis.

8. Delivery. Landlord shall use commercially reasonable efforts to deliver possession of the Expansion Space to Tenant within five (5) days after Landlord recovers possession of the Expansion Space. Landlord shall deliver possession of the Expansion Space to Tenant in a broom clean condition, with all building systems in working order and the roof in water-tight condition. Except as provided above, Tenant shall accept delivery of the Expansion Space in its "as is" condition as of the Expansion Space Delivery Date, without any representation or warranty of any kind from Landlord.

9. Security Deposit. Concurrently with the execution of this Amendment, Tenant shall deliver to Landlord an additional security deposit (the "Additional Security Deposit") in the amount of One Hundred Four Thousand Three Hundred Thirty-Nine and 83/100 Dollars (\$104,339.83). The Additional Security Deposit shall be combined with the Security Deposit and secure the performance of all of Tenant's obligations under the Lease. Tenant shall not be entitled to interest on the Additional Security Deposit. From and after the date of this Amendment, the term "Security Deposit" as used in the Lease shall mean both the original Security Deposit and the Additional Security Deposit.

10. Signage. Notwithstanding anything to the contrary contained in the Lease, Tenant may not install, construct or place any exterior signage on the 4400 Bohannon Building.

11. Tenant Improvement Allowance. Landlord shall not be required to pay to Tenant any tenant improvement allowance or inducement in connection with or as a result of Tenant's lease of the Expansion Space.

12. Addendum. The term "Rider" contained in Section 4.2 of the Lease shall refer to the Addendum to Menlo Oaks Corporate Center Lease attached to and constituting a portion of the Lease.

13. Delivery Date Memorandum. Following the commencement of Tenant's lease of the First Increment Expansion Space, the commencement of Tenant's lease of the Second Increment Expansion Space and the Expansion Space Delivery Date, Landlord shall prepare and deliver to Tenant a delivery date memorandum (the "Delivery Date Memorandum") in the form of Exhibit B, attached hereto. The Delivery Date Memorandum shall certify the Expansion Space Delivery Date and the expiration date of the Term. Tenant's failure to execute and return the executed Delivery Date Memorandum within ten (10) business days after Tenant's receipt thereof shall be conclusive upon Tenant as to the matters set forth in the Delivery Date Memorandum.

14. New Lease. Within thirty (30) days after Landlord's written request, Tenant shall enter into (i) an amendment to the Lease (the "Expansion Space Amendment") to exclude the Expansion Space from the Premises and (ii) a new lease (the "Expansion Space Lease") for the Expansion Space. The Expansion Space Lease shall contain all of the same terms and conditions contained in the Lease, with the result being that Landlord's and Tenant's rights and obligations with respect to the Expansion Space will be unchanged following the execution of the

Expansion Space Amendment and Expansion Space Lease. Specifically, (i) the term of the Expansion Space Lease shall end concurrently with the term of the Lease, (ii) Tenant will not be allowed to place or install exterior signage on the 4400 Bohannon Building, (iii) Landlord will not be required to pay to Tenant any tenant improvement allowance or inducement with respect to the Expansion Space, (iv) the Additional Security Deposit shall constitute Tenant's security deposit under the Expansion Space Lease, (v) a default by Tenant under the Lease or the 4500 Bohannon Lease shall constitute a default by Tenant under the Expansion Space Lease, (vi) the monthly Base Rent for the Expansion Space shall be calculated pursuant to Section 26.3 of the Lease, with the aggregate monthly Base Rent payable by Tenant under the Lease (after execution of the Expansion Space Amendment) and the Expansion Space Lease to be an amount not less than monthly Base Rent payable by Tenant under the Lease prior to the execution of the Expansion Space Amendment and the Expansion Space and (vii) for purposes of determining Tenant's obligations to surrender the Expansion Space to Landlord in the condition in which it was received upon the expiration or earlier termination of the Expansion Space Lease, the date on which Tenant is to have received possession of the Expansion Space shall be deemed to be the date on which Tenant received possession of the Expansion Space under the Lease (as amended by this Agreement) as opposed to the date on which Tenant enters into the Expansion Space Lease.

15. Entire Agreement. This Amendment represents the entire understanding between Landlord and Tenant concerning the subject matter hereof, and there are no understandings or agreements between them relating to the Lease, the Premises or the Expansion Space not set forth in writing and signed by the parties hereto. No party hereto has relied upon any representation, warranty or understanding not set forth herein, either oral or written, as an inducement to enter into this Amendment.

16. Continuing Obligations. Except as expressly set forth to the contrary in this Amendment, the Lease remains unmodified and in full force and effect. To the extent of any conflict between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

"Landlord"
MENLO OAKS PARTNERS, L.P.,
a Delaware limited partnership

By:

AM Limited Partners,
a California limited partnership,
its General Partner

By:

Amarok Menlo, Inc.,
a California corporation,
its General Partner

By: /s/ J.Marty Brill, Jr.

J. Marty Brill, Jr. President
"Tenant"
E*TRADE GROUP, INC.
a Delaware corporation

By: /s/ Raymond Johnson

Name: _Raymond E. Johnson
Its: _VP Facilities

By: /s/ L.C. Purkis

Name: L.C. Purkis
Its: CFO

EXHIBIT A

PHASE II

That certain real property situated in the City of Menlo Park, County of San Mateo, State of California, more particularly described as follows:

Parcel 2:

Parcel A as shown and delineated on that certain map entitled "Record of Survey of a Lot Line Adjustment, Lands of Amarok Bredero, etc.", filed April 25, 1986, Book 9 of Licensed Land Survey Maps, Page 123, San Mateo Records.

**EXHIBIT B
DELIVERY DATE MEMORANDUM**

E*TRADE GROUP, INC., a Delaware corporation ("Tenant"), and MENLO OAKS PARTNERS, L.P., a Delaware limited partnership ("Landlord"), entered into that certain Menlo Oaks Corporate Center Standard Business Lease (_____ Bohannon Drive) dated ____, ____, as amended (the "Lease"). Capitalized terms used herein and not defined herein shall have the same meanings as in the Lease.

Tenant hereby acknowledges and certifies to Landlord as follows:

1. Expansion Space Delivery Date. The Expansion Space Delivery Date occurred on ____, ____.

2. Term. The Term will expire on _____, ____.

IN WITNESS WHEREOF, this Delivery Date Memorandum is executed as of _____, ____.

"Landlord"
MENLO OAKS PARTNERS, L.P.,
a Delaware limited partnership

By: AM Limited Partners,

a California limited partnership,
its General Partner

By: Amarok Menlo, Inc.,

a California corporation,
its General Partner

By: _____

S. Marty Brill, Jr., President

"Tenant"
E*TRADE GROUP, INC.
a Delaware corporation

By: _____

Name:
Its:

By: _____

Name:
Its:

January 18, 1999

VIA FACSIMILE

E*Trade Group, Inc.
2400 Geng Road
Palo Alto, CA 94303
Attn: Mr. Robert Clegg

Re: Lease of 4200 Bohannon Drive, Menlo Park, California

Dear Robert:

Reference is made to that certain Menlo Oaks Corporate Center Standard Business Lease (4200 Bohannon Drive) (the "Lease") dated as of August 18, 1998, by and between Menlo Oaks Partner's, L.P., a Delaware limited partnership ("Landlord"), and E*Trade Group, Inc., a Delaware corporation ("Tenant"). Capitalized terms used herein and not defined herein shall have the meanings set forth in the Lease.

This letter (this "Letter Agreement") shall evidence Landlord's and Tenant's amendment of the Lease as follows:

1. Preliminary Plans. Landlord hereby approves Tenant's Preliminary Plans described in Exhibit 1, attached hereto.
2. Restoration/Modification Obligation. Tenant shall deliver to Landlord for Landlord's review and approval Tenant's proposed plans and specifications (the "Modification Work Plans") for the restoration and modification work described in Exhibit 2, attached hereto (hereinafter referred to as the "Modification Work"), not later than one hundred twenty (120) days prior to the expiration of the Term; provided, however, if the Lease is terminated prior to the expiration of the Term, then Tenant shall deliver to Landlord for Landlord's review and approval the Modification Work Plans within ninety (90) days after the termination of the Lease. Landlord shall not unreasonably withhold its approval of the Modification Work Plans. Tenant shall complete the Modification Work by the expiration of the Term; provided, however, if the Lease is terminated prior to the expiration of the Term, Tenant shall commence the Modification Work within ten (10) days after Landlord approves the Modification Work Plans and complete the Modification Work within ninety (90) days after the termination of the Lease.
3. Additional Deposit. Within ten (10) days after the execution of this Letter Agreement, Tenant shall deliver to Landlord an additional deposit (the "Additional Deposit") in the amount of Two Hundred Thousand Dollars (\$200,000.00). The Additional Deposit shall secure the performance of all of Tenant's obligations under this Letter Agreement, including Tenant's obligation to perform the Modification Work.
 - a. Delivery of Letter of Credit. In lieu of depositing the Additional Deposit in cash, Tenant may deliver to Landlord a clean, irrevocable and unconditional letter of credit (the "LC") in compliance with the terms, provisions and requirements of this Section 3, in the amount of the Additional Deposit and issued by a major California financial institution reasonably acceptable to Landlord.
 - b. Term and Renewal of Letter of Credit. The LC shall be for a term of one (1) year and shall be automatically renewed each year for an additional twelve (12) months from the date of expiration of the LC through the ninetieth (90th) day after the expiration or earlier termination of the Lease. Tenant shall renew, extend or replace the LC as necessary and deliver written evidence thereof to Landlord at least thirty (30) days prior to the expiration date of the LC so that a valid LC which complies with each requirement of this Section 3 is in effect during the entire period required hereby. If Tenant fails to so renew, extend or replace the LC and deliver such written evidence to Landlord, and such failure continues for a period of five (5) days after the date such evidence is due to Landlord, Landlord shall be entitled to immediately draw the entire amount of the LC, and hold such sum as security deposit for Tenant's faithful performance of its obligations under this Letter Agreement. If Landlord draws down on the LC pursuant to this Section 3.b as a result of Tenant's failure to renew, extend or replace the LC and deliver such written notice to Landlord, then Tenant shall have the option of delivering to Landlord a substitute LC which meets all of the requirements set forth in this Section 3 in exchange for Landlord returning to Tenant the portion of the Additional Deposit held by Landlord in cash.
 - c. Amount of Draw on Letter of Credit. Upon the occurrence of a default by Tenant under this Letter Agreement, Landlord shall be entitled to obtain payment under the LC, in such amount as may be required to satisfy Tenant's outstanding obligations under this Letter Agreement and shall apply such amount to said obligations. Specifically, Landlord shall be entitled to obtain partial draws pursuant to the LC in the amounts that Tenant is in default.
 - d. Manner of Presentment. Landlord is authorized to draw, for the account of Tenant, the amounts allowable pursuant to this Section 3 by a draft, which shall be payable at sight, accompanied by a statement signed by Landlord that (a) Landlord is entitled to draw on the amount set forth in said draft pursuant to this Letter Agreement, or (b) Landlord is entitled to draw on the full amount of the LC as a result of a failure by Tenant to renew, extend or replace the LC pursuant to the terms of this Letter Agreement. Payment of the draft shall be made in the manner agreed upon by the issuing bank, but Tenant hereby consents to such payment in the manner as Landlord may designate in the draft.
 - e. Return of Additional Deposit. Provided and on the condition that Tenant has performed all of Tenant's Modification Work, Landlord shall return the Additional Deposit to Tenant within ninety (90) days after the expiration or earlier termination of the Lease. If Landlord sells or otherwise transfers Landlord's rights or interest under the Lease, Landlord shall deliver the Additional Deposit to the transferee whereupon Landlord shall be released from any further liability to Tenant with respect to the Additional Deposit.
4. Failure to Timely Perform the Modification Work. If Tenant fails to deliver to Landlord the Modification Work Plans, commence construction of the Modification Work or complete the Modification Work within the time periods or by the dates required pursuant to Section 2

E*Trade Group, Inc.
Attn: Mr. Robert Clegg

January 18, 1999
Page 2

above, then Landlord, by written notice to Tenant, may, but shall not be obligated to, either (i) perform the Modification Work and apply the Additional Deposit toward the cost of performing the Modification Work or (ii) elect not to perform the Modification Work and retain for Landlord's account all or a portion of the Additional Deposit in an amount equal to the estimated cost of performing the Modification Work, as reasonably determined by Landlord. If the cost of completing the Modification Work exceeds the amount of the Additional Deposit, Tenant shall pay such excess amount to Landlord within ten (10) days after Landlord's written request therefor.

5. Landlord's Election. Notwithstanding anything to the contrary contained in this Letter Agreement, Landlord may elect for Tenant not to perform the Modification Work by written notice to Tenant not later than (i) one hundred eighty (180) days prior to the expiration of the Term or (ii) if the Lease is terminated prior to the expiration of the Term, within ten (10) days after the termination of the Lease. If Landlord elects for Tenant not to perform the Modification Work, Landlord shall return the Additional Deposit to Tenant.

6. Tenant Improvement Allowance.

a. Basic Lease Information. The provisions titled "Additional Allowance" and "Adjustment for Overage" under the heading "Tenant Improvements" in the Basic Lease Information are hereby deleted.

b. Section 4.1 of Work Letter. The first sentence of Section 4.1 of the Work Letter attached as Exhibit C to the Lease is hereby deleted and replaced by the following:

"Landlord shall pay to Tenant upon the terms and conditions set forth in this Section 4 the amount of Two Hundred Thirty-One Thousand Two Hundred Seventy-Five Dollars (\$231,275.00) as a tenant improvement allowance (the "Tenant Improvement Allowance") toward the cost of designing, constructing and installing the Tenant Improvements in the Building."

c. Section 4.2 of Work Letter. Section 4.2 of the Work Letter is hereby deleted in its entirety.

7. Commencement of Tenant Improvement Work. The date in Section 3.4.6 of the Work Letter shall be changed to February 1, 1999.

E*Trade Group, Inc.
Attn: Mr. Robert Clegg

January 18, 1999
Page 3

8. Condition Precedent. The effectiveness of this Letter Agreement and the obligations of Landlord and Tenant hereunder are conditioned upon the execution by Landlord and Tenant of a separate letter agreement of even date herewith amending that certain Menlo Oaks Corporate Center Standard Business Lease (4500 Bohannon Drive) dated as of August 18, 1998, by and between Landlord, as landlord, and Tenant, as tenant.

9. Counterparts. This Letter Agreement may be executed in one (1) or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall constitute one (1) and the same instrument. This Letter Agreement shall become binding when (i) the condition precedent set forth in Section 8 herein is met and (ii) any one (1) or more counterparts hereof, individually or taken together, shall bear the signatures of Landlord and Tenant.

10. Conflicts. To the extent that any of the terms contained in this Letter Agreement conflict with the Lease, the terms contained in this Letter Agreement shall control.

E*Trade Group, Inc.
Attn: Mr. Robert Clegg

January 18, 1999
Page 4

Except as modified hereby, the Lease is unmodified and in full force and effect.

Please execute this Letter Agreement in the space below (and return the same to me) to evidence your agreement to the foregoing.

Very truly yours,

MENLO OAKS PARTNERS, L.P.,
a Delaware limited partnership

By: AM Limited Partners, a California limited
partnership, its General Partner

By: Amarok Menlo, Inc., a California
corporation, its General Partner

By: /s/ J. Marty Brill, Jr.

Name: J. Marty Brill, Jr.
Its: President

By: /s/ John B. Harrington

Name: John B. Harrington
Its: Vice President/Secretary

AGREED AND ACCEPTED:

E*TRADE GROUP, INC.,
a Delaware corporation

By: /s/ Robert Clegg

Name: Robert Clegg
Its: Vice President

By: /s/ Len Purkis

Name: Len Purkis
Its: Chief Financial Officer

EXHIBIT 1

PRELIMINARY PLANS

The term "Preliminary Plans" shall refer to the plans listed below prepared by Studios Architecture.

Sheet No.	Title	Date
A0.00	Cover Sheet	10/30/98
A1.21	Building 4200-First Floor Demo Plan	10/30/98
A1.22	Building 4200-Second Floor Demo Plan	10/30/98
A2.21	Building 4200-First Floor Plan	10/30/98
A2.22	Building 4200-Second Floor Plan	10/30/98
A6.21	Building 4200-First Floor R.C.P.	10/30/98
A6.22	Building 4200-Second Floor R.C.P.	10/30/98

EXHIBIT 2

RESTORATION CONDITION SPECIFICATIONS

All citations to "Sheets" refer to the Preliminary Plans.

Item	Modification Work Required
Columns	The walls that are adjacent to the columns along grid line 3, 4, and 6 shall be moved so that the columns are within such gypsum board walls.

Ceiling systems	The reflected ceiling plan of the Preliminary Plans indicates that portions of the ceiling existing as of the date of the Lease are to be removed and, following completion of Tenant's work in the Premises, there shall be no suspended ceiling system in these areas, but instead the underside of the structure of the second floor, or roof, as the case may be, shall be exposed. In such areas, Tenant shall install a suspended ceiling system to match the adjacent ceiling system, subject to Landlord's review and approval of such system to be specified in the Modification Work Plans, and which shall be installed with a uniform and level grid, as if all of such areas were finished with the ceiling system at the time of Tenant's construction activities. The finishes, including but not limited to mechanical systems, lighting and other electrical distribution shall conform to other general office space within the Building as reasonably determined by Landlord.< br>
Building infrastructure	The Herculite doors and side light panels in the lobby, six (6) doors with frames in good condition, six (6) doors with frames including integral side lights in good condition, and any VAV boxes that are demolished by Tenant, shall be palletized and delivered to Landlord's designated storage area.
Gypsum board ceiling system	The reflected ceiling plan of the Preliminary Plans indicates that portions of the ceiling existing as of the date of the Lease are to be removed and, following completion of Tenant's work in the Premises, in certain areas, including the ceiling adjacent to the second floor restroom, gypsum board ceiling will be installed. In such areas, Tenant shall remove the gypsum board ceiling and install a suspended ceiling system to match the adjacent ceiling system specified in the Modification Work Plans, and which ceiling system shall be installed with a uniform and level grid, as if all of such areas were finished with the ceiling system at the time of Tenant's construction activities. The finishes, including but not limited to mechanical systems, lighting and other electrical distribution shall conform to other general office space within the Building as reasonably determined by Landlord.
Additional HVAC	The air conditioning units to be installed by Tenant serving the first floor of the building will be removed and the affected area will be restored to general purpose office space including but not limited to mechanical systems, lighting and other electrical distribution which shall conform to other general office space within the Building as reasonably determined by Landlord.
Lobby	The fire rated condition of the lobby will be restored and the gypsum board finishes to the stairway (excluding the handrail/guardrail), the finishes to the stairway landing columns, gypsum board ceiling, and wall finishes will be restored including but not limited to mechanical systems, lighting and other electrical distribution as reasonably determined by Landlord.

MENLO OAKS CORPORATE CENTER
STANDARD BUSINESS LEASE
(4500 BOHANNON DRIVE)

Exhibit 10.8

BASIC LEASE INFORMATION

Effective Date:	August 18, 1998
Landlord:	MENLO OAKS PARTNERS, L.P., a Delaware limited partnership
Landlord's Address:	4400 Bohannon Drive Suite 260 Menlo Park, CA 94025 Attn: Mr. J. Marty Brill, Jr. Phone: (650) 329-9030 Fax: (640) 329-0129
Tenant:	E*TRADE GROUP, INC., a Delaware corporation
Tenant's Address:	
Before Commencement Date:	2400 Geng Road Palo Alto, CA 94303 Attn: Vice President of Corporate Services Phone: (650) 842-2500 Fax: (650) 842-2552

After Commencement Date:	4500 Bohannon Drive Menlo Park, CA 94025 Attn: Vice President of Corporate Services
Premises:	Approximately sixty-two thousand nine hundred twenty (62,920) rentable square feet of space in the Building, as more particularly shown on Exhibit A attached hereto.
Building:	That certain office building located within the Project, commonly known as "4500 Bohannon Drive," consisting of approximately sixty-two thousand nine hundred twenty (62,920) rentable square feet of space.
Lot:	That certain real property located within the Project on which the Building is located, as more particularly described in Exhibit B, attached hereto.
Phase:	A portion of the Project, consisting of the Lot, all improvements located thereon and all appurtenances thereto. The Phase includes approximately one hundred seven-two thousand ninety-five (172,095) rentable square feet of space in three (3) buildings located thereon (including the Building).
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Project:	That certain business office park located in Menlo Park, California, comprised of three (3) separate phases and seven (7) office buildings and including approximately three hundred seventy-four thousand one hundred thirty-nine (374,139) rentable square feet of space. The Project is commonly known as "Menlo Oaks Corporate Center."
Term:	Ten (10) years
Commencement Date:	The earlier of (i) the date on which Tenant commences its business operations in the Premises or (ii) November 15, 1998.
Base Rent (Initial):	One Hundred Ninety-Eight Thousand One Hundred Ninety-Eight Dollars (\$198,198.00) per month, subject to adjustment pursuant to Section 4.2
Security Deposit:	Two Hundred Seventy Thousand One Hundred Twenty-Three and 53/100 dollars (\$270,123.53)
Tenant's Building Percentage Share:	One hundred percent (100%)
Tenant's Phase Percentage Share:	Thirty-six and 56/100 percent (36.56%)
Tenant's Project Percentage Share:	Sixteen and 82/100 percent (16.82%)
Default Percentage:	One hundred twenty-five percent (125%)
Permitted Use:	For general office purposes, software research and development, data processing and incidental uses thereto and no other use whatsoever.
Business Hours:	Twenty-four (24) hours a day; seven (7) days a week
Non-Exclusive Parking:	Thirty-six and 56/100 percent (36.56%) of the available parking spaces in the Phase. The Phase includes approximately six hundred forty-five (645) parking spaces.
Tenant Improvements:	
Base Allowance:	Three hundred Fourteen Thousand Six Hundred Dollars (\$314,600.00)
Additional Allowance:	Six Hundred Twenty-Nine Thousand Two Hundred Dollars (\$629,200.00)
Adjustment for Overage:	Monthly Base Rent shall be increased One and One-Half Cents (\$0.015) for each Dollar of Additional Allowance provided by Landlord.
Brokers:	
Landlord's Broker:	None
Tenant's Broker:	Tory Corporate Real Estate Advisors, Inc. (dba The Staubach Company)

Exhibits:	Exhibit A	- Diagram of Premises
	Exhibit B	- Legal Description of Lot
	Exhibit C	- Work Letter
	Exhibit D	- Commencement Date Memorandum
	Exhibit E	- Rules and Regulations
	Exhibit F-1	- First Expansion Option Space
	Exhibit F-2	- Second Expansion Option Space
	Exhibit G	- Landlord's Sign Criteria

MENLO OAKS CORPORATE CENTER STANDARD BUSINESS LEASE

THIS MENLO OAKS CORPORATE CENTER STANDARD BUSINESS LEASE (this "Lease"), dated as of this 18th day of August, 1998 (the "Effective Date"), is entered into by and between **MENLO OAKS PARTNERS, L.P.**, a Delaware limited partnership ("Landlord"), and E*Trade Group, Inc., a Delaware corporation ("Tenant"), on the terms and conditions set forth below.

1. DEFINITIONS. The following terms shall have the meanings set forth below:

- 1.1. Building.** The term "Building" shall have the meaning set forth in the Basic Lease Information.
- 1.2. Building Common Areas.** The Areas and facilities within the Building provided and designated by Landlord for the general use, convenience or benefit of Tenant and other tenants and occupants of the Building (e.g., common stairwells, stairways, hallways, shafts, elevators, restrooms, janitorial telephone and electrical closets, pipes, ducts, conduits, wires and appurtenant fixtures servicing the Building).
- 1.3. Commencement Date.** The term "Commencement Date" shall have the meaning set forth in Section 3.
- 1.4. Common Areas.** The term "Common Areas" shall mean the Building Common Areas, the Phase Common Areas and the Project Common Areas.
- 1.5. Lot.** The term "Lot" shall mean the land upon which the Building is located, as more particularly described in Exhibit B, attached hereto.
- 1.6. Phase.** The term "Phase" shall have the meaning set forth in the Basic Lease Information.
- 1.7. Phase Common Areas.** The areas and facilities within the Phase provided and designated by Landlord for the general use, convenience or benefit of Tenant and other tenants and occupants of the Phase (e.g., uncovered and unreserved parking areas, walkways and accessways).
- 1.8. Premises.** The term "Premises" shall have the meaning set forth in the Basic Lease Information.
- 1.9. Project.** The term "Project" shall have the meaning set forth in the Basic Lease Information.
- 1.10. Project Common Areas.** The term "Project Common Areas" shall mean the areas and facilities within the Project provided and designated by Landlord for the general use, convenience or benefit of Tenant and other tenants and occupants of the Project (e.g., walkways, traffic aisles, accessways, utilities and communications conduits and facilities).
- 1.11. Rentable Area.** The term "Rentable Area" shall mean the rentable area of the Premises, Building, Phase and Project as reasonably determined by Landlord. The parties agree that for all purposes under this Lease, the Rentable Area of the Premises, Building, Phase and Project shall be deemed to be the number of rentable square feet identified in the Basic Lease Information.
- 1.12. Tenant's Building Percentage Share.** The term "Tenant's Building Percentage Share" shall mean the percentage specified in the Basic Lease Information. If the Rentable Area of the Premises or the Rentable Area of the Building is changed, then Tenant's Building Percentage Share shall be adjusted to a percentage equal to the Rentable Area of the Premises divided by the Rentable Area of the Building.
- 1.13. Tenant's Phase Percentage Share.** The term "Tenant's Phase Percentage Share" shall mean the percentage specified in the Basic Lease Information. If the Rentable Area of the Premises or the Rentable Area of the Phase is changed, then Tenant's Phase Percentage Share shall be adjusted to a percentage equal to the Rentable Area of the Premises divided by the Rentable Area of the Phase.
- 1.14. Tenant's Project Percentage Share.** The term "Tenant's Project Percentage Share" shall mean the percentage specified in the Basic Lease Information. If the Rentable Area of the Premises or the Rentable Area of the Project is changed, then Tenant's Percentage Project Share shall be adjusted to a percentage equal to the Rentable Area of the Premises divided by the Rentable Area of the Project.

- 1.15. Term.** The term "Term" shall have the meaning described in Section 3.

2. PREMISES.

- 2.1. Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, together with the right in common

to use the Common Areas, for the Term.

2.2. Condition Upon Delivery. Tenant acknowledges that it has had an opportunity to thoroughly inspect the Premises and, subject to Landlord's obligations under Section 8.1, Tenant accepts the Premises in its existing "as is" condition, with all faults and defects and without any representation or warranty of any kind, express or implied.

2.3. Reserved Rights. Landlord reserves the right to do the following from time to time:

(a) Changes. To install, use, maintain, repair, replace and relocate pipes, ducts, shafts, conduits, wires, appurtenant meters and mechanical, electrical and plumbing equipment and appurtenant facilities for service to other parts of the Building, Phase or Project above the ceiling surfaces, below the floor surfaces and within the walls of the Premises and in the central core areas of the Building and in the Building Common Areas, and to install, use, maintain, repair, replace and relocate any pipes, ducts, shafts, conduits, wires, appurtenant meters and mechanical, electrical and plumbing equipment and appurtenant facilities servicing the Premises, which are located either in the Premises or elsewhere outside of the Premises;

(b) Boundary Changes. To change the boundary lines of the Lot or the Project;

(c) Facility Changes. To alter or relocate the Common Areas or any facility within the Project;

(d) Parking. To designate and/or redesignate specific parking spaces in the Phase or the Project for the exclusive or non-exclusive use of specific tenants in the Phase or the Project;

(e) Services. To install, use, maintain, repair, replace, restore or relocate public or private facilities for communications and utilities on or under the Building, Phase and/or Project; and

(f) Other. To perform such other acts and make such other changes in, to or with respect to the Common Areas, Building, Phase and/or Project as Landlord may reasonably deem appropriate.

2.4. Work Letter. Landlord and Tenant shall each perform the work required to be performed by it as described in the Work Letter attached hereto as Exhibit C. Landlord and Tenant shall each perform such work in accordance with the terms and conditions contained therein.

3. TERM

3.1. Commencement of Term. The term of this Lease (the "Term") shall be for the period of time specified in the Basic Lease Information unless sooner terminated as hereinafter provided. The Term shall commence on the ("Commencement Date") and shall continue in full force and effect for the period specified as the Term or until this Lease is terminated as otherwise provided herein.

3.2. Commencement Date Memorandum. Following the date on which Landlord delivers possession of the Premises to Tenant or the Commencement Date, Landlord may prepare and deliver to Tenant a commencement date memorandum (the "Commencement Date Memorandum") in the form of Exhibit D, attached hereto, subject to such changes in the form as may be required to insure the accuracy thereof. The Commencement Date Memorandum shall certify the date on which Landlord delivered possession of the Premises to Tenant and the dates upon which the Term commences and expires. Tenant's failure to execute and deliver to Landlord the Commencement Date Memorandum within five (5) days after Tenant's receipt of the Commencement Date Memorandum shall be conclusive upon Tenant as to the matters set forth in the Commencement Date Memorandum.

4. RENT

4.1. Base Rent. The monthly base rent ("Base Rent") shall be the amount set forth in the Basic Lease Information, subject to adjustment pursuant to Section 4.2. Tenant shall pay the Base Rent to Landlord in advance upon the first day of each calendar month of the Term, at Landlord's address or at such other place designated by Landlord in a notice to Tenant, without any prior demand therefor and without any deduction, abatement or setoff

whatsoever. If the Term shall commence or end on a day other than the first day of a calendar month, then Tenant shall pay, on the Commencement Date and first day of the last calendar month, a pro rata portion of the Base Rent, prorated on a per diem basis, with respect to the portions of the fractional calendar month included in the Term. Concurrently with executing this Lease, Tenant shall pay to Landlord the Base Rent due for the first full calendar month during the Term along with the Security Deposit as provided in Section 4.5 below.

4.2. Adjustment to Base Rent. The Base Rent shall be adjusted as provided in the Rider attached hereto and incorporated herein by reference.

4.3. Additional Rent. All charges required to be paid by Tenant hereunder, including payments for insurance, Impositions, Operating Expenses and any other amounts payable hereunder, shall be considered additional rent ("Additional Rent") for the purposes of this Lease, and Tenant shall pay Additional Rent to Landlord upon written demand by Landlord or otherwise as provided in this Lease. The term "Rent" shall mean Base Rent and Additional Rent.

4.4. Late Payment. If any installment of Rent is not paid, Tenant shall pay to Landlord a late payment charge equal to five percent (5%) of the amount of such delinquent payment of Rent in addition to the installment of Rent then owing, regardless of whether or not a notice of default or notice of termination has been given by Landlord. This provision shall not relieve Tenant from payment of Rent at the time and in the manner herein specified.

4.5. Interest. In addition to the imposition of a late payment charge pursuant to Section 4.3 above, any Rent that is not paid due shall bear interest from the date due until the date paid at the rate (the "Interest Rate") that is the lesser of twelve percent (12%) per annum or the maximum rate permitted by law. Landlord's acceptance of any interest payments on any past due Rent shall not constitute a waiver by Landlord of Tenant's default with respect to the amount of Rent past due or prevent Landlord from exercising any of the rights and remedies available to Landlord under

this Lease or at law.

4.6. Security Deposit. Upon executing this Lease, Tenant shall deliver to Landlord cash (the "Security Deposit") in the amount specified as the Security Deposit in the Basic Lease Information. The Security Deposit shall secure the performance of all of Tenant's obligations under this Lease, including Tenant's obligation to pay Rent and other monetary amounts, to maintain the Premises and repair damages thereto, and to surrender the Premises to Landlord upon termination of this Lease in the condition required pursuant to Section 8 below. Landlord may use and commingle the Security Deposit with other funds of Landlord. If Tenant fails to perform Tenant's obligations hereunder, Landlord may, but without any obligation to do so, apply all or any portion of the Security Deposit towards fulfillment of Tenant's unperformed obligations. If Landlord does so apply all or any portion of the Security Deposit, Tenant, upon written demand by Landlord, shall immediately pay to Landlord a sufficient amount in cash to restore the Security Deposit to the full original amount. Tenant's failure to pay to Landlord a sufficient amount in cash to restore the Security Deposit to its original amount within five (5) days after receipt of such demand shall constitute an Event of Default. Tenant shall not be entitled to interest on the Security Deposit. Within thirty (30) days after the expiration or earlier termination of this Lease, if Tenant has then performed all of Tenant's obligations hereunder, Landlord shall return the Security Deposit to Tenant. If Landlord sells or otherwise transfers Landlord's rights or interest under this Lease, Landlord deliver the Security Deposit to the transferee, whereupon Landlord shall be released from any further liability to Tenant with respect to the Security Deposit.

5. IMPOSITIONS

5.1. Tenants Obligations. Tenant shall pay to Landlord, as Additional Rent, Tenant's Phase Percentage Share of Impositions for the Phase during each year of the Term (prorated for any partial calendar year during the Term).

5.2. Definition of Impositions. The term "Impositions" shall include all transit charges, housing fund assessments, real estate taxes and all other taxes relating to the Premises, Building, Lot and Phase of every kind and nature whatsoever, including any supplemental real estate taxes attributable to any period during the Term; all taxes which may be levied in lieu of real estate taxes; and all assessments, assessment bonds, levies, fees, penalties (if a result of Tenant's delinquency) and other governmental charges (including, but not limited to, charges for parking, traffic and any storm drainage/flood control facilities, studies and improvements, water and sewer service studies and improvements, and fire services studies and improvements); and all amounts necessary to be expended because of governmental orders, whether general or special, ordinary or extraordinary, unforeseen as well as foreseen, of any

kind and nature for public improvements, services, benefits or any other purpose, which are assessed, based upon the use or occupancy of the Premises, Building, Lot and/or Phase, or levied, confirmed, imposed or become a lien upon the Premises, Building, Lot and/or Phase, or become payable during the Term, and which are attributable to any period within the Term.

5.3. Limitation. Nothing contained in this Lease shall require Tenant to pay any franchise, estate, inheritance, succession or transfer tax of Landlord, or any income, profits or revenue tax or charge upon the net income of Landlord from all sources; provided, however, that if at any time during the Term under the laws of the United States Government or the State of California, or any political subdivision thereof, a tax or excise on rent, or any other tax however described, is levied or assessed by any such political body against Landlord on account of Rent, or any portion thereof, Tenant shall pay one hundred percent (100%) of any said tax or excise as Additional Rent.

5.4. Installment Election. In the case of any Impositions which may be evidenced by improvement or other bonds or which may be paid in annual or other periodic installments, Landlord shall elect to cause such bonds to be issued or such assessment to be paid in installments over the maximum period permitted by law.

5.5. Estimate of Tenant's Share of Impositions. Prior to the commencement of each calendar year during the Term, or as soon thereafter as reasonably practicable, Landlord shall notify Tenant in writing of Landlord's estimate of the amount of Impositions which will be payable by Tenant for the ensuing calendar year. On or before the first day of each month during the ensuing calendar year, Tenant shall pay to Landlord in advance, one-twelfth (1/12th) of the estimated amount; provided, however, if Landlord fails to notify Tenant of the estimated amount of Tenant's share of Impositions for the ensuing calendar year prior to the end of the current calendar year, Tenant shall be required to continue to pay to Landlord each month in advance Tenant's estimated share of Impositions on the basis of the amount due for the immediately prior month until ten (10) days after Landlord notifies Tenant of the estimated amount of Tenant's share of Impositions for the ensuing calendar year. If at any time it appears to Landlord that Tenant's share of Impositions payable for the current calendar year will vary from Landlord's estimate, Landlord may give notice to Tenant of Landlord's revised estimate for the year, and subsequent payments by Tenant for the year shall be based on the revised estimate.

5.6. Annual Adjustment. Within one hundred twenty (120) days after the close of each calendar year during the Term, or as soon after the one hundred twenty (120) day period as reasonably practicable, Landlord shall deliver to Tenant a statement of the adjustment to the Impositions for the prior calendar year. If, on the basis of the statement, Tenant owes an amount that is less than the estimated payments for the prior calendar year previously made by Tenant, Landlord shall apply the excess to the next payment of Impositions due. If, on the basis of the statement, Tenant owes an amount that is more than the amount of the estimated payments made by Tenant for the prior calendar year, Tenant shall pay the deficiency to Landlord within thirty (30) days after delivery of the statement. The year end statement shall be binding upon Tenant unless Tenant notifies Landlord in writing of any objection thereto within thirty (30) days after Tenant's receipt of the year end statement. In addition, if, after the end of any calendar year or any annual adjustment of Impositions for a calendar year, any Impositions are assessed or levied against the Premises, Building or Phase that are attributable to any period within the Term (e.g., supplemental taxes or escaped taxes), Landlord shall notify Tenant of its share of such additional Impositions and Tenant shall pay such amount to Landlord within ten (10) days after Landlord's written request therefor.

5.7. Personal Property Taxes. Tenant shall pay or cause to be paid, not less than ten (10) days prior to delinquency, any and all taxes and assessments levied upon all of Tenant's trade fixtures, inventories and other personal property in, on or about the Premises. When possible, Tenant shall cause Tenant's personal property to be assessed and billed separately from the real or personal property of Landlord.

5.8. Taxes on Tenant Improvements. Notwithstanding any other provision hereof, Tenant shall pay to Landlord the full amount of any increase in Impositions during the Term resulting from any and all alterations and tenant improvements of any kind whatsoever placed in, on or about or made to the Premises, Building, Phase or Project for the benefit of, at the request of, or by Tenant.

6. INSURANCE

6.1. Landlord. Landlord shall maintain "Special Form" property insurance (or its equivalent if "Special Form" property insurance is not available) including vandalism and malicious mischief coverage for the full replacement cost of the Building (but excluding any equipment, fixtures, alterations, improvements, additions or

personal property of Tenant or any alterations, additions or improvements made by or at the request of Tenant to the Premises, other than those tenant improvements owned by Landlord). Such property insurance shall include endorsements for sprinkler leakage, inflation, building ordinance coverage and such other endorsements as selected by Landlord, together with rental value insurance against loss of Rent for a period of twelve (12) months commencing on the date of loss. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, including, without limitation, liability insurance and hazardous materials, earthquake/volcanic action, flood and/or surface water, boiler and machinery comprehensive coverages in such amounts, with such deductibles and upon such terms as Landlord shall determine. Upon Tenant's written request, Landlord shall deliver to Tenant certificates evidencing the coverage required under this Section 6.1. Landlord, either directly or through its agent, may maintain any of the insurance required to be maintained by Landlord pursuant to this Section 6.1 under one or more "blanket policies", insuring other parties and/or other locations, so long as the amounts and coverages required under this Section 6.1 are not diminished as a result thereof.

6.2. Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times the following insurance:

(a) Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than providing coverage for, among other things, blanket contractual liability, premises, products/completed operations and personal and advertising injury coverage;

(b) Automobile Liability Insurance, Comprehensive automobile liability insurance having a combined single limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence, and insuring Tenant against liability for claims arising out of ownership, maintenance or use of any owned, hired, borrowed or non-owned automobiles;

(c) Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by Tenant in the conduct of its operations on the Premises (including the all states endorsement and, if applicable, the volunteers endorsement), together with employer's liability insurance coverage in the amount of at least Five Million Dollars (\$5,000,000.00);

(d) Property Insurance. "Special Form" property insurance (or its equivalent if "Special Form" property insurance is not available), including vandalism and malicious mischief, boiler and machinery comprehensive form, if applicable, and endorsement for earthquake sprinkler damage, each covering damage to or loss of Tenant's personal property, fixtures and equipment, including electronic data processing equipment ("EDP Equipment"), media and extra expense, and all alterations, additions and improvements made by or at the request of Tenant to the Premises other than those tenant improvements owned by Landlord. EDP Equipment, media and extra expense shall be covered for perils insured against in the so-called "EDP Form". If the property of Tenant's invitees is to be kept in the Premises, warehouse's legal liability or bailee customers insurance for the full replacement cost of such property;

(e) Business Insurance. Business insurance in an amount not less than the annual Base Rent and Additional Rent payable by Tenant hereunder for the then current calendar year; and

(f) Additional Insurance. Any such other insurance as Landlord or Landlord's lender may reasonably require.

6.3. General.

(a) Insurance Companies. Insurance required to be maintained by Tenant shall be written by companies licensed to do business in California and having a "General Policyholders Rating" of at least A:X or better (or such higher rating as may be required by a lender having a lien on the Lot) as set forth in the most current issue of "Best's Insurance Guide" or "Best's Key Rating Guide."

(b) Increased Coverage. Landlord, upon written notice to Tenant, may require Tenant to increase the amount of any insurance coverage maintained by Tenant under this Section 6 to the amount of insurance coverage that landlords of similar buildings located in Menlo Park and Palo Alto customarily require tenants to maintain.

(c) Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance with the additional insured endorsement and the primary insurance endorsement(s) attached for all insurance required to be maintained by Tenant, no later than seven (7) days prior to the Commencement Date or such earlier date that Tenant takes possession of the Premises. Tenant shall, at least thirty (30) days prior to expiration of the policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days' prior written notice to the parties named as additional insureds in this Lease. If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and cost resulting from said failure.

(d) Additional Insureds. Landlord, any property management company of Landlord for the Premises and any designated by Landlord shall be named as additional insureds under all of the policies required to be maintained by Tenant under this Section 6. The policies required to be maintained by Tenant under this Section 6 shall provide for severability of interest.

(e) Primary Coverage. All insurance to be maintained by Tenant shall be primary, without right of contribution from Landlord's insurance. Any umbrella liability policy or excess liability policy (which shall be in "following form") shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of insurance maintained by Tenant shall not limit Tenant's liability under this Lease.

(f) Waiver of Subrogation. Landlord and Tenant waive any right to recover against the other for damages covered by insurance or which would have been covered by insurance had the applicable party maintained the insurance required to be maintained by that party under the terms of this Lease. This provision is intended to waive fully, and for the benefit of Landlord or Tenant, as applicable, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverages obtained by Landlord and Tenant pursuant to this Lease shall include, without limitation, waiver of subrogation endorsements.

6.4. Tenant's Indemnity. Tenant shall indemnify, protect and defend by counsel reasonably satisfactory to Landlord and hold harmless Landlord and Landlord's officers, directors, shareholders, employees, partners, members, lenders and successors and assigns (collectively, the "Indemnified Parties" and each, an "Indemnified Party") from and against any and all claims, demands, causes of action, judgments, losses, costs, liabilities, damages (including punitive and consequential damages) and expenses, including attorneys' fees and costs (collectively, "Claims") arising from any cause whatsoever in the Premises, including Claims caused in whole or in part by the act, omission or negligence of the Indemnified Party (but excluding Claims caused by an Indemnified Party's willful or criminal misconduct). In addition, Tenant shall further indemnify, protect and defend by counsel reasonably satisfactory to Landlord and hold harmless the Indemnified Parties from and against any and all Claims arising from (i) Tenant's use or occupancy of the Premises, the conduct of Tenant's business or any activity, work or things done, permitted or suffered by Tenant in or about the Premises, (ii) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, and/or (iii) any acts, omissions or negligence of Tenant or any of Tenant's agents, contractors, employees or invitees. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property in, upon or about the Premises arising from any cause; Tenant hereby waives all claims in respect thereof against Landlord. The provisions of this Section 6.4 shall survive the expiration or earlier termination of this Lease.

6.5. Exemption of Landlord from Liability. Neither Landlord nor any other Indemnified Party shall be liable to Tenant for any injury to Tenant's business or loss of income therefrom, loss or damage to property, or injury or death to any persons, including any loss, damage or injury attributable in whole or in part to the act, omission or negligence of any Indemnified Party (but excluding any loss, damage or injury to the extent caused by the willful or criminal misconduct of such Indemnified Party, whether such loss, damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, and whether said loss, damage or injury results from conditions arising upon the Premises, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. As a material part of Landlord's consideration in exchange for entering into this Lease, Tenant assumes all risk of such loss, damage and injury.

7. OPERATING EXPENSES

7.1. Operating Expenses. Tenant shall pay to Landlord, as Additional Rent during each year of the Term (prorated or any partial calendar year during the Term), (i) Tenant's Building Percentage Share of all Operating Expenses attributable to the ownership, operation, repair and/or maintenance of the Building, (ii) Phase Percentage Share of all Operating Expenses attributable to the ownership, operation, repair and/or maintenance of the Phase and (iii) Tenant's Project Percentage Share of all Operating Expenses attributable to the ownership, operation, repair and/or maintenance of the Project, each as determined by Landlord. Landlord shall not collect any Operating Expense from Tenant more than once.

7.2. Definition of Operating Expenses. The term "Operating Expenses" shall include all expenses and costs of every kind and nature which Landlord shall pay or become obligated to pay because of or in connection with the ownership, operation, repair and/or maintenance of the Building, Phase and/or Project, the surrounding property, and the supporting facilities, including, without limitation, (i) premiums for insurance maintained by Landlord pursuant to this Lease and all costs incidental thereto, (ii) wages, salaries and related expenses and benefits of all employees engaged in operation, maintenance and security of the Building, Phase and/or Project; (iii) costs for all supplies, materials and rental equipment used in the operation of the Building, Phase and/or Project; (iv) all maintenance, janitorial, security and service costs; (v) all management fees; (vi) legal and accounting expenses, including the cost of audits; (vii) costs for repairs, replacements, uninsured damage or deductibles on property insurance, and general maintenance of the Building, Phase and Project, including service areas, elevators, mechanical rooms, exterior surfaces and all component parts thereof (but excluding any repairs or replacements paid for out of insurance proceeds or by other parties and alterations attributable solely to tenants of the Building other than Tenant); (viii) the cost of any capital improvements made to the Building, Phase or Project, amortized over such reasonable period as Landlord shall determine, together with interest upon the unamortized balance at the or such other higher rate as may have been paid by Landlord on funds borrowed for the purpose of constructing the capital improvements; (ix) all charges for heat, water, gas, electricity, sewer, air conditioning, emergency telephone service, trash removal and other utilities used or supplied to the Building, Phase and/or Project (and not separately metered and billed to individual tenants); and (x) all business license, permit and inspection fees.

7.3. Prorated Expenses. Any Operating Expenses attributable to a period which falls only partially within the Term shall be prorated between Landlord and Tenant so that Tenant shall pay only that proportion thereof attributable to the period that falls within the Term.

7.4. Payment at End of Term. Any amount payable by Tenant which would not otherwise be due until after the termination of this Lease, shall, if the exact amount is uncertain at the time that this Lease terminates, be paid by Tenant to Landlord upon such termination in an amount to be estimated by Landlord with an adjustment to be made once the exact amount is known.

7.5. Estimates of Tenant's Share of Operating Expense. Prior to the commencement of each calendar year during the Term, or as soon thereafter as is reasonably practicable, Landlord shall notify Tenant in writing of Landlord's estimate of the amount of Operating Expenses which will be payable by Tenant for the ensuing calendar year. On or before the first day of each month during the ensuing calendar year Tenant shall pay to Landlord, in advance, one-twelfth (1/12) of the estimated amount; provided however, if Landlord fails to notify Tenant of the estimated amount of Tenant's share of Operating Expenses for the ensuing calendar year prior to the end of the current calendar year, Tenant shall be required to continue to pay to Landlord each month in advance Tenant's estimated share of Operating Expenses on the basis of the amount due for the immediately prior month until ten (10) days after Landlord notifies Tenant of the estimated amount of Tenant's share of Operating Expenses for the ensuing calendar year. If at any time it appears to Landlord that Tenant's share of Operating Expenses payable for the current calendar year will vary from Landlord's estimate, Landlord may give notice to Tenant of Landlord's revised estimate for the calendar year, and subsequent payments by Tenant for the calendar year shall be based on the revised estimate.

7.6. Annual Adjustment. Within one hundred twenty (120) days after the close of each calendar year during the Term, or as soon after the

one hundred twenty (120) day period as practicable, Landlord shall deliver to Tenant a statement of the adjustment to the Operating Expenses for the prior calendar year. If, on the basis of the statement, Tenant owes an amount that is less than the estimated payments for the prior calendar year previously made by Tenant, Landlord shall apply the excess to the next payment of Operating Expenses due. If, on the basis of the statement, Tenant owes an amount that is more than the amount of estimated payments made by the Tenant for

the prior calendar year, Tenant shall pay the deficiency to Landlord within thirty (30) days after delivery of the statement. The year end statement shall be binding upon Tenant unless Tenant notifies Landlord in writing of any objection thereto within ninety (90) days after Tenant's receipt of the year end statement. In addition, if, after the end of any calendar year or any annual adjustment of Operating Expenses for a calendar year, Operating Expenses are incurred or billed to Landlord that are attributable to any period within the Term (e.g., sewer district flow fees), Landlord shall notify Tenant of its share of such additional Operating Expenses and Tenant shall pay such amount to Landlord within ten (10) days after Landlord's written request therefor.

7.7. Less Than Full Occupancy. In the event the Building, Phase or Project are not fully occupied during any year of the Term, an adjustment shall be made in computing Operating Expenses for such year so that the same shall be computed for such year as though the Building, Phase and Project had been fully occupied during such year.

7.8. Special Services.

(a) Utilities. In the event Landlord provides additional utilities, heating, air conditioning, trash removal and/or cleaning services to Tenant beyond such standard services related to the operation and management similar business office parks located in Menlo Park/Palo Alto areas, or at times other than during Business Hours (as defined in the Basic Lease Information), Tenant shall pay Landlord's reasonable charge for such special services as Additional Rent. Any cleaning of lunchrooms, cafeterias, conference rooms, etc., shall be on a special services basis (except with respect to the removal of trash from trash receptacles or cleaning incidental to normal cleaning).

(b) Meters. Landlord shall have the right, at Tenant's sole cost and expense, to install separate metering for electricity, water or gas to the Premises or to separately charge Tenant for any quantity of such utilities consumed by Tenant beyond the amounts customarily consumed by tenants in the Project as reasonably determined by Landlord. Landlord may also charge Tenant for costs of sanitary sewer or trash removal occasioned by Tenant's excessive consumption of such services. All such charges shall be reasonably determined by Landlord and promptly paid by Tenant to Landlord as Additional Rent.

8. REPAIRS AND MAINTENANCE

8.1. Landlord Repairs and Maintenance. Landlord shall maintain those portions of the Building, Lot, Phase and Project that are owned by Landlord and not leased to tenants in the Project or required to be maintained by any tenants in the Project consistent with the standards applied by landlords of similar Class A business office parks located in the Menlo Park and Palo Alto areas.

8.2. Tenant Repairs and Maintenance. Tenant, at Tenant's sole cost and expense, shall at all times during the Term keep, maintain and preserve the Premises and all parts, components, systems, fixtures, hardware and finishes of and in the Premises in a first class, clean, safe and sanitary order, condition and repair, excepting only insured casualty to the extent of the insurance proceeds received by Landlord. Tenant shall comply with all applicable manufacturer's specifications and recommendations and best industry practices in connection with cleaning, protecting, servicing, maintaining and repairing the Premises and all of the parts, components, systems, fixtures, hardware and finishes in the Premises in order to preserve and achieve the maximum aesthetic and economically serviceable life of the Premises and the improvements contained therein. All repairs, replacements and restorations made by Tenant shall be performed promptly as required, in a good and workmanlike manner, employing materials of equal or better quality, serviceability and utility to those items or parts being replaced, with surface finishes (including color, texture and general appearance) comparable and compatible with adjacent surfaces, to the reasonable satisfaction of Landlord and in compliance with all applicable federal, state or local laws, ordinances, regulations and orders and the requirements of any insurer of the Building. Tenant shall, at Tenant's own expense, immediately replace all glass in the Premises that may be broken during the Term with glass at least equal to the specification and quality of the glass being replaced. Upon expiration of the Term, Tenant shall surrender the Premises to Landlord in the same condition as received, reasonable wear and tear, damage by fire or other insured casualty to the extent of insurance proceeds received by Landlord excepted. The term "reasonable wear and tear" as used herein shall mean wear and tear which manifests itself solely through normal intensity of use and passage of time consistent with the employment of commercially prudent measures to protect finishes and components from damage and excessive wear, the application of regular and appropriate preventative maintenance practices and procedures, routine cleaning and servicing, waxing, polishing, adjusting, repair, refurbishment and replacement at a standard of appearance and utility and as often as appropriate for Class A corporate and professional office occupancies in the Palo Alto/Menlo Park office market. The term "reasonable wear and tear"

would thus encompass the natural fading of painted surfaces, fabric and materials over time, and carpet wear caused by normal foot traffic. The term "reasonable wear and tear" shall not include any damage or deterioration that could have been prevented by Tenant's employment of ordinary prudence, care and diligence in the occupancy and use of the Premises and the performance of all of its obligations under this Lease. Items not considered reasonable wear and tear hereunder include the following for which Tenant shall bear the obligation for repair and restoration (except to the extent caused by the gross negligence or willful misconduct of Landlord or its employees or agents), (i) excessively soiled, stained, worn or marked surfaces or finishes; (ii) damage, including holes in building surfaces (e.g., cabinets, doors, walls, ceilings and floors) caused by the installation or removal of Tenant's trade fixtures, furnishings, decorations, equipment, alterations, utility installations, security systems, communications systems (including cabling, wiring and conduits), displays and signs; (iii) damage to any component, fixture, hardware, system or component part thereof within the Premises, and any such damage to the Building, Phase or Project, caused by Tenant or its agents, contractors or employees, and not fully recovered by Landlord from insurance proceeds. Tenant shall not commit or allow any waste or damage to be committed on any portion of the Premises, Building, Phase or Project.

8.3. Failure to Maintain, Repair or Restore. The timely performance by Tenant of Tenant's duties to maintain, repair and restore the Premises is essential to the preservation of Landlord's property value and the security interests of Landlord's mortgagee. If, upon expiration of the

Term, Tenant has failed to fully perform its obligations under this Section 8 or Sections 9 or 11.2, Landlord shall have the right, but not the obligation, to perform any obligation of Tenant (notice to Tenant) as provided in Section 19.16 hereof, and Tenant shall reimburse Landlord for all costs incurred by Landlord related thereto (including overtime or premium time labor charges as determined by Landlord in its sole discretion). Tenant shall pay to Landlord all costs, fees and penalties owing, due, paid or payable by Landlord to any lender or mortgagee as a result of Tenant's failure to perform its obligations under this Section 8 or Sections 9 or 11.2, and any fees, penalties, loss, costs, expenses or liabilities whether paid or accrued by Landlord as a result of Landlord's failure to timely deliver all or a portion of the Premises for occupancy by one or more successor or replacement tenants to the extent such failure is due to Tenant's failure to perform hereunder. In addition, if Tenant fails to fully perform its obligations pursuant to this Section 13 or Sections 9 or 11.2 by the end of the Term, then for each day required by Landlord to perform such obligations (or each day that would reasonably be required by Landlord to perform such obligations if Landlord elected to do so), Tenant shall pay to Landlord as liquidated damages an amount equal to one thirtieth (1/30th) of the product of (i) the Default Percentage (as stated in the Basic Lease Information) and (ii) the monthly Rent due under this Lease during the last month of the Term (hereinafter referred to as the "Liquidated Damages Amount"). The Liquidated Damages Amount is intended to compensate Landlord for any loss of rent incurred by Landlord during the period of time required by Landlord to perform Tenant's unperformed obligations under this Section 8 and Sections 9 and 11.2 (or that would reasonably be required by Landlord to perform such obligations had Landlord elected to do so). Landlord and Tenant agree that Landlord's actual damages for loss of rents or opportunity as a result of Tenant's failure to complete its obligations pursuant to this Section 8 and Sections 9 and 11.2 would be difficult or impossible to determine because, *inter alia*, where a tenant has failed to perform such obligations, it is difficult for a landlord effectively to market that tenant's premises to prospective tenants, and the Liquidated Damages Amount is the best estimate of the amount of damages Landlord would suffer in the nature of loss of rent or opportunity for any such failure by Tenant. Nothing contained in this paragraph shall limit Landlord's other remedies pursuant to this Lease or by law with respect to losses other than loss of rent or opportunity, or waive or affect any of Tenant's indemnity obligations under this Lease and Landlord's rights to enforce those indemnity obligations. The payment of the Liquidated Damages Amount as liquidated damages is not intended as a forfeiture or penalty within the meaning of California Civil Code Section 3275 or 3369, but is intended to constitute liquidated damages to Landlord pursuant to California Civil Code Section 1671.

8.4. Inspection of Premises. Landlord and Landlord's agents, at all reasonable times, may enter the Premises to perform any construction related to the Premises, Building or Phase, to inspect, clean or repair the same, to inspect the performance by Tenant of the terms and conditions contained in this Lease, to affix reasonable signs and displays, to show the Premises to prospective purchasers, tenants and lenders, to post notices of non-responsibility and similar notices, and for all other purposes as Landlord shall reasonably deem necessary.

8.5. Liens. Tenant shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered on behalf of Tenant and shall keep the Premises, Building, Phase and Project free and clear of all mechanic's and materialmen's liens in connection therewith. Landlord shall have the right to post or keep posted on the Premises, or in the immediate vicinity thereof, any notices of nonresponsibility for any construction, alteration or repair of the Premises by Tenant. If any such lien is filed, Landlord may, but shall not be required to,

take such action or pay such amount as may be necessary to remove such lien; and, Tenant shall pay to Landlord as Additional Rent any such amounts expended by Landlord within five (5) days after Tenant receives Landlord's written request for payment.

9. FIXTURES, PERSONAL PROPERTY AND ALTERATIONS

9.1. Fixtures and Personal Property. Tenant, at Tenant's sole cost and expense, may install any necessary trade fixtures, equipment and furniture in the Premises, provided that such items are installed and are removable without affecting the structural integrity, character or utility of the Building. Landlord reserves the right to approve or disapprove of any curtains, draperies, shades, paint or other interior improvements that are visible from outside the Premises on wholly aesthetic grounds. Such improvements or replacement items must be submitted for Landlord's written approval prior to installation, or Landlord may remove or replace such items at Tenant's sole cost and expense. The trade fixtures, equipment and furniture shall remain Tenant's property and shall be removed by Tenant prior to the expiration of this Lease. If Tenant fails to remove Tenant's trade fixtures, equipment and furniture prior to the termination of this Lease, Landlord may keep and use the foregoing items or remove and dispose any or all of those items at Tenant's expense, and cause Tenant's trade fixtures, equipment and furniture to be stored or sold in accordance with applicable law. Prior to expiration of the Term or earlier termination of this Lease, Tenant shall repair, at Tenant's sole cost and expense, all damage caused to the Building or Premises as a result of the installation, operation, use or removal of Tenant's trade fixtures, equipment, furniture, or unauthorized improvements and replacements, and restore the Building and the Premises to their condition at the commencement of the Term.

9.2. Alterations. Tenant shall deliver to Landlord full and complete plans and specifications of all such alterations, additions or improvements, and no such work shall be commenced by Tenant until Landlord has given its written approval thereof. Landlord does not expressly or implicitly covenant or warrant that any plans or specifications submitted by Tenant are safe or that the same comply with any applicable laws, ordinances, etc. Farther, Tenant shall indemnify and hold harmless Landlord from any loss, cost or expense, including attorneys' fees and costs, incurred by Landlord as a result of any defects in design, materials or workmanship resulting from Tenant's alterations, additions or improvements to the Premises. All other alterations, additions and improvements shall remain the property of Tenant until termination of this Lease, at which time they shall be and become the property of Landlord. All alterations, additions, improvements, repairs and restoration by Tenant hereinafter required or permitted shall be done in a good and workmanlike manner, incorporating materials of quality equal to or better than those replaced, with finishes comparable to and compatible with adjacent finishes within the Premises and the Building and in compliance with all applicable laws, ordinances, bylaws, regulations and orders of any federal, state, county, municipal or other public authority and of the insurers of the Building. In addition, all of Tenant's alterations, additions and improvements shall be constructed in such a manner so as to (i) not unreasonably disturb or otherwise interfere with the use and occupancy of any other tenant of the Building, Phase or Project, (ii) protect by appropriate means and measures all components of the Premises, Building, Phase and Project from soiling or damage associated with Tenant's work, and (iii) not impose any additional expense or delay upon Landlord in the construction of improvements to, or maintenance or operation of, the Building, Phase and/or Project. Tenant shall, reimburse Landlord for reviewing and approving or disapproving plans and specifications for any alterations proposed by Tenant. Tenant shall require that any contractors used by Tenant carry a commercial liability insurance policy covering bodily injury in the amounts of Two Million Dollars (\$2,000,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence, and covering property damage in the amount of Two Million Dollars (\$2,000,000.00). Landlord may increase the amount of insurance coverage required pursuant to this Section to reflect inflation, industry cost and recovery experience over time. Landlord may require proof of such insurance prior to commencement of any work on the Premises.

10. USE AND COMPLIANCE WITH LAWS

10.1. General Use and Compliance with Laws. Tenant shall only use the Premises for the Permitted Use (as set forth in the Basic Lease Information) and for no other use whatsoever without the prior written consent of Landlord. Tenant, at Tenant's sole cost and expense, shall comply with all of the requirements of any recorded covenants, conditions and restrictions, and any requirements of municipal, county, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the Premises, Building, Phase, and/or Project, including any occupancy permit for the Premises, and secure any necessary permits therefor. Tenant, in Tenant's use and occupancy of the Premises, shall not subject the Premises to any use which would tend

to damage any portion thereof, nor overload the common facilities of the Building, Phase or Project to the detriment of other tenants' enjoyment thereof.

10.2. Signs. Tenant shall not install any sign in or on the Premises, Building, Phase or Project without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Any sign placed by or erected by Landlord for the benefit of Tenant in or on the Premises, Building, Phase or Project shall be installed at Tenant's sole cost and expense and, except in the interior of the Premises, shall contain only Tenant's name, or the name of any affiliate of Tenant actually occupying the Premises, and no advertising matter. No such sign shall be erected until Tenant has obtained Landlord's prior written approval of the location, material, size, design and content thereof and all necessary governmental and other permit and approvals therefor. Landlord shall have the right, in Landlord's sole and absolute discretion, to object to any sign proposed by Tenant. Tenant shall remove all of Tenant's signs prior to the expiration of the Term or earlier termination of this Lease and shall return the Premises, Building, Phase and Project to their condition existing immediately prior to the placement or erection of said sign or signs. If Tenant places or installs any monument or exterior signs in or on the Building, Phase and/or Project, and at any time thereafter Tenant less than fifty percent (50%) of the original Rentable Area of the Premises (as a result of Tenant having assigned its interest in this Lease, Tenant shall immediately remove all such signs and restore the area of the Building, Phase and/or Project where Tenant's signs were previously located to their condition prior to Tenant's installation or placement of such signs.

10.3. Parking Access. In addition to the general obligation of Tenant to comply with laws and without limitation thereof, Landlord shall not be liable to Tenant nor shall this Lease be affected if any parking privileges appurtenant to the Premises are impaired by reason of any moratorium, initiative, referendum, statute, regulation or other governmental decree or action which could in any manner prevent or limit the parking rights of Tenant hereunder. Any governmental charges or surcharges or other monetary obligations imposed relative to parking rights with respect to the Premises, Building, Phase or Project shall be considered as Impositions and shall be payable by Tenant under the provisions of Section 5. Tenant is allocated the use of a percentage of the parking spaces contained in the Phase on a non-exclusive basis as provided in the Basic Lease Information. Tenant shall not permit any on street parking, unauthorized parking upon private property, or parking in excess of Tenant's allocation by Tenant's employees, agents or invitees.

10.4. Floor Load. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor is designed to carry.

11. HAZARDOUS MATERIALS.

11.1. Definitions.

(a) Hazardous Materials. The term "Hazardous Materials" shall mean any substance that: (A) now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. § 5901 et seq., or (B) is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation.

(b) Environmental Requirements. The term "Environmental Requirements" shall mean all present and future federal, state and local laws, ordinances, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials.

(c) Environmental Losses. The term "Environmental Losses" shall mean all costs and expenses, damages, including foreseeable and unforeseeable consequential damages, fines and penalties incurred in connection with any violation of and compliance with Environmental Requirements, and all losses of any kind attributable to the diminution of value, loss of use or adverse effect on the marketability or use of any portion of the Premises, Building, Phase or Project.

11.2. Tenant's Covenants. Tenant shall not use, install, handle, generate, store, dispose, discharge, release, abate or transport any Hazardous Materials on or about the Premises, Building, Phase or Project without Landlord's prior written consent, which consent may be granted, denied or conditioned upon compliance with

Landlord's requirements, all in Landlord's sole and absolute discretion. Notwithstanding the foregoing, Tenant may use and store at the Premises normal quantities of those Hazardous Materials customarily used in the conduct of general office activities, such as copier fluids and cleaning supplies (Permitted Hazardous Materials) without Landlord's prior written consent, provided that Tenant's use, storage and disposal of all Hazardous Materials shall at all times comply with all Environmental Requirements. At the expiration or termination of this Lease, Tenant shall promptly remove from the Premises, Building, Phase and Project all Hazardous Materials used, installed, handled, generated, stored, disposed, discharged, released, abated or transported by Tenant on or under the Premises, Building, Phase or Project. Tenant shall keep Landlord fully and promptly informed of Tenant's use, installation, handling, generation, storage, disposal, discharge, release, abatement or transportation of any Hazardous Materials other than Permitted Hazardous Materials. Tenant shall be responsible and liable for compliance with all of the provisions of this Section 11 by Tenant's agents, employees, contractors, licensees, assignees, sublessees, transferees, representatives, guests, customers,

invitees and visitors, and all of Tenant's obligations under this Section 11 (including its indemnification obligations under Section 11.5 below) shall survive the expiration or termination of this Lease.

11.3. Compliance. Tenant shall, at Tenant's sole cost and expense, promptly take all actions required by any governmental agency or entity in connection with or as a result of Tenant's use, installation, handling, generation, storage, disposal, discharge, release, abatement or transportation of any Hazardous Materials on or about the Premises, Building, Phase or Project, including inspecting and testing, performing all cleanup, removal and remediation work required with respect to those Hazardous Materials, complying with all closure requirements and post-closure monitoring, and filing all required reports or plans. All of the foregoing work shall be performed in a good, safe and workmanlike manner by consultants qualified and licensed to undertake such work and in a manner that will not unreasonably interfere with any other tenants' quiet enjoyment of the Building, Phase and/or Project or Landlord's use, operation, leasing and sale of the Project or any portion thereof. Tenant shall deliver to Landlord, prior to delivery to any governmental agency, or promptly after receipt from any governmental agency, copies of all permits, manifests, closure or remedial action plans, notices and all other documents relating to Tenant's use, installation, handling, generation, storage, disposal, discharge, release, abatement or transport of any Hazardous Materials on or about the Premises, Building, Phase or Project. If any lien attaches to the Premises, Building, Phase or Project in connection with or as a result of Tenant's use, installation, handling, generation, storage, disposal, discharge, release, abatement or transport of any Hazardous Materials, and Tenant does not cause the same to be released, by payment, bonding or otherwise, within ten (10) days after the attachment thereof, Landlord shall have the right, but not the obligation, to cause the lien to be released and any sums expended by Landlord in connection therewith shall be payable by Tenant on demand.

11.4. Landlord's Rights. Landlord shall have the right, but not the obligation, to enter the Premises upon forty-eight (48) hours, prior written notice to Tenant, except in instances in which Landlord, in its reasonable discretion, deems an emergency or a breach by Tenant of the terms and conditions of this Section 11 to exist in which no prior notice shall be required, (i) to confirm Tenant's compliance with the provisions of this Section 11, and (ii) to perform Tenant's obligations under this Section 11 if Tenant has failed to do so or commence to do so within five (5) days after written notice to Tenant. Landlord shall also have the right to engage qualified Hazardous Materials consultants to inspect the Premises, Building, Phase and/or Project and review Tenant's use, installation, handling, generation, storage, disposal, discharge, release, abatement or transport of any Hazardous Materials, including review of all permits, reports, plans and other documents, the costs of which shall be reimbursed by Tenant to Landlord on demand. Tenant shall pay to Landlord on demand the all costs incurred by Landlord in performing Tenant's obligations under this Section 11. Landlord shall not be responsible for any interference caused by Landlord's entry on the Premises.

11.5. Tenant's Indemnification. Tenant agrees to indemnify, protect and defend with counsel acceptable to Landlord and hold harmless Landlord, its partners or members, and its or their partners, members, directors, officers, shareholders, employees and agents from all Environmental Losses and all other claims, actions, losses, damages, liabilities, costs and expenses of every kind, including attorneys', experts' and consultants' fees and costs, that are incurred at any time and arising from or in connection with Tenant's use, installation, handling, generation, storage, disposal, discharge, release, abatement or transport of any Hazardous Materials at or about the Premises, Building, Phase and Project, or Tenant's failure to comply in full with all Environmental Requirements with respect to the Premises, Building, Phase and Project.

12. DAMAGE AND DESTRUCTION

12.1. Obligation to Rebuild.

12.2. Right to Terminate. Landlord shall have the option to terminate this Lease if the Premises or the Building is destroyed or damaged by fire or other casualty, regardless of whether the casualty is insured against under this Lease, if Landlord reasonably determines that (i) there are insufficient insurance proceeds to pay all of the costs of the repair or restoration or (ii) the repair or restoration of the cannot be completed within days after the date of the casualty. If Landlord elects to exercise the right to terminate this Lease as a result of a casualty, Landlord shall exercise the right by giving Tenant written notice of its election to terminate this Lease within forty-five (45) days after the date of the casualty, in which event this Lease shall terminate fifteen (15) days after the date of the notice.

12.3. Limited Obligation to Repair. Landlord's obligation, should Landlord elect or be obligated to repair or rebuild, shall be limited to the shell of the Building and any tenant improvements owned by Landlord. Tenant, at its sole cost and expense, shall replace or fully repair all trade fixtures and equipment owned by Tenant in the Premises and all improvements, additions and alterations constructed by or at the request of Tenant in the Premises (other than any tenant improvements owned by Landlord) and existing at the time of the damage or destruction.

12.4. Abatement of Rent. In the event of any damage or destruction to the Premises that is not caused by Tenant's negligence or the negligence of Tenant's agents, employees or invitees, the Base Rent shall be temporarily abated proportionately to the degree the Premises are rendered untenantable as a result of the damage or destruction, but only to the extent of any proceeds received by Landlord from rental abatement insurance. Such abatement shall commence on the date of the damage or destruction and continue through the period required by Landlord to substantially complete the repair and restoration of the Premises or until such time as the Premises are tenantable for the operation of Tenant's business, whichever is earlier. Except for the rent abatement provided above, Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the Premises, damage to Tenant's personal property or any inconvenience occasioned by any damage, repair or restoration.

12.5. Damage Near End of Term and Extensive Damage. In addition to Landlord's right to terminate this Lease under Section 12.2, shall have the right to terminate this Lease upon thirty (30) days' prior written notice to if the Premises or Building is substantially destroyed or damaged during the last twelve (12) months of the Term. In writing of its election to terminate this Lease under this Section 12.5, if at all, within forty-five (45) days after Landlord determines that the Premises or Building has been substantially destroyed. If to terminate this Lease, the repair of the Premises or Building shall be governed by Sections 12.1 and 12.3.

12.6. Insurance Proceeds. If this Lease is terminated, Landlord may keep all the insurance proceeds resulting from the damage, except for those proceeds that specifically insured Tenant's personal property and trade fixtures (if any).

12.7. Waiver. With respect to any destruction which Landlord is obligated to repair or elects to repair under the terms of this Section 12, Tenant waives all of its rights to terminate this Lease pursuant to rights presently or hereafter accorded by law to tenants, including the provisions of Section 1932, Subdivision 2, and Section 1933, Subdivision 4, of the California Civil Code.

13. EMINENT DOMAIN

13.1. Total Consideration. If the whole of the Premises is acquired or condemned by eminent domain, inversely condemned or sold in lieu of condemnation; for any public or quasi-public use or purpose ("Condemned"), then this Lease shall terminate as of the date of title vesting in such proceeding, and Rent shall be adjusted as of the date of such termination. Tenant shall immediately notify Landlord of any such occurrence.

13.2. Partial Condemnation. If any portion of the Premises is Condemned, and such partial condemnation renders the Premises unusable for the business of Tenant, as reasonably determined by Landlord, or if a substantial portion of the Building is Condemned, as reasonably determined by Landlord, then this Lease shall terminate as of the date of title vesting in such proceeding and Rent shall be adjusted as of the date of termination. If such condemnation is not sufficiently extensive to render the Premises unusable for the business of Tenant, as reasonably determined by, then Landlord shall promptly restore the Premises to a condition comparable to its condition immediately prior to such condemnation less the portion thereof lost in such condemnation, and this Lease

shall continue in full force and effect, except that after the date of title vesting the Base Rent shall be proportionately reduced as reasonably determined by Landlord. Notwithstanding the foregoing, in restoring the Premises to their original condition, Landlord shall not be required to expend an amount greater than the product of (i) Tenant's Building Percentage Share and (ii) the total amount of any condemnation proceeds for the Building received by Landlord. If any parking areas are Condemned, Landlord has the option, but not the obligation, to supply Tenant with other parking areas.

13.3. Landlord's Award. If the Premises are wholly or partially Condemned, then, subject to the provision of Section 13.4 below, Landlord shall be entitled to the entire award paid in connection with such condemnation, and Tenant waives any right or claim to any part thereof from Landlord or the condemning authority.

13.4. Tenant's Award. Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all costs which Tenant might incur in moving Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment to a new location.

13.5. Temporary Condemnation. If the whole or any part of the Premises shall be Condemned for any temporary public or quasi-public use or purpose, this Lease shall remain in effect and Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Term. If a temporary condemnation remains in force at the expiration or earlier termination of this Lease, Tenant shall pay to Landlord an amount equal to the reasonable cost of performing any obligations required of Tenant by this Lease with respect to the surrender of the Premises, including, without limitation, repairs and maintenance, and upon such payment Tenant shall be excused from any such obligations. If a temporary condemnation is for an established period which extends beyond the Term and such temporary condemnation this Lease shall renders the Premises unusable for the business of Tenant, as reasonably determined by, terminate as of the date of occupancy by the condemning authority, and the damages shall be as provided in Sections 13.3 and 13.4 and Rent shall be adjusted as of the date of occupancy.

13.6. Notice and Execution. Landlord shall notify Tenant in writing immediately upon service of process in connection with any condemnation or potential condemnation. Tenant shall immediately execute and deliver to Landlord all instruments that may be required to effectuate the provisions of this Section 13.

14. DEFAULT

14.1. Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" on the part of Tenant with or without notice from Landlord:

- (a) Abandonment. Tenant's abandonment of the Premises;
- (b) Payment. Tenant's failure to pay any installment of Base Rent, Additional Rent or other sums due and payable hereunder by the date such payment is due;
- (c) Performance. Tenant's failure to perform any of Tenant's covenants, agreements or obligations under this Lease (other than a failure to pay Rent or other sums), which default has not been cured within thirty (30) days after written notice thereof from Landlord;
- (d) Assignment. A general assignment by Tenant for the benefit of its creditors;
- (e) Bankruptcy. The commencement of a case or proceeding by Tenant or any of Tenant's creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any law relating to bankruptcy, insolvency or other relief of debtors;
- (f) Receivership. The appointment of a receiver or other custodian to take possession of all or substantially all of Tenant's assets or this leasehold;
- (g) Insolvency, Dissolution, Etc. Tenant shall become insolvent or unable to pay its debts, or shall fail generally to pay its debts as they become due; or any court shall enter a decree or order directing the winding up or liquidation of Tenant or of all or substantially all of its assets; or Tenant shall take any action toward the dissolution or winding up of its affairs or the cessation or suspension of its use of the Premises;

(h) Attachment. The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets or this leasehold;

(i) Failure to Comply. Tenant's failure to comply with the provisions contained in Sections 16.1 and 16.3;

An Event of Default shall constitute a default by Tenant under this Lease. In addition, any notice required to be given by Landlord under this Lease shall be in lieu Of, and not in addition to, any notice required under Section 1161 of the California Civil Code of Procedure. Tenant shall pay to Landlord the amount of Two Hundred Fifty Dollars (\$250.00) for each notice of default given to Tenant under this Lease, which amount is the amount the parties reasonably estimate will compensate Landlord for the cost of giving such notice of default.

14.2. Landlord's Remedies. Upon an Event of Default, Landlord shall have the following remedies, in addition to all other rights and remedies provided by law, equity, statute or otherwise provided in this Lease, to which Landlord may resort cumulatively or in the alternative:

(a) Continue Lease. Landlord may continue this Lease in full force and effect, and this Lease shall continue in full force and effect so long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect Rent when due. In such event, Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations), or any successor statute.

(b) Terminate Lease. Landlord may terminate Tenant's right to possession of the Premises at any time by giving written notice to that effect. Upon termination of this Lease, Landlord shall have the right, at Tenant's sole cost and expense, to remove all of Tenant's personal property from the Premises and store Tenant's personal property on Tenant's behalf. Landlord shall have the right to recover from Tenant: (1) the worth at the time of award of unpaid Rent and other sums due and payable which had been earned at the time of termination; plus (2) the worth at the time of award of the amount by which the unpaid Rent and other sums due and payable which would have been payable after termination until the time of award exceeds the amount of the Rent loss that Tenant proves could have been reasonably avoided; plus (3) the worth at the time of award of the amount by which the unpaid Rent and other sums due and payable for the balance of the Term after the time of award exceeds the amount of the Rent loss that Tenant proves could be reasonably avoided; plus (4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which, in the ordinary course of things, would be likely to result therefrom.

(c) Definition. The "worth at the time of award" of the amounts referred to in Subsections 14.2(b)(1), (2) and (3) is defined in California Civil Code Section 1951.2.

(e) Cumulative. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

(f) No Waiver. Landlord's failure to insist upon the strict performance of any term hereof or to exercise any right or remedy upon a default by Tenant under this Lease shall not constitute a waiver of any such term or default. In addition, Landlord's acceptance of Rent shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent accepted, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepts such Rent. Efforts by Landlord to mitigate the damages caused by Tenant's breach of this Lease shall not be construed to be a waiver of Landlord's right to recover damages under this Section 14. Nothing in this Section 14 affects the right of Landlord to indemnification by Tenant in accordance with the terms of this Lease for any liability arising prior to the termination of this Lease for personal injuries or property damage.

15. ASSIGNMENT AND SUBLETTING

15.1. Assignment and Subletting; Prohibition. Tenant shall not assign, mortgage, pledge or otherwise transfer this Lease, in whole or in part (each hereinafter referred to as an "assignment"), nor sublet or permit

occupancy by any party other than Tenant of all or any part of the Premises (each hereinafter referred to as a "sublet" or "subletting"), without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld. No assignment or subletting by Tenant shall relieve Tenant of any obligation under this Lease, including Tenant's obligation to pay Base Rent and Additional Rent hereunder. Any purported assignment or subletting contrary to the provisions of this Lease without Landlord's prior written consent shall be void. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for obtaining Landlord's consent to any subsequent assignment or subletting. Landlord may consent to any subsequent assignment or subletting, or any amendment to or modification of this Lease with the assignees of Tenant, without notifying Tenant or any successor of Tenant, and without obtaining its or their consent thereto, and such action shall not relieve Tenant or any successor of Tenant of any liability under this Lease. As Additional Rent hereunder, Tenant shall reimburse Landlord for all reasonable legal fees and other expenses incurred by Landlord in connection with any request by Tenant for consent to an assignment or subletting.

15.2. Information to be Furnished. If Tenant desires at any time to assign its interest in this Lease or sublet the Premises, Tenant shall first notify Landlord of its desire to do so and shall submit in writing to Landlord: (i) the name of the proposed assignee or subtenant; (ii) the nature of the proposed assignee's or subtenant's business to be conducted in the Premises; (iii) the terms and provisions of the proposed assignment or sublease, including the date upon which the assignment shall be effective or the commencement date of the sublease (hereinafter referred to as the "Transfer Effective Date") and a copy of the proposed form of assignment or sublease; and (iv) such financial information, including financial statements, and other information as Landlord may reasonably request concerning the proposed assignee or subtenant.

15.3. Landlord's Election. At any time within days after Landlord's receipt of the information specified in Section 15.2, Landlord may, by written notice to Tenant, elect to (i) terminate this Lease as to the space in the Premises that Tenant proposes to sublet; (ii) terminate this Lease as to entire Premises (available only if Tenant proposes to assign all of its interest in this Lease (iii) consent to the proposed assignment or subletting by Tenant; or (iv) withhold its consent to the proposed assignment or subletting by Tenant.

15.4. Termination. If Landlord elects to terminate this Lease with respect to all or a portion of the Premises pursuant to Section 15.3(i) or (ii) above, this Lease shall terminate effective as of the Transfer Effective Date.

15.5. Withholding Consent. Without limiting other situations in which it may be reasonable for Landlord to withhold its consent to any proposed assignment or sublease, Landlord and Tenant agree that it shall be reasonable for Landlord to withhold its consent in any one (1) or more of the following situations: (1) in Landlord's reasonable judgment, the proposed subtenant or assignee or the proposed use of the Premises would detract from the status of the Building as a first-class office building, generate vehicle or foot traffic, parking or occupancy density materially in excess of the amount customary for the Building or the Project or result in a materially greater use of the elevator, janitorial, security or other Building services (e.g., HVAC, trash disposal and sanitary sewer flows) than is customary for the Project; (2) in Landlord's reasonable judgment, the creditworthiness of the proposed subtenant or assignee does not meet the credit standards applied by Landlord in considering other tenants for the lease of space in the Project on comparable terms, or Tenant has failed to provide Landlord with reasonable proof of the creditworthiness of the proposed subtenant or assignee; (4) the proposed assignee or subtenant is a governmental entity, agency or department or the United States Post Office; or (5) the proposed subtenant or assignee is a then existing or prospective tenant of the Project. If Landlord fails to elect either of the alternatives within the day period referenced in Section 15.3, it shall be deemed that Landlord has refused its consent to the proposed assignment or sublease.

15.6. Bonus Rental. If, in connection with any assignment or sublease, Tenant receives rent or other consideration, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in case of the sublease of a portion of the Premises, in excess of such Rent fairly allocable to such portion, Tenant shall pay to Landlord, as Additional Rent hereunder, fifty percent (50%) of the excess of each such payment of Rent or other consideration received by Tenant promptly after Tenant's receipt of such Rent or other costs or expenses normally paid by a landlord in connection with a lease of commercial office property located in Menlo Park or Palo Alto, or a sublandlord in connection with a sublease of office space in Menlo Park or Palo Alto, or the subtenant purchases goods or services from sublandlord or an affiliate of sublandlord for an amount in excess of the fair market value for such goods or services, such costs incurred or amounts expended shall be deemed to be "other consideration" for purposes of calculating excess Rent due to Landlord hereunder.

15.7. Scope. The prohibition against assigning or subletting contained in this Section 15 shall be construed to include a prohibition against any assignment or subletting by operation of law. If this Lease is assigned, or if the underlying beneficial interest of Tenant is transferred, or if the Premises or any part thereof is sublet or occupied by anybody other than Tenant, Landlord may collect rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent due herein and apportion any excess rent so collected in accordance with the terms of Section 15.6, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of the provisions regarding assignment and subletting, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the further performance, by Tenant of covenants on the part of Tenant herein contained. No assignment or subletting shall affect the continuing primary liability of Tenant (which, following assignment, shall be joint and several with the assignee), and Tenant shall not be released from performing any of the terms, covenants and conditions of this Lease.

15.8. Executed Counterparts. No sublease or assignment shall be valid, nor shall any subtenant or assignee take possession of the Premises, until a fully executed counterpart of the sublease or assignment has been delivered to Landlord and Landlord, Tenant and the applicable assignee or subtenant have entered into a consent to assignment or sublease in a form acceptable to Landlord.

15.9. Transfer of a Majority Interest. If Tenant is a non-publicly traded corporation, the transfer (as a consequence of a single transaction or any number of separate transactions) of fifty percent (50%) or more of a controlling interest or the beneficial ownership interest of the voting stock of Tenant issued and outstanding as of the Effective Date shall constitute an assignment hereunder for which Landlord's prior written consent is required. If Tenant is a partnership, limited liability company, trust or an unincorporated association, the transfer of a controlling or majority interest therein shall constitute an assignment hereunder for which Landlord's prior written consent is required.

15.10. Indemnity. If Landlord reasonably withholds its consent to any proposed assignment or sublease, Tenant shall indemnify, protect, defend and hold harmless Landlord against and from any and all loss, liability, damages, costs and expenses (including attorneys' fees and disbursements) resulting from any claims that may be made against Landlord by the proposed assignee or sublessee or by any brokers or any persons claiming a commission or similar compensation in connection with the proposed assignment or sublease. Notwithstanding any contrary provision of law, including, without limitation, California Civil Code Section 1995.310, the provisions of which Tenant hereby waives, Tenant shall have no right to terminate this Lease, in the event Landlord is determined to have unreasonably withheld or delayed its consent to a proposed sublease or assignment,

15.11. Waiver. Notwithstanding any assignment or sublease, or any indulgences, waivers or extensions of time granted by Landlord to any assignee or sublessee, or failure by Landlord to take action against any assignee or sublessee, Tenant waives notice of any default of any assignee or sublessee and agrees that Landlord may, at its option, proceed against Tenant without having taken action against or joined such assignee or sublessee, except that Tenant shall have the benefit of any indulgences, waivers and extensions of time granted to any such assignee or sublessee.

15.12. Release. Whenever Landlord conveys its interest in the Phase and/or Building, Landlord shall be automatically released from the further performance of covenants on the part of Landlord herein contained, and from any and all further liability, obligations, costs and expenses, demands, causes of action, claims or judgments arising from or growing out of, or connected with this Lease after the effective date of said release. The effective date of Tenant's release shall be the date the assignee executes an assumption agreement pursuant to which the assignee expressly agrees to assume all of Landlord's obligations, duties, responsibilities and liabilities with respect to this Lease. If requested, Tenant shall execute a form of release and such other documentation as may be required to further effect the provisions of this Section 15.

16. ESTOPPEL, ATTORNMEN AND SUBORDINATION

16.1. Estoppel. Within ten (10) days after Landlord's written request, Tenant shall execute and deliver to Landlord, in recordable form, a certificate to Landlord and any existing or proposed mortgagee or purchaser certifying, among other things, (i) that this Lease is unmodified and in full force and effect or, if modified, stating the nature of the modification and certifying that this Lease, as so modified, is in full force and effect, (ii) the date to which the Rent and other charges have been paid in advance, if any; (iii) that to Tenant's knowledge, there are no uncured defaults on the part of Landlord or Tenant under this Lease, or if there are uncured defaults on the part of Landlord or Tenant, stating the nature of the uncured defaults; (iv) that Tenant has no right to purchase, option or

right of first refusal to purchase all or any portion of the Building, Phase or Project; and (v) any other statement or provision reasonably requested by Landlord or any existing or proposed mortgagee or prospective purchaser. Any such certificate may be relied upon by Landlord and any mortgagee, beneficiary, ground or underlying lessor, purchaser or prospective purchaser or mortgagee of the Project, Phase and/or Building or any interest therein. Tenant's failure to timely deliver said statement shall be conclusive upon Tenant that: (i) this Lease is in full force and effect, without modification except as may be represented by Landlord; (ii) there are no uncured defaults in Landlord's performance and Tenant has no right of offset, counterclaim or deduction against Rent hereunder; (iii) Tenant has no right to purchase, option or right of first refusal to purchase all or any portion of the Building, Phase or Project, and (iv) no more than one month's Base Rent has been paid in advance. In addition, Tenant hereby irrevocably appoints Landlord as its agent and attorney-in-fact to execute, acknowledge and deliver any such certificate in the name of and on behalf of Tenant if Tenant fails to execute, acknowledge and deliver any such certificate within ten days after Landlord's written request therefor.

16.2. Attornment. In the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage or deed of trust made by Landlord or its successors or assigns that encumbers the Phase or the Building, or any part thereof, or in the event of a termination of any ground lease, if any, Tenant, if so requested, shall attorn to the purchaser upon such foreclosure or sale or upon any grant of a deed in lieu of foreclosure and recognize such purchaser as Landlord under this Lease.

16.3. Subordination. This Lease is subject and subordinate to all ground and underlying leases, mortgages and deeds of trust which now or may hereafter encumber the Phase, Building or Premises, and to all renewals, modifications, consolidations, replacements and extensions thereof. Within ten (10) days after Landlord's written request therefor, Tenant shall execute any and all documents required by Landlord, the lessor under any ground or underlying lease ("Lessor"), or the holder or holders of any mortgage or deed of trust ("Holder"), in order to make this Lease subordinate to the lien of any lease, mortgage or deed of trust, as the case may be. In addition, if Lessor or Holder desires to make this Lease prior and superior to the ground lease, mortgage or deed of trust, then, within seven (7) days after Landlord's written request, Tenant shall execute, have acknowledged and deliver to Landlord any and all documents or instruments, in the form presented to Tenant, which Landlord, Lessor or Holder deems necessary or desirable to make this Lease prior and superior to the lease, mortgage or deed of trust:

17. NOTICES. All notices required to be given hereunder shall be in writing and given by United States registered or certified mail, postage prepaid, return receipt requested; personal delivery; electronic mail (e.g., facsimile); or any commercial overnight courier service (e.g., FedEx); and sent to the appropriate address indicated in the Basic Lease Information or at such other place or places as either Landlord or Tenant may, from time to time, respectively, designate in a written notice given to the other. Notices that are sent by electronic mail shall be deemed to have been given upon receipt. Notices which are mailed shall be deemed to have been given when seventy-two (72) hours have elapsed after the notice was deposited in the United States mail, registered or certified, postage prepaid, addressed to the party to be served. Notices that are sent by commercial overnight courier shall be deemed to have been given on the next business day after the notice was delivered to the commercial overnight courier.

18. SUCCESSORS BOUND. This Lease and each of the covenants and conditions contained herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives and assigns, subject to the provisions hereof. Whenever in this Lease a reference is made to Landlord, such reference shall be deemed to refer to the person in whom the interest of Landlord shall be vested, and Landlord shall have no obligation hereunder as to any claim arising after the transfer of its interest in the Premises. Any successor or assignee of Tenant who accepts an assignment or the benefit of this Lease and enters into possession or enjoyment hereunder shall thereby assume and agree to perform and be bound by the covenants and conditions contained in this Lease. Nothing contained herein shall be deemed in any manner to give a right of assignment to Tenant without the written consent of Landlord.

19. MISCELLANEOUS

19.1. Waiver. No waiver of any default or breach of any covenant by either party hereunder shall be implied from any omission by either party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and said waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein by either party shall not be construed as a waiver of any subsequent breach of the same

covenant, term or condition. The consent or approval by either party to or of any act by the other party shall not be deemed to waive or render unnecessary a party's consent or approval to or of any subsequent similar acts.

19.2. Easements. Landlord reserves the right to grant easements on the Phase and dedicate for public and private use portions thereof without Tenant's consent; provided, however, that no such grant or dedication shall materially interfere with Tenant's use of the Premises. From time to time, and upon Landlord's demand, Tenant shall execute, acknowledge and deliver to Landlord, in accordance with Landlord's instructions, any and all documents, instruments, maps or plats necessary to effectuate Tenant's covenants hereunder.

19.4. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

19.5. Limitation of Landlord's Liability. The obligations of Landlord under this Lease do not constitute personal obligations of the individual partners, members, directors, officers or shareholders of Landlord, and Tenant shall look solely to the real estate that and to no other assets of Landlord for satisfaction of any liability in respect of this Lease and will not seek recourse against the individual partners, members, directors, officers or shareholders of Landlord or any of their personal assets for such satisfaction.

19.6. Time. Time is of the essence of every provision hereof.

19.7. Attorneys' Fees. In any action or proceeding which Landlord or Tenant brings against the other party in order to enforce its respective rights hereunder or by reason of the other party failing to comply with all of its obligations hereunder, whether for declaratory or other relief, the

unsuccessful party therein agrees to pay all costs incurred by the prevailing party therein, including reasonable attorneys' fees, to be fixed by the court, and said costs and attorneys' fees shall be made a part of the judgment in said action. A party shall be deemed to have prevailed in any action (without limiting the definition of prevailing party) if such action is dismissed upon the payment by the other party of the amounts allegedly due or the performance of obligations which were allegedly not performed, or if such party obtains substantially the relief sought by such party in the action, regardless of whether such action is prosecuted to judgment.

19.8. Captions and Section Numbers. The captions, section numbers and table of contents appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent or such sections or sections of this Lease nor in any way affect this Lease.

19.9. Severability If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall, to any extent, be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Lease, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

19.10. Applicable Law. This Lease, and the rights and Obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

19.11. Submission of Lease. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of or option for leasing the Premises. This document shall become effective and binding only upon execution and delivery hereof by Landlord and Tenant. No act or omission of any employee or agent of Landlord or of Landlord's broker or agent shall alter, change or modify any of the provisions in this Lease.

19.12. Holding Over. Should Tenant, or any of its successors in interest, hold over in the Premises, or any part thereof, after the expiration of the Term unless otherwise agreed to in writing, such holding over shall constitute and be construed as tenancy from month-to-month only, at a monthly rent equal to the greater of (i) the Base Rent owed during the final year of the Term, as the same may have been extended, together with the Additional Rent due under this Lease, or (ii) fair market rent for the Premises, as reasonably determined by Landlord. The inclusion of the preceding sentence shall not be construed as Landlord's permission for Tenant to hold over. In addition, Tenant shall indemnify, protect, defend and hold harmless Landlord for all losses, expenses

and damages, including any consequential damages incurred by Landlord, as a result of Tenant failing to surrender the Premises to Landlord and vacate the Premises by the end of the Term.

19.13. Rules and Regulations. At all times during the Term, Tenant shall comply with the rules and regulations for the Building, Phase and Project set forth in Exhibit D, attached hereto, and all amendments as Landlord may reasonably adopt.

19.14. No Nuisance. Tenant shall conduct its business and control its agents, employees, invitees and visitors in such a manner as not to create any nuisance, or interfere with, annoy or disturb any other tenant in the Building, Phase or Project, or Landlord in its operation of the Building, Phase and Project.

19.15. Broker. Tenant warrants that it has had no dealings with any real estate broker or agent other than the broker(s) referenced in the Basic Lease Information ("Broker") in connection with the negotiation of this Lease, and that it knows of no other real estate broker or agent who is entitled to any commission or finder's fee in connection with this Lease. Tenant agrees to indemnify, protect, defend and hold harmless Landlord from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, attorneys' fees and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of Tenant's dealings with any real estate broker or agent other than Broker.

19.16. Landlord's Right to Perform. Upon Tenant's failure to perform any obligation of Tenant hereunder, including without limitation, payment of Tenant's insurance premiums, charges of contractors who have supplied materials or labor to the Premises, etc., Landlord shall have the right to perform such obligation of Tenant on behalf of Tenant and/or to make payment on behalf of Tenant to such parties. Tenant shall reimburse Landlord for the reasonable cost of Landlord's performing such obligation on Tenant's behalf, including reimbursement of any amounts that may be expended by Landlord, plus interest at the Interest Rate.

19.17. Nonliability. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the rental herein reserved be abated by reason of, (i) the interruption of use of the Premises as a result of the installation of any equipment in connection with the use, operation or maintenance of the Premises, Building, Phase and/or Project, (ii) any failure to furnish or delay in furnishing any services required to be provided by Landlord when such failure or delay is caused by accident or any condition beyond the reasonable control of Landlord or by the making of necessary repairs or improvements to the Premises, Building, Phase or Project, or (iii) the limitation, curtailment, rationing or restriction on use of water or electricity, gas or any other form of energy or any other service or utility whatsoever serving the Premises, Building, Phase or Project. Landlord shall use reasonable efforts to remedy any interruption in the furnishing of such services.

19.18. Financial Statements. Within ten (10) days after Landlord's written request, Tenant shall deliver to Landlord Tenant's most current quarterly and annual financial statements audited by Tenant's certified public accountant or, if audited financial statements are not available, Tenant shall deliver to Landlord, Tenant's financial statements certified to be true and correct by Tenant's chief financial officer. Tenant's annual financial statements shall not be dated more than twelve (12) months prior to the date of Landlord's request.

19.19. Entire Agreement. This Lease sets forth all covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises, Building, Phase and Project, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Tenant other than as are herein set forth. Except as otherwise provided in this Lease, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by Landlord and Tenant.

19.20. Addendum. The Addendum attached hereto is incorporated herein by reference. If no Addendum, state "none" in the following space:

_____.
IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above-written.

"Landlord"

"Tenant"

MENLO OAKS PARTNERS L.P.,
a Delaware limited partnership

E*TRADE GROUP, INC.
a Delaware corporation

By: /s/ Len Purkis

By AM Limited Partners, a California limited
partnership, its General Partner

Name: Len Purkis
Its: EVP & COO

By: /s/ Kathy Levinson

By: Amarok Menlo, Inc., a California
corporation, its General Partner

Name: Kathy Levinson
Its: President & COO

By: /s/ J. Marty Brill, Jr.

Name: J. Marty Brill, Jr.
Its: President

**ADDENDUM TO MENLO OAKS CORPORATE CENTER LEASE
(4500 Bohannon Drive)**

THIS ADDENDUM TO MENLO OAKS CORPORATE CENTER LEASE (this "Addendum") is entered into by and between Menlo Oaks Partners, L.P., a Delaware limited partnership ("Landlord"), and E*TRADE GROUP, INC., a Delaware corporation ("Tenant"). This Addendum is made a part of that certain Menlo Oaks Corporate Center Lease (the "Lease"), entered into between Landlord and Tenant concurrently herewith, pursuant to which Landlord leases to Tenant that certain building commonly known as 4500 Bohannon Drive, located in Menlo Park, California. Capitalized terms used herein and not defined herein shall have the meanings set forth in the Lease.

Section 1.3:

On page 1, line 2, in place of the deleted language, insert "the Basic Lease Information". Section 2.3:

At the end of this Section, insert "Landlord shall use commercially reasonable efforts in exercising its rights under this Section 2.3 so as not to materially impair Tenant's access to or use of the Premises."

Section 2.5:

At the end of Section 2.4, insert the following Section:

"2.5 Parking. Tenant shall have the right to use up to thirty-six and 56/100ths percent (36.56%) of the available parking spaces in the Phase on a non-exclusive basis. The Phase includes approximately six hundred forty-five (645) parking spaces. At Tenant's written request, Landlord shall designate up to six (6) of the parking spaces allocated for Tenant's use and located near the Building as "visitor parking".

Section 3.3:

At the end of Section 3.2, insert the following Section:

"3.3 Delivery of Possession. Landlord shall deliver possession of the Premises to Tenant within one (1) business day after the Effective Date, in a broom clean condition with all building systems in working order and the roof in water-tight condition."

Section 4.4:

On page 3, line 1, in place of the deleted language, insert "within three (3) business days after Tenant's receipt of written notice from Landlord that such installment of Rent is past due".

Section 4.5:

On page 3, line 2, in place of the deleted word, insert "within three (3) business days after Tenant's receipt of written notice from Landlord that such installment of Rent is past".

Section 4.6:

On page 4, line 3, in place of the deleted word, insert "will".

On page 4, line 4, after the word "transferee", insert "or the transferee will assume in writing Landlord's obligation to return the Security Deposit to Tenant in accordance with the terms of this Lease."

Section 5.6:

At the end of this Section, insert "Landlord shall furnish Tenant with copies of tax bills for the prior calendar year within ten (10) days after Tenant's written request."

Section 6.1:

On page 5, line 9, after the word "action", insert "covering the Building, the Tenant Improvements and all other improvements made by Tenant to the Premises (if available at commercially reasonable rates)".

Section 6.2(a):

On page 5, line 2, in place of the deleted language, insert "Five Million Dollars (\$5,000,000.00) per occurrence and Ten Million Dollars (\$10,000,000.00) aggregate".

On page 5, line 5, after the word "coverage", add a period and insert "Tenant may satisfy the insurance requirement pursuant to this Section 6.2 (a) in combination with an umbrella policy."

Section 6.2(b):

On page 5, line 1, before the word "Comprehensive", insert "Solely with respect to the Project,".

On page 5, line 4, after the word "automobiles", add a period and insert "Tenant may satisfy the insurance requirement pursuant to this Section 6.2(b) in combination with an umbrella policy".

Section 6.2 (c):

On page 5, line 5, after the amount "(\$5,000,000)", insert "in the state of California. Tenant may satisfy the insurance requirement with respect to the employer's liability insurance in combination with an umbrella policy".

Section 6.2 (d):

On page 6, line 6, in place of the deleted language, add a period and insert "Tenant shall maintain full replacement cost property insurance with respect to all of the alterations, improvements and additions made by Tenant in the Premises or the Building (including the Tenant Improvement Work). Tenant's property insurance with respect to such alterations, improvements and additions shall provide that all claims made thereunder shall be adjusted by Landlord and all proceeds payable thereunder shall be paid to Landlord. Tenant shall maintain, at a minimum, actual value insurance with respect to the EDP Equipment."

Section 6.2(e):

On page 6, line 1, in place of the first deletion, insert "Interruption".

On page 6, line 1, in place of the second deletion, insert "interruption".

Section 6.3 (d):

On page 6, line 2, in place of the deleted language, insert "mortgagee, ground lessee, partner, agent or affiliate of Landlord".

On page 6, line 3, after the word "Section 6", insert ", except workers' compensation insurance and business interruption insurance".

Section 6.3 (f):

On page 7, line 1, after the word "The", insert "property insurance".

Section 6.4:

On page 7, line 2, in place of the deleted word, insert "property manager".

On page 7, line 8, after the word "misconduct", insert "or Environmental Losses (defined in Section 11.1) not covered by Sections 11.3 and 11.5 of this Lease".

On page 7, line 15, after the word "cause", insert "excluding any loss, damage or injury to the extent caused by the willful or criminal misconduct of any Indemnified Party".

Section 6.5:

On page 7, line 8, in place of the deleted language, insert "or Building".

Section 7.2:

On page 7, line 8, after the word "fees", insert "(not to exceed in any year three percent (3%) of the annual Base Rent due for such year)".

On page 8, line 1, in place of the deleted language, insert "rate equal to the Prime Rate plus one percent (1%) (with the term "Prime Rate" defined as the reference rate (or its equivalent) announced publicly in San Francisco, California, from time to time by Wells Fargo Bank, N.A. or, if Wells Fargo Bank, N.A. ceased to exist, the largest bank, in terms of assets, headquartered in California)".

At the end of this Section, insert "Notwithstanding anything to the contrary contained in this Lease, Operating Expenses chargeable to Tenant shall not include the following:

1. The cost of any capital repairs, replacements and/or improvements made to the structural portions of the Building or the Phase, including the structural walls of the Building, the Building foundation and the structural portions of the roof (but excluding the roof membrane);"
2. The cost of providing any service direct to and paid directly by any other tenant of the Project (excluding such tenant's share of Operating Expenses);
3. The cost of any items for which Landlord is reimbursed by insurance proceeds, condemnation awards, a tenant of the Project or otherwise (excluding any payment by a tenant of that tenant's share of Operating Expenses), to the extent so reimbursed;
4. Any real estate brokerage commission or other costs incurred in procuring tenants, or any fee in lieu of commission;
5. Payments of principal or interest on mortgages or ground lease payments (if any);
6. Costs incurred by Landlord due to the violation by Landlord or any tenant of the terms and conditions of any lease of space in the Building, Phase or Project, or any law, code, regulation, ordinance or the like (except to the extent attributable to Tenant's acts or omissions);
7. Landlord's general corporate overhead and general and administrative expenses;
8. Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord (other than in the parking facility for the Phase or the Project); and
9. Costs incurred to (i) comply with laws relating to the removal of any Hazardous Material (as that term is defined in Section 11) of such nature that a federal, state or municipal governmental authority, if it then had knowledge of the presence of such Hazardous Material, in the state and under the conditions that the Hazardous Material then existed in or on the Building, Phase or Project, would have then required the removal of such Hazardous Material or other remedial or containment action with respect thereto, and (ii) remove, remedy, contain or treat any Hazardous Material which is brought onto the Building, Phase or Project after the date hereof by Landlord or any other tenant of the Project, and which is of such a nature, at that time, that a federal, state or municipal governmental authority, if it then had knowledge of the presence of such Hazardous Material, in the state and under the conditions that it then existed in or on the Building, Phase or Project, would have then required the removal of such Hazardous Material or other remedial or containment action with respect thereto."

Section 7.8 (a):

At the end of this Section, insert "Tenant shall arrange and provide for its own janitorial services in the Building."

Section 7.8 (b):

At the end of this Section, insert "Landlord represents to Tenant that the Building is separately metered for electricity, gas and water."

Section 7.9:

At the end of Section 7.8, add the following Section:

7.9 Tenant's Audit Rights. Tenant shall have ninety (90) days after Tenant receives the year end statement of the adjustment to the Operating Expenses for the prior calendar year to notify Landlord in writing of Tenant's desire to conduct, at Tenant's sole cost and expense, an audit of Landlord's books and records relating to the prior calendar year. Any such audit must be conducted by Tenant or its agent during regular business hours at the offices

of Landlord or the offices of Landlord's designated agent and must be completed within one hundred fifty (150) days after Tenant receives the applicable year end statement. The person or entity performing the audit or review of Landlord's books and records on Tenant's behalf or at Tenant's request may not be compensated for the audit or review on a contingency fee basis. If Landlord objects to the findings of Tenant's audit, Landlord and Tenant shall attempt to resolve their disagreement concerning the amount of Tenant's proportionate share of Operating Expenses within the next thirty (30) days. If Landlord and Tenant are unable to agree upon the amount of Tenant's proportionate share of Operating Expenses (after Tenant has completed its audit), the parties shall submit the matter to binding arbitration before a single neutral arbitrator having experience in real estate valuation, property management or accounting or, alternatively, the arbitrator may be a retired judge or justice of a California Superior Court or Court of Appeal. The matter shall be decided by arbitration in accordance with the applicable arbitration statutes and the then existing Commercial Arbitration Rules of the American Arbitration Association. Any party may initiate the arbitration procedure by delivering a written notice

of demand for arbitration to the other party. Within thirty (30) days after the other party's receipt of written notice of demand for arbitration, the parties shall attempt to select a qualified arbitrator who is acceptable to all parties. If the parties are unable to agree upon an arbitrator who is acceptable to all parties, either party may request the American Arbitration Association to appoint the arbitrator in accordance with its Commercial Arbitration Rules. The provisions of California Code of Civil Procedure Section 1283.05 or its successor section(s) are incorporated in and made a part of this Lease with respect to any arbitration requested in accordance with the provisions contained in this Section. Depositions may be taken and discovery may be obtained in any arbitration proceeding requested pursuant to this Section in accordance with the provisions of California Code of Civil Procedure Section 1283.05 or its successor section(s). Arbitration hearing(s) shall be conducted in Santa Clara County California. Any relevant evidence, including hearsay, shall be admitted by the arbitrator if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law; however, the arbitrator shall apply California law relating to privileges and work product. In rendering his or her award, the arbitrator shall set forth the reasons for his or her decision. The fees and expenses of the arbitrator shall be paid in the manner allocated by the arbitrator. This agreement to arbitrate any dispute concerning the findings of Tenant's audit shall be specifically enforceable under the prevailing arbitration law. Judgment on the award rendered by the arbitration may be entered in any court having jurisdiction thereof. If, subsequent to Tenant's audit, the parties determine that Landlord has overstated Tenant's percentage share of the Operating Expenses by more than five percent (5%) during the applicable calendar year, Landlord shall reimburse Tenant for the reasonable cost of the audit."

Section 8.1:

At the end of this Section, insert "Specifically, Landlord shall maintain the structural portions of the Building, including the structural elements of the walls, floor slabs and roof; the heating, ventilating and air conditioning system in the Building (the "Building HVAC"); the elevator; the plumbing and electrical systems in the Common Areas (with Tenant maintaining the plumbing and electrical systems in the Premises); the Common Area parking lots in the Phase; the exterior of the Building, including the exterior glass; and the foundation. If the existing Building HVAC breaks or malfunctions during the Term, then, to the extent it is commercially reasonable to do so, Landlord shall repair the existing Building HVAC as opposed to replacing the existing Building HVAC. Landlord shall notify Tenant in writing prior to replacing the existing Building HVAC. Landlord shall be responsible for ensuring that the Building HVAC and the elevators are in working order on January 1, 2000."

Section 8.2:

On page 9, line 4, after the word "Landlord", insert "and those items or components of the Building that Landlord is obligated to repair pursuant to Section 8.1."

On page 9, line 14, after the word "all", insert "interior".

At the end of this Section, insert "Tenant is responsible for the proper maintenance and servicing of fire extinguishers and fire protection equipment in the Premises. Notwithstanding anything to the contrary contained in this Section, Tenant shall not be required to remove any of the Tenant Improvements (defined in the Work Letter) constructed by Tenant as part of the Tenant Improvement Work (defined in the Work Letter)."

Section 8.3:

On page 10, line 3, in place of the deleted language, insert "upon three (3) business days prior written".

On page 10, line 11, after the word "Term," insert "and Tenant fails to perform such obligations within three (3) business days after written notice to Tenant,".

Section 8.4:

On page 10, line 1, after the word "times", insert "after prior notice to Tenant (except in the event of an emergency whereupon no prior notice is required)".

On page 10, line 4, after the word "tenants", insert " (during the last fifteen (15) months during the Term)".

On page 10, line 5, in place of the deleted language, insert "Tenant at all times shall maintain personnel on the Premises twenty-four (24) hours a day who are authorized to provide Landlord access to the Premises in accordance with the provisions of this Section 8.4."

Section 8.5:

On page 10, line 6, after the word "lien", insert "if Tenant does not post a bond sufficient to remove the lien in accordance with California law within twenty (20) days after Tenant is notified of the existence of the lien".

Section 9.2:

On page 11, line 1, in place of the deleted language, insert "Tenant shall not make or allow to be made any alterations, additions or improvements to the Premises, either at the inception of this Lease or subsequently during the Term, without obtaining the prior written consent of Landlord. Landlord shall not unreasonably withhold its consent to any non-structural alterations, additions or improvements provided that the proposed non-structural alterations, additions or improvements do not require changes or modifications to the Building systems and are consistent with the use of the Premises as first class office space as reasonably determined by Landlord. Landlord shall have the right to withhold its consent to all other alterations, additions or improvements in Landlord's sole and absolute discretion. Landlord shall respond to any request by Tenant to make any alteration, addition or improvement to the Premises within ten (10) business days after Landlord's receipt of Tenant's written request."

On page 11, line 23, in place of the second deletion, insert "all reasonable third-party costs incurred by Landlord in".

On page 11, line 25, after the first occurrence of the word "Tenant", insert "; provided, however, Landlord shall not charge Tenant for costs incurred by Landlord in reviewing Tenant's plans for the Tenant Improvement Work (as defined in the Work Letter)."

At the end of this Section, insert "Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right, without the consent of, but with notice to, Landlord, to make nonstructural alterations within the Premises costing, in the aggregate, less than Twenty-Five Thousand Dollars (\$25,000.00) in any twelve (12) month period, provided that the non-structural alterations proposed by Tenant do not (i) diminish the use of the Premises as first class office space as reasonably determined by Landlord and (ii) affect the structure of the Building or the Building systems. Tenant shall provide Landlord with as built drawings of any such alterations. If requested in writing by Tenant at the time Tenant requests Landlord's consent to any proposed alteration, addition or improvement (or, if Landlord's consent is not required, at the time Tenant notifies Landlord of any proposed alteration, addition or improvement), Landlord shall notify Tenant as to whether Tenant will be required to remove the proposed alteration, addition or improvement and restore the Premises to its original condition at the end of the Term."

Section 10.2:

On page 12, line 8, in place of the deleted word, insert "leases".

On page 12, line 9, in place of the deleted language, insert "or Tenant's lease as to all or a portion of the Premises being terminated".

On page 12, line 12, at the end of the sentence, insert "The provisions of this Section shall not pertain to any interior signage of Tenant that is not visible from the outside of the Premises."

At the end of this Section, insert "Notwithstanding anything to the contrary contained in this Section, Tenant shall have the right to install (i) a directional sign on the existing directional signs located within the Phase

Common Areas, (ii) a sign on the entry wall adjacent to the main entrance of the Building ("Entry Wall Signs"), and (iii) a sign on the exterior of the Building facing Highway 101 (but only if Tenant has not installed exterior signage on the 4200 Bohannon Building (defined in Section 27) facing Highway 101). Tenant's right to install the signage referenced in the preceding sentence is subject to Landlord's prior review and approval of Tenant's proposed signage, including the size, color, design and exact proposed location of Tenant's signage, which approval shall not be unreasonably withheld provided that the signage is in accordance with Landlord's written sign criteria. A copy of Landlord's written sign criteria is attached hereto as Exhibit G. Landlord approves in advance text reading "E*TRADE" on Tenant's Building signage so long as the text is black in color; provided, however, the text on Tenant's monument signs in the Phase and Tenant's Entry Wall Signs may contain the colors contained in Tenant's current logo. Tenant shall obtain all of the necessary governmental permits and approvals required to install Tenant's signs in the Project and all of Tenant's signs shall comply with all laws, ordinances and regulations and any of the conditions, covenants and restrictions recorded against the Phase."

Section 11.5:

On page 13, line 5, after the word "Tenant's", insert "and Tenant's employees', agents', representatives' and contractors".

Section 12.1:

On page 14, line 1, in place of the deleted language, insert "If the Premises and/or the Building are damaged or destroyed, then, subject to the provisions of this Section 12 and provided that neither party terminates this Lease pursuant to this Section 12, (i) Landlord shall promptly and diligently repair or restore the Premises and/or the Building (excluding the Tenant Improvements and all other alterations, additions and improvements made by Tenant to the Premises) and (ii) Tenant shall promptly and diligently repair or restore all of the Tenant Improvements and all other alterations, additions and improvements made by Tenant to the Premises."

Section 12.2:

On page 14, line 4, in place of the deleted language, insert "portions of the Premises or the Building which Landlord is obligated to repair".

On page 14, line 5, in place of the deleted number, insert "two hundred seventy (270)".

On page 14, line 8, after the word "notice.", insert the following:

"In addition, Tenant shall have the right to terminate this Lease upon thirty (30) days' prior written notice to Landlord if the Premises or the Building is destroyed or damaged by fire or other casualty and either (i) Landlord reasonably determines that the repair or restoration of the portion of the Premises or the Building which Landlord is obligated to repair or restore cannot be completed within two hundred seventy (270) days from after the date of the casualty or (ii) Landlord fails to substantially complete the repair or restoration of the portion of the Premises or the Building which Landlord is obligated to repair or restore by the two hundred seventieth (270th) day from after the date of the casualty (hereinafter referred to as the "Outside Completion Date"). The Outside Completion Date shall be extended for an additional ninety (90) days in the event Landlord fails to substantially complete the repair or restoration of the portion of the Premises or the Building which Landlord is obligated to repair or restore for any reason not within Landlord's reasonable control, including, without limitation, inclement weather, labor disputes, or any default by Landlord's contractor or architect under their agreement with Landlord with respect to the repair or restoration of the Premises or the Building). In addition, the Outside Completion Date shall be extended one day for each day that Landlord is delayed in completing the repair or restoration work due to any interference by Tenant or Tenant's contractors with Landlord's repair or restoration work. Tenant shall exercise its right to terminate this Lease pursuant to subsection (i) above, if at all, by written notice to Landlord within thirty (30) days after Landlord notifies Tenant of Landlord's estimate of the time required to complete the repair or restoration of the portion of the Premises or the Building which Landlord is obligated to repair or restore. Tenant shall exercise its right to terminate this Lease pursuant to subsection (ii) above, if at all, by written notice to Landlord within ten (10) days after the expiration of the Outside Completion Date. Notwithstanding the foregoing, if at any time Landlord reasonably determines that Landlord cannot substantially complete the repair or restoration of the Premises by the Outside Completion Date, Landlord shall notify Tenant in writing and Tenant shall have ten (10) days from the date Tenant receives such written notice in which to terminate this Lease by written notice to Landlord."

If neither party exercises its right to terminate this Lease, then (i) Landlord shall promptly commence the process of obtaining all of the necessary permits and approvals for the repair or restoration of the portion of the Premises or the Building which Landlord is obligated to repair or restore as soon as reasonably practicable, and thereafter prosecute the repair or restoration of the Premises or the Building diligently to completion, and (ii) Tenant shall promptly commence the process of obtaining all of the necessary permits and approvals for the repair or restoration of the Tenant Improvements and any other alterations, additional or improvements made by Tenant to the Premises as soon as reasonably practicable, and thereafter prosecute the repair or restoration of the Tenant Improvements and other improvements to completion. Tenant shall not interfere with Landlord's repair and restoration work and may commence Tenant's repair or restoration work in the Premises only to the extent that Tenant's work does not interfere with Landlord's repair or restoration work."

At the end of this Section, insert "Notwithstanding the foregoing, if Landlord elects to terminate this Lease as a result of there being insufficient insurance proceeds to pay for all of the costs of the repair or restoration, Tenant shall have the right to vitiate Landlord's termination by (i) notifying Landlord in writing within thirty (30) days after Landlord notifies Tenant of its election to terminate this Lease of Tenant's election to pay for the difference between the cost of restoring the Premises or the Building, as applicable, and the amount of the insurance proceeds available to Landlord for the repair or restoration of the Premises or the Building, and (ii) delivering to Landlord within thirty (30) days after Tenant notifies Landlord of its election to pay for any shortfall in insurance proceeds an amount equal to the difference between the cost of repairing or restoring the Premises or the Building, as reasonably estimated by Landlord, and the amount of insurance proceeds available to Landlord for the repair or restoration of the Premises or the Building, as applicable.

Section 12.3:

At the end of this Section, insert "If Landlord receives any proceeds from either Landlord's or Tenant's insurance carrier attributable to the cost of repairing or restoring the Tenant Improvements or any other alterations, additions or improvements made by Tenant in the Premises that are not owned by Landlord, then Landlord shall reimburse Tenant an amount equal to the amount expended by Tenant in repairing or restoring those alterations, additions or improvements in the Premises not to exceed the amount of the proceeds received by Landlord. Notwithstanding the foregoing, if either party terminates this Lease as a result of a casualty or for any other reason, all of the insurance proceeds with respect to the Tenant Improvements and any other alterations, additions or improvements made by Tenant to the Premises shall belong to Landlord."

Section 12.5:

On page 14, line 1, in place of the deleted word, insert "Landlord's and Tenant's"

On page 14, line 2, in place of the deleted word, insert "either party".

On page 14, line 3, in place of the deleted word, insert "the other party".

On page 14, line 4, in place of the deleted language, insert "The party electing to terminate this Lease shall notify the other party".

On page 14, line 6, in place of the deleted language, insert "neither party elects".

Section 13.2:

On page 15, line 6, in place of the deleted language, insert "Tenant".

Section 13.4:

On page 15, line 2, after the word "right", insert "such as".

Section 13.5:

On page 15, line 9, in place of the deleted word, insert "Tenant".

Section 14.1 (c):

On page 16, line 3, after the word "Landlord", insert "; provided, however, if such default cannot be cured within thirty (30) days, Tenant shall not be in default of this Lease so long as Tenant has commenced such cure

within the thirty (30) day period and is diligently pursuing the cure to completion (but in no event longer than ninety (90) days from the date Landlord notifies Tenant of the default)."

Section 14.1 (j):

At the end of Section 14.1(i), add the following Section:

"(j) 4200 Bohannon Lease. An Event of Default (as that term is defined in the 4200 Bohannon Lease) on the part of the tenant under the 4200 Bohannon Lease."

Section 14.1:

On page 16, in the last sentence in this Section, after the word "Lease", insert "if the notice of default was drafted for Landlord by Landlord's attorneys."

Section 15.1:

On page 17, line 5, after the word "withheld", insert "or delayed".

At the end of this Section, insert "Notwithstanding anything to the contrary contained in Section 15.1, Tenant shall have the right to assign this Lease or sublet all or a portion of the Premises without Landlord's consent (but with thirty (30) days' prior written notice to Landlord) to (i) an Affiliate or (ii) any entity resulting from a merger or consolidation with Tenant (each hereinafter referred to as a "Permitted Assignee"). For purposes of this Section 15, an "Affiliate" is defined as (i) an entity that directly or indirectly controls, is controlled by or is under common control with Tenant or (ii) an entity at least a majority of whose economic interest is owned by Tenant; and "control" means the power to direct the management of such entity through voting rights, ownership or contractual obligations. No assignment or subletting by Tenant shall relieve Tenant of any obligation under this Lease, including Tenant's obligation to pay Base Rent and Additional Rent hereunder."

Section 15.3:

On page 17, line 1, in place of the deleted number, insert "ten (10) business".

On page 17, line 3, after the word "sublet", insert "if the term of such sublet is for greater than five (5) years or ends during the last year of the Term or the proposed sublessee is an existing tenant or subtenant in the Project."

At the end of this Section, insert "Notwithstanding anything to the contrary contained in Section 15.3, Landlord shall not have the right to terminate this Lease as to all or any portion of the Premises pursuant to the terms and conditions contained in this Section 15.3 in connection with an assignment by Tenant of its interest in this Lease to a Permitted Assignee or Tenant's sublease of all or a portion of the Premises to a Permitted Assignee."

Section 15.5:

On page 18, line 15, after the word "Project.", insert "For purposes of this Section 15.5, the term "prospective tenant" shall mean any prospective lessee of space in the portion of the Project owned by Landlord with whom or which Landlord has been in contact concerning the prospective lessee's interest in the space within thirty (30) of Tenant's contact with such prospective lessee or the date on which Tenant requests Landlord's consent to the proposed sublease or assignment."

On page 18, line 16, in place of the deleted number, insert "ten (10) business".

Section 15.6:

On page 18, line 10, after the word "Also,", insert "and Tenant is not entitled to deduct those costs pursuant to this Section 15.6 prior to calculating the amount of any excess rent or other consideration payable to Landlord in accordance with the terms of this Section 15.6,"

At the end of this Section, insert "Notwithstanding anything to the contrary contained in Section 15.6, in calculating the amount of the excess rent or other consideration due to Landlord in connection with any assignment or sublease by Tenant, Tenant shall be entitled to deduct from the total amount of rent or other consideration paid to Tenant (prior to determining Landlord's share of any excess rent or other consideration) the total amount of (i) any

attorneys' fees and brokerage commissions paid by Tenant in connection with the assignment or sublease and (ii) the cost of installing a demising wall in connection with the partitioning of the Premises for multiple occupancy. In addition, further notwithstanding anything to the contrary contained in Section 15.6, Landlord shall not be entitled to any excess rent or consideration in connection with Tenant's assignment of its interest in this Lease to a Permitted Assignee or Tenant's sublease of all or a portion of the Premises to a Permitted Assignee."

Section 15.12:

On page 19, line 4, after the word "release", insert "; provided, however, Landlord shall be released from its obligation to refund the Security Deposit to Landlord in accordance with the terms of this Lease only if Landlord delivers the Security Deposit to the transferee or the transferee assumes in writing liability for returning the Security Deposit to Tenant in accordance with the terms of this Lease."

Section 15.13:

At the end of Section 15.12, add the following Sections:

"15.13. Additional Space. During the Term, Tenant shall not sublease (as a sublessee) any additional space within the Project or take an assignment of any lease of additional space within the Project which would result in Tenant having subleased or, as a result of one or more assignments, leased in the aggregate more than fifty (50,000) rentable square feet of space in the Project without Landlord's prior written consent, which may be withheld by Landlord in its sole and absolute discretion. Notwithstanding the foregoing, if Tenant (i) exercises its option pursuant to Section 26 and leases all of the First Expansion Option Space and (ii) exercises its option under the 4200 Bohannon Lease and leases the 4400 Bohannon Expansion Option Space (defined in the 4200 Bohannon Lease), then, from the later of the commencement of Tenant's lease of the 4400 Bohannon Expansion Option Space or the commencement of Tenant's lease of any increment of the First Expansion Option Space, Tenant shall not occupy or sublease any additional space in the Project, as a result of one or more assignment or sublease of, in the aggregate, more than thirty thousand (30,000) rentable square feet of space without Landlord's prior written consent, which may be withheld by Landlord in its sole and absolute discretion.

15.14. Landlord Estoppel Certificate. Within ten (10) days after Tenant's written request, Landlord shall execute and deliver to Landlord, in recordable form, a certificate to Tenant certifying, among other things, (i) that this Lease is unmodified and in full force and effect or, if modified, stating the nature of the modification and certifying that this Lease, as so modified, is in full force and effect, (ii) the date to which the Rent and other charges have been paid in advance, if any; and (iii) that to Landlord's actual knowledge, there are no uncured defaults on the part of Tenant under this Lease, or if there are uncured defaults on the part of Tenant, stating the nature of the uncured defaults. Any such certificate may be relied upon by Tenant."

Section. 16.1:

On page 20, line 9, after the number "ten (10)", insert "business".

Section 16.3:

At the end of this Section, insert "Tenant's obligations under this Lease are conditioned upon Tenant's receipt of an executed nondisturbance agreement from all current mortgagees (as of the date of this Lease) whose liens are secured by the Phase within sixty (60) days after the date of this Lease. The nondisturbance agreement, among other things, shall provide that Tenant's possession of the Premises shall not be disturbed in the event of a foreclosure so long as Tenant is not in default under this Lease, and that this Lease shall remain in full force and effect, without materially increasing Tenant's obligations and duties under this Lease or materially diminishing Tenant's rights and privileges under this Lease. Tenant shall subordinate Tenant's interest in the Premises, Building and Phase and this Lease to any future mortgagee or ground lessor provided that such mortgagee or ground lessor agrees to provide Tenant with a nondisturbance agreement on the terms set forth above."

Section 19.5:

On page 21, line 3, in place of the deleted language, insert "constitutes the Phase".

Section 19.12:

On page 22, line 3, in place of the deleted word, insert "one hundred fifty percent (150%) of".

On page 22, line 7, after the word "addition," insert "if Tenant fails to vacate and surrender the Premises to Landlord after the end of the Term within ten (10) days after written notice from Landlord".

Section 19.15:

At the end of this Section, insert "Landlord shall pay to Tenant's Broker a leasing commission in connection with this Lease in accordance with the terms and conditions set forth in a separate written agreement entered into between Landlord and Tenant's Broker."

Section 19.17:

At the end of this Section, insert "Notwithstanding anything to the contrary contained in this Section, if in the event of any interruption in utilities or services to the Premises that (i) substantially interferes with Tenant's use of the Premises for Tenant's business, as reasonably determined by Tenant, for more than five (5) continuous days, and (ii) are not the result of Tenant's negligence or willful misconduct, the Rent due under this Lease shall abate (but only to the extent of any proceeds received by Landlord from rental abatement insurance) for each successive day that the interruption continues until the utilities or services are restored."

Sections 20-26:

The following Sections are incorporated into the Lease:

20. Early Entry. Upon the execution and delivery of this Lease, Tenant may, at Tenant's sole risk and cost, enter upon the Premises prior to the Commencement Date for the purposes of performing Tenant's Work (as defined in the Work Letter) subject to Tenant complying with each of the following terms and conditions during such early entry period: (i) Tenant shall comply with all of the terms and conditions contained in this Lease, except for Tenant's obligation to pay Base Rent, Impositions and Operating Expenses; (ii) Tenant shall indemnify, protect, defend and hold harmless Landlord and all other Indemnified Parties from all claims and losses, and exempt Landlord and the other Indemnified Parties from any liability, all as more particularly provided in Sections 6.4 and 6.5; (iii) Tenant shall comply with all of the requirements contained in this Lease with respect to the type and amounts of insurance required to be maintained by Tenant and provide Landlord with evidence satisfactory to Landlord that Tenant has obtained such insurance; and (iv) Tenant shall pay for all utility services supplied to the Premises and/or used by Tenant.

21. Adjustments to Base Rent. The monthly Base Rent shall be increased on each anniversary of the Commencement Date during the Term by an amount equal to three and one-half percent (3.5%) of the amount of the then existing monthly Base Rent.

25. Extension Options

25.1 Options to Extend. Tenant shall have two (2) options to extend the Term for a period of five (5) years each (hereinafter referred to as the "First Extension Term" and "Second Extension Term," respectively, and each, an "Extension Term"), provided that at the time Tenant's Extension Notice (defined below) is given and at the time the Extension Term is to commence (i) no Event of Default by Tenant exists and (ii) E-Trade Group, Inc. or a Permitted Assignee of E-Trade Group, Inc. is in occupancy of at least ninety percent (90%) of the Building, the 4200 Bohannon Building and any other space leased to Tenant pursuant to this Lease or the 4200 Bohannon Lease. Tenant shall exercise such option, if at all, by written notice ("Tenant's Extension Notice") to Landlord not later than fifteen (15) months, nor earlier than eighteen (18) months, prior to the expiration of the original Term (as such Term may be extended pursuant to Section 26) or the First Extension Term, as the case may be. Tenant may exercise its option to extend the Term for an Extension Term only if Tenant concurrently exercises its right to extend the term of the 4200 Bohannon Lease for an equal period of time in accordance with the terms and conditions contained therein. Tenant's failure to deliver Tenant's Extension Notice to Landlord in a timely manner shall be deemed a waiver of Tenant's option to extend the Term and Tenant's extension option, and any future option to extend the Term, shall lapse and be of no force or effect.

25.2 Exercise of Option.

(a) First Extension Term. If Tenant exercises its extension option for the First Extension Term, the Term shall be extended for an additional period of five (5) years on all of the terms and conditions of this Lease, except (i) Tenant's options to further extend the Term shall be reduced in number by one, (ii) Landlord shall

not be required to pay to Tenant any tenant improvement allowance or inducement and (iii) the monthly Base Rent for the first year of the First Extension Term shall be the greater of (A) the "Initial Fair Market Rent" prevailing at the commencement of the First Extension Term or (B) the monthly Base Rent in effect at the end of the original Term. The Base Rent due during the First Extension Term shall be increased annually by the Average Annual Percentage (defined below), if any.

(b) Second Extension Term. If Tenant exercises its extension option for the Second Extension Term, the Term shall be extended for an additional period of five (5) years on all of the terms and conditions of this Lease, except (i) Tenant shall have no further options to extend the Term of this Lease, (ii) Landlord shall not be required to pay to Tenant any tenant improvement allowance or inducement and (iii) the monthly Base Rent for the first year of the Second Extension Term shall be the greater of (A) the "Initial Fair Market Rent" prevailing at the commencement of the Second Extension Term or (B) the monthly Base Rent in effect at the end of the First Extension Term. The Base Rent due during the Second Extension Term shall be increased annually by the Average Annual Percentage, if any.

(c) Real Estate Commission. Tenant shall be responsible for all brokerage costs and/or finder's fees associated with Tenant's exercise of its option to extend the Term made by parties claiming through Tenant. Landlord shall be responsible for all brokerage costs and/or finder's fees associated with Tenant's exercise of its option to extend the Term made by parties claiming through Landlord.

25.3 Determination of Fair Market Rent.

(a) Agreement on Rent. For the purposes of this Section, the "Initial Fair Market Rent" means the monthly base rent (i.e., rent other than operating expenses, taxes and insurance premiums), expected to prevail as of the commencement of an Extension Term for the first year of that Extension Term with respect to leases of office space within buildings located in the "Designated Area" (defined as the Menlo Park and Palo Alto areas other than the Sand Hill Road area, Stanford Research Park and the Palo Alto central business district) of a quality and with interior improvements, parking, site amenities, building systems, location, identity and access all comparable to that of the Premises, for a term equal to the Extension Term. The term "Average Annual Percentage" shall mean the average annual percentage increase in the monthly base rent (i.e., rent other than operating expenses, taxes and insurance premiums) expected to prevail as of the commencement of that particular Extension Term with respect to leases of office space within buildings located in the Designated Area of a quality and with interior improvements, parking, site amenities, building systems, location, identity and access all comparable to that of the Premises, for a term equal to the Extension Term). Within fifteen (15) days after Landlord's receipt of Tenant's Extension Notice, by written notice to Tenant ("Landlord's Rent Notice"), Landlord shall advise Tenant as to Landlord's determination of the Initial Fair Market Rent and Average Annual Percentage. If Tenant disagrees with Landlord's determination, Tenant shall advise Landlord as to Tenant's determination of Initial Fair Market Rent and Average Annual Percentage by written notice ("Tenant's Rent Notice") within fifteen (15) days after Tenant's receipt of Landlord's Rent Notice. If Tenant fails to deliver Tenant's Rent Notice to Tenant within the time period provided above, Tenant shall be bound by Landlord's determination of the Initial Fair Market Rent and Average Annual Percentage as set forth in Landlord's Rent Notice. If Tenant shall timely deliver to Landlord Tenant's Rent Notice, Landlord and Tenant shall attempt in good faith to reach agreement as to the Initial Fair Market Rent and Average Annual Percentage within fifteen (15) days after Landlord's receipt of Tenant's Rent Notice.

(b) Selection of Appraisers. If Landlord and Tenant are unable to agree as to the amount of the Initial Fair Market Rent and Average Annual Percentage within the aforementioned fifteen (15) day period as evidenced by a written amendment to this Lease executed by them, then, within ten (10) days after the expiration of the fifteen (15) day period, Landlord and Tenant shall each, at its sole cost and by giving notice to the other party, appoint a competent and disinterested real estate appraiser with membership in the Appraisal Institute and M.A.I. designation and with at least five (5) years' full-time commercial appraisal experience in the Menlo Park and Palo Alto areas to determine the Initial Fair Market Rent and Average Annual Percentage. If either Landlord or Tenant does not appoint an appraiser within ten (10) days after the other party has given notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and shall determine the Initial Fair Market Rent and Average Annual Percentage. If Landlord and Tenant as stated in this Section appoint two (2) appraisers, they shall attempt to select a third appraiser meeting the qualifications stated in this Section within ten (10) days. If they are unable to agree on the third appraiser, either Landlord or Tenant, by giving ten (10) days' notice to the other party, can apply to the then president of the real estate board of the county in which the Building is located, or to the Presiding Judge of the Superior Court of the county in which the Building is located, for the selection of a third

appraiser who meets the qualifications stated in this paragraph. Landlord and Tenant each shall bear one-half (1/2) of the cost of appointing the third appraiser and of paying the third appraiser's fee. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for either Landlord or Tenant.

(c) Value Determined By Three (3) Appraisers. The appraisers shall determine the Initial Fair Market Rent and Average Annual Percentage by using the "Market Comparison Approach" with the relevant market being office buildings located in the Designated Area. Within thirty (30) days after the selection of the third appraiser, Landlord's appraiser shall arrange for the simultaneous delivery to Landlord of written appraisals from each of the appraisers and the three (3) appraisals shall be added together and their total divided by three (3); the resulting quotients shall be the Initial Fair Market Rent and Average Annual Percentage. If, however, the low appraisal and/or the high appraisal of either the Initial Fair Market Rent or the Average Annual Percentage are/is more than ten percent (10%) lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If only one (1) appraisal is disregarded, the remaining two (2) appraisals shall be added together and their total divided by two (2); the resulting quotients shall be the Initial Fair Market Rent and Average Annual Percentage. If both the low appraisal and the high appraisal of either the Initial Fair Market Rent or the Average Annual Percentage are disregarded as stated in this Section, the middle appraisal shall be the Initial Fair Market Rent or Average Annual Percentage, as applicable.

25.4 Notice to Landlord and Tenant. After the monthly Base Rent for an Extension Term has been set, Landlord and Tenant immediately shall execute an amendment to the Lease stating the monthly Base Rent.

26. Option to Expand.

26.1 First Expansion Option Space.

(a) Option to Expand. Provided that (i) no Event of Default by Tenant exists under the terms of this Lease at the time Tenant exercises

its option to expand the Premises or at the time Tenant is to commence occupancy of the space in question, (ii) E-Trade Group, Inc. or a Permitted Assignee occupies at least ninety percent (90%) of the Building, the 4200 Bohannon Building and all other space leased to Tenant pursuant to this Lease and the 4200 Bohannon Lease, and (iii) Tenant has a financial net worth of at least Five Hundred Million Dollars (\$500,000,000.00) at the time Tenant exercises its First Expansion Option, or Tenant otherwise delivers to Landlord the additional security deposit required pursuant to Section 26.3 below, Tenant shall have the option (the "First Expansion Option") to lease the space (the "First Expansion Option Space") listed on Exhibit F-1, at tached hereto, in the increments listed on Exhibit F-1, upon the terms and conditions contained in this Section 26.

(b) Exercise of First Expansion Option. Tenant shall exercise the First Expansion Option with respect to either or both of the increments of First Expansion Option Space by written notice to Landlord no earlier than fifteen (15) months prior to the expiration date (the "FEOS Current Lease Expiration Date") of the existing lease of the applicable increment of First Expansion Option Space (noted on Exhibit F-1) and no later than January 31, 1999. If Tenant fails to exercise the First Expansion Option with respect to an increment of First Expansion Option Space within the time period provided above, the First Expansion Option with respect to that increment of First Expansion Option Space shall expire, and Tenant and Landlord shall have no further rights or obligations under this Section with respect to that increment of First Expansion Option Space.

(c) Terms of Lease. Landlord shall lease each increment of First Expansion Option Space to Tenant on all the same terms and conditions contained in this Lease except (i) Landlord shall not be required to pay to Tenant any tenant improvement allowance or inducement, (ii) the term of Tenant's lease of each increment of First Expansion Option Space shall be for ten (10) years, commencing on the date on which Landlord delivers to Tenant possession of the increment of First Expansion Option Space (subject to extension pursuant to Section 26.1(e) and Section 26.2(e) below), (iii) Tenant shall not have the right to install exterior signage on the building in which the First Expansion Option Space is located, (iv) Tenant shall deliver to Landlord concurrently with Tenant's execution of an amendment to the Lease to include the additional premises or Tenant's execution of a new lease for the additional premises (which Tenant shall execute within thirty (30) days after Tenant exercises its First Expansion Option and receives the proposed amendment or lease from Landlord) a security deposit for the applicable increment of First Expansion Option Space leased by Tenant in an amount equal to the last monthly installment of Base Rent due for the applicable increment of First Expansion Option Space, (v) the monthly Base Rent per rentable square foot for the increment of First Expansion Option Space leased by Tenant shall be an amount equal to monthly Base Rent per rentable square foot of the existing Premises in effect at the commencement of the term of the applicable increment of First Expansion Option Space, less (1) the amount of the monthly Base Rent per rentable

square foot attributable to the Additional Allowance (if any) and (2) the amount of the monthly Base Rent per rentable square foot attributable to the Base Allowance (which the parties agree to be an amount equal to Seven and One-Half Cents (\$.075) per rentable square foot, increased by three and one-half percent (3.5%) per annum beginning on the Commencement Date and ending on the commencement date of the term Of the applicable increment of First Expansion Option Space), subject to further increases thereafter in the same percentages and on the same dates as the remainder of the Premises pursuant to Section 4.2, and (vi) Tenant shall lease the First Expansion Option Space in its "as is" condition, except Landlord shall deliver the First Expansion Option Space to Tenant in broom clean condition, with all building systems in good working condition and the roof in water-tight condition.

(d) Delivery of First Expansion Option Space. If Tenant exercises the First Expansion Option with respect to any increment of First Expansion Option Space, Landlord shall use commercially reasonable efforts to deliver possession of the applicable increment of First Expansion Option Space to Tenant within five (5) days after Landlord recovers possession of the increment of First Expansion Option Space. Tenant's obligation to pay Rent to Landlord for an increment of First Expansion Option space shall commence on the forty-fifth (45th) day after Landlord delivers possession of the applicable increment of First Expansion Option Space to Tenant.

(e) Extension of Term. If Tenant exercises its option to lease an increment of First Expansion Option Space or Tenant exercises its option under the 4200 Bohannon Lease to lease the 4400 Bohannon Expansion Option Space, then the Term with respect to the Premises, the 4400 Bohannon Expansion Option Space (provided that Tenant has exercised its option with respect to such space) and all increments of First Expansion Option Space for which Tenant has exercised its First Expansion Option, shall be extended until the end of the tenth (10th) year after latest commencement date of Tenant's lease of any increment of First Expansion Option Space (for which Tenant has exercised its First Expansion Option) or the commencement date of Tenant's lease of the 4400 Bohannon Expansion Option Space (for which Tenant has exercised its expansion option).

26.2 Second Expansion Option Spaces.

(a) Option to Expand. Provided that (i) no Event of Default by Tenant exists under the terms of this Lease at the time Tenant exercises its option to expand the Premises or at the time Tenant is to commence occupancy of the space in question, (ii) E-Trade Group, Inc. or a Permitted Assignee occupies at least ninety percent (90%) of the Building, the 4200 Bohannon Building and all other space leased to Tenant pursuant to this Lease and the 4200 Bohannon Lease (including the 4400 Bohannon Expansion Option Space), (iii) Tenant has exercised the First Expansion Option with respect to all of the First Expansion Option Space, (iv) Tenant has exercised its expansion option with respect to and the 4400 Bohannon Expansion Option Space, and (v) Tenant has a financial net worth of at least Seven Hundred Million Dollars (\$700,000,000.00) at the time Tenant exercises its Second Expansion Option, or Tenant otherwise delivers to Landlord the additional security deposit required pursuant to Section 26.3 below, Tenant shall have the option (the "Second Expansion Option") to lease the space (the "Second Expansion Option Space") listed on Exhibit F-2, attached hereto, in the increments listed on Exhibit F-2, upon the terms and conditions contained in this Section 26.

(b) Exercise of Second Expansion Option. Tenant shall exercise the Second Expansion Option with respect to either or both of the increments of Second Expansion Option Space by written notice to Landlord no earlier than fifteen (15) months prior to the expiration date (the "SEOS Current Lease Expiration Date") of the existing lease of the applicable increment of Second Expansion Option Space (noted on Exhibit F-2) and no later than twelve (12) months prior to the SEOS Current Lease Expiration Date. Notwithstanding the foregoing, if the tenant that currently leases the Second Expansion Option Space defaults on its obligations under its lease and Landlord either terminates the existing tenant's lease or enters into a lease termination agreement with the existing tenant (in lieu of bringing an unlawful detainer action against the existing tenant) which results in an increment of Second Expansion Option Space becoming available for lease prior to the SEOS Current Lease Expiration Date (hereinafter referred to as an "Early Termination Event"), then Tenant shall exercise its option to lease the applicable increment of Second Expansion Option Space (if at all) within forty-five (45) days after Landlord notifies Tenant in writing of the date that the increment of Second Expansion Option Space has become or will become available for lease (hereinafter referred to as the "SEOS Early Availability Date"); provided, however, in no event will Tenant be required to exercise its Second Expansion Option with respect to any increment of Second Expansion Option

Space more than twelve (12) months prior to the SEOS Early Availability Date. If Tenant fails to exercise the Second Expansion Option with respect to any increment of Second Expansion Option Space within the time period provided above, the Second Expansion Option with respect to that increment of Second Expansion

Option Space shall expire, and Tenant and Landlord shall have no further rights or obligations under this Section with respect to that increment of Second Expansion Option Space.

(c) Terms of Lease. Landlord shall lease each increment of Second Expansion Option Space to Tenant on all the same, terms and conditions contained in this Lease except (i) Landlord shall not be required to pay to Tenant any tenant improvement allowance or inducement, (ii) the term of Tenant's lease of each increment of Second Expansion Option Space shall be for twelve (12) years, commencing on the date on which Landlord delivers to Tenant possession of the increment of Second Expansion Option Space (subject to extension pursuant to Section 26.2(e) below), (iii) Tenant may not place exterior building signage on the building located at 4600 Bohannon Drive (but Tenant shall have the right to place exterior building signage on the building located at 4700 Bohannon Drive in accordance with the provisions contained in this Lease pertaining to exterior building signage), (iv) Tenant shall deliver to Landlord concurrently with Tenant's execution of an amendment to this Lease to include the additional premises or Tenant's execution of a new lease for the additional premises (which Tenant shall execute within thirty (30) days after Tenant exercises its Second Expansion Option and receives the proposed amendment or lease from Landlord) a security deposit for the applicable increment of Second Expansion Option Space in an amount equal to the last monthly installment of Base Rent due for the applicable increment of Second Expansion Option Space, (v) the monthly Base Rent per rentable square foot for the increment of Second Expansion Option Space leased by Tenant shall be an amount equal to monthly Base Rent per rentable square foot of the existing Premises in effect at the commencement of the term of the applicable increment of Second Expansion Option Space, less (1) the amount of the monthly Base Rent per rentable square foot attributable to the Additional Allowance (if any) and (2) the amount of the monthly Base Rent per rentable square foot attributable to the Base Allowance (which the parties agree to be an amount equal to Seven and One-Half Cents (\$0.075) per rentable square foot, increased by three and one-half percent (3.5%) per annum beginning on the Commencement Date and ending on the commencement date of the term of the applicable increment of Second Expansion Option Space), subject to further increases thereafter in the same percentages and on the same dates as the remainder of the Premises pursuant to Section 4.2, and (vi) Tenant shall lease the Second Expansion Option Space in its "as is" condition, except Landlord shall deliver the Second Expansion Option Space to Tenant in broom clean condition, with all building systems in good working condition and the roof in water-tight condition.

(d) Delivery of Second Expansion Option Space. If Tenant exercises its Second Expansion Option with respect to any increment of Second Expansion Option Space, Landlord shall use commercially reasonable efforts to deliver possession of the applicable increment of Second Expansion Option Space to Tenant within five (5) days after Landlord recovers possession of the increment of Second Expansion Option Space. Tenant's obligation to pay Rent to Landlord for an increment of Second Expansion Option Space shall commence on the forty-fifth (45th) day after Landlord delivers possession of the increment of Second Expansion Option Space to Tenant; provided, however, if Landlord delivers possession of an increment of Second Expansion Option Space to Tenant prior to the SEOS Current Lease Expiration Date for the applicable increment of space as a result of an Early Termination Event, Tenant's obligation to pay Rent to Landlord for that increment of Second Expansion Option Space shall commence on the sixtieth (60th) day after Landlord delivers possession of that increment of Second Expansion Option Space to Tenant.

(e) Extension of Term. If Tenant exercises its option to lease an increment of Second Expansion Option Space, the Term solely with respect to the First Expansion Option Space and the Second Expansion Option Space for which Tenant has exercised its Second Expansion Option shall be extended until the end of the twelfth (12th) year after latest commencement date of Tenant's lease of any increment of First Expansion Option Space or any increment of Second Expansion Option Space (for which Tenant has exercised its Second Expansion Option). The Term with respect to the remaining Premises shall not be extended.

26.3 Additional Security Deposit.

(a) First Expansion Option.

(I) FEOS Additional Security Deposit. If Tenant does not have a financial net worth of at least Five Hundred Million Dollars (\$500,000,000.00) at the time Tenant exercises its First Expansion Option, Tenant may still exercise its First Expansion Option provided that Tenant delivers to Landlord concurrently with Tenant's execution of an amendment to this Lease to include the increment of First Expansion Option Space Leased by Tenant or Tenant's execution of a new lease for the increment of First Expansion Option Space (which shall occur no later than thirty (30) days after Tenant's execution of its First Expansion Option), an additional security

deposit (the "FEOS Additional Security Deposit") in an amount equal to the difference between (i) Forty-Five Dollars (\$45.00) per rentable square foot of the increment of First Expansion Option Space for which Tenant is exercising its First Expansion Option, and (ii) the amount of the security deposit due with respect to the applicable increment of First Expansion Option Space pursuant to Section 26.1(c). If Tenant's financial net worth falls below Five Hundred Million Dollars (\$500,000,000.00) at any time after Tenant exercises its First Expansion Option, then Tenant shall deliver to Landlord within twenty (20) days after Landlord's written request the FEOS Additional Security Deposit for each increment of First Expansion Option Space leased by Tenant or for which Tenant has exercised its First Expansion Option. Alternatively, if Tenant's Financial net worth increases to Five Hundred Million Dollars (\$500,000,000.00) or more at any time after Tenant has delivered to Landlord the FEOS Additional Security Deposit, then, within twenty (20) days after Tenant's written request, Landlord shall return the FEOS Additional Security Deposit to Tenant or credit the FEOS Additional Security Deposit against the next installment of Rent due under this Lease.

(2) Additional Remedy. If Tenant's financial net worth falls below Five Hundred Million Dollars (\$500,000,000.00) at any time after Tenant exercises its First Expansion Option, but prior to Tenant's lease of the increment of First Expansion Option Space for which Tenant has exercised its First Expansion Option, and Tenant fails to deliver to Landlord the FEOS Additional Security Deposit required pursuant to Section 26.3(a), then, in addition to all other remedies available to Landlord under this Lease, Landlord may vitiate Tenant's exercise of its First Expansion Option by written notice to Tenant and elect not to lease the applicable increment of First Expansion Option Space to Tenant (whereupon Tenant shall have no further rights to lease that increment of First Expansion Option Space).

(b) Second-Expansion Option.

(1) SEOS Additional Security-Deposit. If Tenant does not have a financial net worth of at least Seven Hundred Million Dollars (\$700,000,000.00) at the time Tenant exercises its Second Expansion Option, Tenant may still exercise its Second Expansion Option provided that Tenant delivers to Landlord concurrently with Tenant's execution of an amendment to this Lease to include the increment of Second Expansion Option Space leased by Tenant or Tenant's execution of a new lease for the increment of Second Expansion Option Space (which shall occur no later than thirty (30) days after Tenant's execution of its Second Expansion Option), an additional security deposit (the "SEOS Additional Security Deposit") in an amount equal to the difference between (i) Forty-Seven Dollars (\$47.00) per rentable square foot of the increment of Second Expansion Option Space for which Tenant is exercising its Second Expansion Option, and (ii) the amount of the security deposit due with respect to the applicable increment of Second Expansion Option Space pursuant to Section 26.2(c). If Tenant's financial net worth falls below Seven Hundred Million Dollars (\$700,000,000.00) at any time after Tenant exercises its Second Expansion Option, then Tenant shall deliver to Landlord within twenty (20) days after Landlord's written request the SEOS Additional Security Deposit for each increment of Second Expansion Option Space leased by Tenant or for which Tenant has exercised its Second Expansion Option. Alternatively, if Tenant's financial net worth increases to Seven Hundred Million Dollars (\$700,000,000.00) or more at any time after Tenant has delivered to Landlord the SEOS Additional Security Deposit, then, within twenty (20) days after Tenant's written request, Landlord shall return the SEOS Additional Security Deposit to Tenant or credit the SEOS Additional Security Deposit against the next installment of Rent due under this Lease.

(2) Additional Remedy. If Tenant's financial net worth falls below Second Hundred Million Dollars (\$700,000,000.00) at any time after Tenant exercises its Second Expansion Option, but prior to Tenant's lease of the increment of Second Expansion Option Space for which Tenant has exercised its Second Expansion Option, and Tenant fails to deliver to Landlord the SEOS Additional Security Deposit required pursuant to Section 26.3(b), then, in addition to all other remedies available to Landlord under this Lease, Landlord may vitiate Tenant's exercise of its Second Expansion Option by written notice to Tenant and elect not to lease the applicable increment of Second Expansion Option Space to Tenant (whereupon Tenant shall have no further rights to lease that increment of Second Expansion Option Space).

(c) Letter of Credit. In lieu of a cash security deposit, Tenant may deliver to Landlord as the SEOS Additional Security Deposit or the SEOS Additional Security Deposit an irrevocable standby letter of credit (the "Letter of Credit") naming landlord as beneficiary, in the amount of the SEOS Additional Security Deposit or the SEOS Additional Security Deposit, as applicable. The Letter of Credit shall be issued by a major national bank located in San Francisco or a regional bank located in the San Francisco Bay Area ("Bank") reasonably satisfactory to Landlord and shall be upon such terms and conditions as Landlord may reasonably require. The Letter of Credit

shall allow draws by Landlord upon sight draft accompanied by a statement from Landlord that it is entitled to draw upon the Letter of Credit and shall contain terms which allow Landlord to make partial and multiple draws up to the face amount of the Letter of Credit. If Tenant has not delivered to Landlord at least thirty (30) days prior to the expiration of the original Letter of Credit (or any renewal letter of credit) a renewal or extension thereof, Landlord shall have the right to draw down the entire amount of original Letter of credit (or renewal thereof) and retain the proceeds thereof as the security deposit. If and when Tenant would be entitled to request that Landlord return the security deposit to Tenant or apply the security deposit towards Tenant's obligation to pay Rent, Landlord shall, at Tenant's request, return to Tenant any Letter of Credit delivered to Landlord pursuant to this paragraph.

27. 4200 Bohannon Lease. Concurrently with the execution of this Lease, Landlord and Tenant are entering into that certain lease (the "4200 Bohannon Lease") pursuant to which Landlord is leasing to Tenant approximately forty-six thousand two hundred fifty-five (46,255) rentable square feet of space in that certain building (the "4200 Bohannon Building") located in the Project. The obligations of Landlord and Tenant under this Lease are expressly conditioned upon Landlord and Tenant entering into the 4200 Bohannon Lease."

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date set forth below.

"Landlord"

MENLO OAKS PARTNERS L.P.,
a Delaware limited partnership

By:

AM Limited Partners,
a California limited partnership,
its General Partner

By:

Amarok Menlo, Inc., a California corporation, its General Partner

By:/s/ J. Marty Brill, Jr.
Name: J. Marty Brill, Jr.
Its: President

"Tenant"

E*TRADE GROUP, INC.,
a Delaware corporation

By:/s/ Len Purkis
Name: Len Purkis
Its: EVP & CFO

By:/s/ Kathy Levinson

Exhibit A

[4500 BOHANNON DRIVE, FIRST FLOOR, FLOOR PLAN APPEARS HERE]

**4500 BOHANNON DRIVE
FIRST FLOOR**

Exhibit A

[FLOOR PLAN APPEARS HERE]

Exhibit B

LEGAL DESCRIPTION

That parcel of land in the City of Menlo Park, County of San Marco, State of California, described as follows:

Parcel B as shown and delineated on that certain map entitled "Record of Survey of a Lot Line Adjustment, Lands of Amarok-Bredero, etc.", filed April 25, 1986, Book 9 of Licensed Land Survey Maps, page 123, San Mateo County Records.

**EXHIBIT C
WORK LETTER
(4200 Bohannon Drive)**

This Work Letter sets forth Landlord's and Tenant's responsibilities, respectively, for the construction of certain tenant improvements in the Premises.

1. Defined Terms. Unless provided to the contrary herein, the following defined terms shall have the meanings set forth below and the remaining defined terms shall have the meanings set forth in the Lease:

Landlord's Representative: Michael E. Tamas

Tenant's Representative: JC Blakely

2. Landlord's Work. Tenant's Work.

3.1 Tenant Improvements. Tenant shall arrange for the construction of certain general purpose office improvements (the "Tenant Improvements") in the Premises. The Tenant Improvements shall be subject to Landlord's prior written approval (as provided below) and conform to Landlord's General Building Specifications, a copy of which is attached hereto as Schedule 1. The Tenant Improvements shall be constructed by Tenant's Contractor in accordance with plans and specifications prepared by Tenant's Architect (each as defined below). Tenant's construction of the Tenant Improvements is hereinafter referred to as the "Tenant Improvement Work."

3.2 Costs. Except for Landlord's obligation to pay to Tenant the Tenant Improvement Allowance pursuant to Section 4 below, Tenant shall be responsible for all costs incurred in connection with the construction of the Tenant Improvements, including (i) the cost of all labor, materials, equipment and fixtures supplied by Tenant's Contractor or any subcontractors or materialmen, (ii) fees paid to engineers, architects and interior design specialists for preparation of the Preliminary Plans and Working Drawings and all other services supplied to Tenant in connection with the Tenant Improvements, (iii) all taxes, fees, charges and levies by governmental agencies for authorizations, approvals, licenses or permits, (iii) fees paid to utility service providers for utility connections and installation of utility service meters, and (iv) all costs required to comply with any governmental requirements triggered as a result of Tenant's construction of the Tenant Improvements.

3.3 Tenant's Architect and Contractor. Tenant shall notify Landlord in writing of the name of the architect that Tenant proposes to use to prepare the plans and specifications and working drawings for the Tenant Improvements and the name of the contractor that Tenant proposes to use to construct the Tenant Improvements. In addition, Tenant shall deliver to Landlord any information reasonably requested by Landlord concerning the proposed architect or contractor. The architect and the contractor proposed by Tenant must each be approved by Landlord in writing, which approval may not be unreasonably withheld. The architect selected by Tenant and approved by Landlord in connection with the Tenant Improvement Work is hereinafter referred to as "Tenant's Architect". The contractor selected by Tenant and approved by Landlord in connection with the Tenant Improvement Work is hereinafter referred to as "Tenant's Contractor". Both Tenant's Architect and Tenant's Contractor must be licensed to do business in California. At Landlord's option, Tenant's Contractor shall be bondable.

3.4 Construction.

3.4.1 Preliminary Plans. Tenant shall arrange for Tenant's Architect to prepare preliminary plans and specifications (the "Preliminary Plans") of the proposed Tenant Improvements and submit the Preliminary Plans to Landlord for Landlord's review and approval. Landlord shall approve or disapprove of the Preliminary Plans by written notice to Tenant within five (5) business days after Landlord's receipt of the Preliminary Plans. Landlord shall not unreasonably withhold its approval of the Preliminary Plans. If Landlord disapproves the Preliminary Plans, Landlord's written notice to Tenant disapproving of the Preliminary Plans shall include (i) a description of the disapproved element of the Preliminary Plans, (ii) the reasons for Landlord's disapproval and (iii) at Landlord's option, suggested modifications to the Preliminary Plans. If Landlord disapproves

of the Preliminary Plans, Tenant shall arrange for Tenant's Architect to revise the Preliminary Plans to address Landlord's comments and/or incorporate Landlord's suggested modifications (if any) and resubmit the Preliminary Plans to Landlord for Landlord's review and approval. Landlord shall review the revised Preliminary Plans and approve or disapprove of the revised Preliminary Plans within three (3) business days after Landlord's receipt thereof in accordance with the procedure provided above. If Landlord fails to respond to Tenant's request for approval or disapproval of the Preliminary Plans within the time periods provided for above, such approval shall be deemed to have been given.

3.4.2 Working Drawings. Subject to obtaining Landlord's approval of the Preliminary Plans, Tenant shall arrange for Tenant's Architect to prepare working drawings and specifications, including architectural, mechanical, electrical, plumbing and other shop drawings (the "Working Drawings") for the Tenant Improvements. The Working Drawings shall be based on the Preliminary Plans approved by Landlord. Landlord shall approve or disapprove of the Working Drawings by written notice to Tenant within five (5) business days after Landlord's receipt of the Working Drawings. Landlord shall not unreasonably withhold its approval of the Working Drawings. If Landlord disapproves the Working Drawings, Landlord's written notice to Tenant disapproving of the Working Drawings shall include (i) a description of the disapproved element of the Preliminary Plans, (ii) the reasons for Landlord's disapproval and (iii) at Landlord's option, suggested modifications to the Working Drawings. If Landlord disapproves of the Working Drawings, Tenant shall arrange for Tenant's Architect to revise the Working Drawings to address Landlord's comments and/or incorporate Landlord's proposed changes and resubmit the Working Drawings to Landlord for Landlord's review and approval. Landlord shall review the revised Working Drawings and approve or disapprove of the revised Working Drawings within three (3) days after Landlord's receipt thereof in accordance with the procedure provided above. The Working Drawings which have been approved by Landlord are hereinafter referred to as the "Approved Working Drawings". If Landlord fails to respond to Tenant's request for approval or disapproval of the Working Drawings within the time periods provided for above, such approval shall be deemed to have been given.

3.4.3 Changes. Tenant, at its sole cost and expense, shall make all changes to the Approved Working Drawings that are required by law or any governmental agency. All changes to the Approved Working Drawings, including those required by law or any governmental agency, require Landlord's prior written approval, which approval shall not be unreasonably withheld. All changes to the Approved Working Drawings must be in writing and signed by both Landlord and Tenant prior to the change being made. Notwithstanding the foregoing, Tenant shall have the right, without the need for Landlord's prior written consent, to make changes to the Approved Working Drawings that cost less than Five Thousand Dollars (\$5,000.00) each, and less than Sixty Thousand Dollars (\$60,000.00) in the aggregate, provided that (a) such change does not materially adversely affect the use of the Premises as first class office space, (b) Tenant provides Landlord with prior written notice of such changes, and (c) such changes are otherwise performed in accordance with the terms of this Work Letter and in compliance with all governmental laws. If Landlord fails to respond to Tenant's written request for any change to the Approved Working Drawings within three (3) business days after Landlord's receipt thereof, the change order shall be deemed to have been approved by Landlord. Tenant shall be responsible for all additional costs attributable to changes to the Approved Working Drawings, including, without limitation, additional architectural fees and increases in construction costs of the Tenant Improvements.

3.4.4 Construction Contract. Tenant shall deliver to Landlord not less than five (5) days prior to the date Tenant commences the Tenant Improvement Work a copy of the construction contract entered into between Tenant and Tenant's Contractor with respect to the construction of the Tenant Improvements, along with Tenant's and Tenant's Contractor's estimate of the cost of constructing the Tenant Improvements.

3.4.5 Insurance. Prior to performing any work in the Premises or the Building, Tenant shall deliver to Landlord certificates evidencing that Tenant's Contractor has in force (i) a commercial liability insurance policy covering bodily injury in the amounts of Two Million Dollars (\$2,000,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence, and covering property damage in the amount of Two Million Dollars (\$2,000,000.00), and (ii) workers' compensation insurance in an amount reasonably acceptable to Landlord.

3.4.6 Time Limits. Tenant shall commence the construction of the Tenant Improvements by no later than January 1, 1999 and shall diligently proceed with the construction of the Tenant Improvements until completion. In any event, Tenant shall complete the Tenant Improvements in any portion of the Premises within six (6) months after the date Tenant demolishes the existing improvements in that portion of the

Premises. Tenant's failure to construct the Tenant Improvements in accordance with the terms of this Work Letter constitutes a default by Tenant under this Lease.

3.4.7 Lien Waivers. Upon completion of the Tenant Improvement Work, Tenant shall deliver to Landlord a release and waiver of lien executed by each contractor, including Tenant's Contractor, subcontractor and materialman concerning with the Tenant Improvement Work.

3.4.8 Cooperation. Landlord shall cooperate with (i) Tenant's Architect in completing the Preliminary Plans and the Working Drawings and (ii) Tenant's Contractor in completing the Tenant Improvements; provided, however, Landlord shall not be required to incur any unreimbursed additional expense in so doing.

3.4.9 Warranties. Tenant hereby warrants to Landlord that (i) the Tenant Improvements will be constructed in a good and

workmanlike manner, by well-trained, adequately supplied workers, (ii) the Tenant Improvements and all equipment and material incorporated therein will strictly comply with the Approved Working Drawings, (iii) the Tenant Improvements shall strictly comply with all governmental and quasi-governmental rules, regulations, laws and building codes, all private covenants, conditions and restrictions applicable to the construction of the Tenant Improvements and all requirements of Landlord's and Tenant's lenders and insurers, and (iv) the Tenant Improvements shall be free from all design, material and workmanship defects. At Landlord's written request, Tenant shall assign to Landlord all of Tenant's warranties received from Tenant's Contractor, Tenant's Architect or any materialman or supplier in connection with the Tenant Improvements.

3.4.10 Completion. Within ten (10) days after the Tenant's completion of the Tenant Improvements, Tenant shall deliver to Landlord a breakdown of the total costs incurred by Tenant in constructing the Tenant Improvements. All of the Tenant Improvements shall remain the property of Tenant until the termination of this Lease, at which time they shall be and become the property of Landlord.

4. Allowance.

4.1 Tenant Improvement Allowance. Landlord shall pay to Tenant upon the terms and conditions set forth in this Section 4 up to Nine Hundred Forty-Three Thousand Eight Hundred Dollars (\$943,800.00) (the "Maximum Tenant Improvement Allowance") as a tenant improvement allowance (the "Tenant Improvement Allowance") toward the cost of designing, construction and installing the Tenant Improvements in the Building). The Tenant Improvement Allowance may be used by Tenant only to pay for the design and construction of general office improvements in the Building. The Tenant Improvement Allowance may not be used to pay for (i) any trade fixtures, furniture, furnishing, equipment (except electrical, mechanical, plumbing and HVAC systems which may be paid for out of the Tenant Improvement Allowance), decorations, signs, inventory or other personal property, (ii) rent for leased equipment or other personal property, (iii) interest or financing costs, (iv) utility and permit fees or (v) administrative or overhead costs and expenses paid or incurred by Tenant in connection with the construction of the Tenant Improvements.

4.2 Amount. Tenant shall notify Landlord in writing by January 1, 1999, of the amount of the Additional Allowance that Tenant will require from Landlord. If the total amount of the Tenant Improvement Allowance (i.e., the sum of the Base Allowance and the amount of the Additional Allowance requested by Tenant) exceeds Three Hundred Fourteen Thousand Six Hundred Dollars (\$314,600.00) (the "Base Allowance"), the monthly Base Rent under this Lease shall be increased effective as of the Commencement Date by an amount equal to the product of (i) One and One-half Cents (\$0.015) and (ii) the difference, between (x) the Tenant Improvement Allowance and (y) the Base Allowance. Tenant shall pay to Landlord on January 1, 1999 any additional Base Rent due to Landlord for the period commencing on the Commencement Date and ending on December 31, 1998, as a result of Tenant's election to request from Landlord a portion of the Additional Allowance. For purposes of this Lease, the "Additional Allowance" is defined as the positive difference between (i) the Maximum Tenant Improvement Allowance and (ii) the Base Allowance.

4.3 Payment of the Tenant Improvement Allowance. Landlord shall pay the Tenant Improvement Allowance to Tenant within thirty (30) days after Tenant's written request therefore, provided that (i) Tenant is not in default under the terms of this Lease after the expiration of any applicable cure period, (ii) Tenant has completed all of the Tenant Improvement Work in accordance with the Approved Working Drawings and this Work Letter, and (iii) Tenant has delivered to Landlord the following: (a) a copy of a "finalized" building permit issued by the City of Menlo Park or certificate of occupancy for the Premises, (b) a certificate of completion issued

by Tenant's Architect, certifying that the Tenant Improvement Work has been completed in accordance with the Approved Working Drawings, (c) "as built" drawings for the Premises, (d) evidence that the total cost of the portion of the Tenant Improvement Work which may be paid for out of the Tenant Improvement Allowance is equal to or exceeds the amount of the Tenant Improvement Allowance requested by Tenant, which evidence shall be in the form of copies of paid invoices and the applicable construction contracts, and (e) unconditional lien waivers from Tenant's Contractor and all subcontractors, materialmen and suppliers that have performed work or supplied materials in connection with the Tenant Improvement Work.

5. Default. Tenant's failure to timely commence or complete the Tenant Improvement Work or to comply with any of the other terms or conditions of this Work Letter shall constitute an Event of Default under the Lease.

6. Representatives.

6.1 Tenant's Representative. Tenant has designated Tenant's Representative as its sole representative with respect to the matters set forth in this Work Letter, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Work Letter. Tenant shall not change the Tenant's Representative without notice to Landlord.

6.2 Landlord's Representative. Landlord has designated Landlord's Representative as its sole representative with respect to the matters set forth in this Work Letter, who shall have full authority and responsibility to act on behalf of Landlord as required in this Work Letter. Landlord shall not change Landlord's Representative without notice to Tenant.

7. Indemnity. Tenant shall indemnify, protect and defend (with counsel satisfactory to Landlord) and hold harmless Landlord and all other Indemnified Parties from and against any and all suits, claims, actions, losses, costs or expenses (including claims for workers' compensation, attorneys' fees and costs) based on personal injury or property damage caused in, or contract claims (including, but not limited to claims for breach of warranty) arising from the performance of the Tenant Improvement Work. Tenant shall repair or replace (or, at Landlord's election, reimburse Landlord for the cost of repairing or replacing) any portion of the Building, Phase and/or Project, or item of Landlord's equipment or any of Landlord's real or personal property, damaged, lost or destroyed in the performance of the Tenant Improvement Work.

8. No Representations or Warranties. Notwithstanding anything to the contrary contained in the Lease or this Work Letter, Landlord's participation in the preparation of the Preliminary Plans and the Approved Working Drawings shall not constitute any representation or warranty, express or implied, that the Preliminary Plans or the Approved Working Drawings are in conformity with applicable governmental codes, regulations or rules. Tenant acknowledges and agrees that the Premises are intended for use by Tenant and the specification and design requirements for the Tenant Improvements are not within the special knowledge or experience of Landlord.

9. No Encumbrance. Tenant shall not mortgage, grant a security interest in or otherwise encumber all or any portion of the Tenant

Improvements.

10. Landlord Delays. The Commencement Date shall be delayed one (1) day for each day that Landlord is late in responding to Tenant's request for approval of the Preliminary Plans and Working Drawings as provided above.

11. HVAC System. In the event Tenant elects to use a portion of the Premises for the operation of a data center, then, as part of the Tenant Improvement Work, Tenant shall install a HVAC system or unit in the Premises. Tenant's installation of the HVAC system or unit in the Premises shall be subject to Landlord's review and approval of Tenant's plans and specifications for the HVAC system or unit (to be included as part of Tenant's Preliminary Plans and Working Drawings). Landlord, by written notice to Tenant, may require Tenant to remove the HVAC system or unit at the end of the Term and repair any damage to the Premises due to Tenant's removal of the HVAC system of unit.

12. Conduit. Tenant shall have the right to install underground conduit in the Project to connect the various building in the Project that are leased by Tenant and the Generator, provided that Tenant complies with each of the following terms and conditions: (i) prior to installing additional conduit in the Phase, Tenant utilizes the existing conduit in the Phase to the extent the conduit can be used in a secure manner (excluding the Generator which will use its own dedicated conduit), (ii) Tenant installs additional conduit in the Phase only in

the location designated by Landlord; (iii) all of the terms and conditions contained in the Lease with respect to Tenant's construction of additional improvements in the Premises, including Landlord's right to approve Tenant's proposed plans, shall apply with respect to Tenant's installation of additional conduit in the Phase, and (iv) following Tenant's installation of additional conduit in the Phase, Tenant shall restore the landscaping, parking lots and other areas within the Project that are disturbed or affected as a result of Tenant's installation of additional conduit to their condition existing prior to Tenant's installation of additional conduit, including applying a seal coat and striping to the parking lot in the area where the additional conduit is placed so that the patched area of the parking lot (resulting from the installation of the conduit) blends with and is not materially distinguishable from the remaining portion of the parking lot in the Phase as reasonably determined by Landlord.

Schedule 1

Page 1 of 2
June 30, 1998

MENLO OAKS CORPORATE CENTER GENERAL BUILDING SPECIFICATIONS

1.	Carpet	Manufactured by Designweave "New Sabre", 38oz. cut pile, glue down.	Throughout u.o.n.
2.	Base	Burke 2 ½ inch top set base.	Throughout u.o.n.
3.	Doors	Solid wood core door with Nevemar plastic laminate rustic quartered oak, full height 10'-0" door.	As indicated on plans.
4.	Frames	Manufactured by Eclipse, painted aluminum, standard building finish.	As indicated on plans.
5.	Hardware	Manufactured by Schlage, latchset (L-series 03A. Style: Lever) in brass.(Lockset not included u.o.n.)	As indicated on plans.
6.	Suspended Ceiling System	USG Donn Fineline grid system. 2'X2" module size Armstrong Tegular Cortega, Minatone 2X2 No. 704A, White.	Throughout u.o.n.
7.	Lighting	2'X4' parabolume fixture (18 cell) with accent Recessed incadescent light fixtures as indicated on plan.	1 each per 110 usable sq. ft.
8.	Wall Finishes	Smooth wall gyp. board painted with light roller finish. Building standard 2 coats or paint to cover, Kelley Moore or Fuller O'Brien or equal, flat latex or latex eggshell enamel.	Throughout u.o.n.
9.	Window Covering	Mini-blinds Building standard, Riviera #310 Sand.	Throughout u.o.n.
10.	Vinyl Tiles	VCT: Azrock or equal	As indicated on plans.

11.	Electrical Power	Duplex power receptacles: Wall mounted Typical Office Conference Room Open Office Area- Ceiling J-Box or base feed to electrified furniture partition.	2 duplex receptacles 3 duplex receptacles. As indicated on plans.
12.	Telephone/Data	Combination telephone and data receptacle, note all data receptacles shall be double gang size. Ring and pull wire – wall mounted. Typical Office and Conference Room. Open Office Area	1 receptacle As indicated on plans.
13.	Glass	Glass sidelight adjacent to door. 2'-0' wide	location shown on space plan.
14.	HVAC System	Existing variable volume system, or package units, with economizer cycle.	Throughout u.o.n.
15.	Fire Sprinkler	Building standard, semi recessed pendant heads designed for normal office use (light hazard), chrome or white escutcheon.	Throughout u.o.n.

**MENLO OAKS CORPORATE CENTER
GENERAL BUILDING SPECIFICATIONS
TOILET CORES**

**Schedule 1
Page 2 of 2
June 30, 1998**

1. Wall Finishes/Ceiling	Smooth wall gypsum board with light roller finish. Two coats of paint to cover, Kelley Moore or Fuller O'Brien or equal, eggshell enamel. Ceiling height shall be 9'-0'.
2. Wall Finishes – Wet Walls	Ceramic tile.
3. Flooring	Ceramic tile flooring.
4. Toilet Partitions	Ceiling hung with plastic lamine finish.
5. Fixtures	Water closets and urinals shall be wall mounted with flushometer valves.
6. Accessories	Bobrick semirecessed, brushed stainless steel finish. Provide floor drain at each toilet room.
7. Lavatories	Plastic laminate counters with bullnosed edges, covered splash and wall supported at each end. Vitreous china lavatory, counter mounted.
8. Lighting	Incandescent or fluorescent downlights and eggcrate soffitt lighting above lavatory.

EXHIBIT D

COMMENCEMENT DATE MEMORANDUM

E*TRADE GROUP, INC., a Delaware corporation ("Tenant"), and MENLO OAKS PARTNERS, L.P., a Delaware limited partnership ("Landlord"), entered into a Lease (the "Lease") dated August __, 1998. Pursuant to the Lease, Landlord leases to Tenant and Tenant leases from Landlord space in Menlo Oaks Corporate Center in Menlo Park, California. Capitalized terms used herein and not defined herein shall have the same meanings as in the Lease.

Tenant hereby acknowledges and certifies to Landlord as follows:

- (1) Landlord delivered possession of the Premises to Tenant on ____, 1998;
- (2) The Commencement Date occurred on ____, 1998;
- (3) The Term will expire on ____; and
- (4) Tenant has accepted and is currently in possession of the Premises.

IN WITNESS WHEREOF, this Commencement Date Memorandum is executed this ____ day of ____, ____.

"Tenant"
E*TRADE GROUP, INC.,
a Delaware corporation
By:
Name:
Its:

By:
Name:
Its:

EXHIBIT E

RULES AND REGULATIONS

1. The sidewalks, driveways, entrances, lobbies, stairways and public corridors shall be used only as a means of ingress and egress and shall remain unobstructed at all times. The entrance and exit doors of all buildings and suites are to be kept closed at all times except as required for orderly passage. Loitering in any part of the Building or the Project or obstruction of any means of ingress or egress to the Project or any building within the Project is not permitted.
 2. Plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no rubbish, newspapers, trash or other inappropriate substances of any kind shall be deposited therein. Personal articles, equipment and clothing shall not be left in restrooms, showers, locker rooms or Common Areas except and unless such articles are stored properly within a locker, and in no circumstance shall such articles remain overnight. Landlord may remove and dispose, at Tenant's expense, of any articles or property improperly stored or left in restroom, showers, locker rooms or other Common Areas.
 3. Walls, floors, windows, doors and ceilings shall not be defaced in any way and no one shall be permitted to mark, drive nails or screws or drill into, paint, or in any way mar any Building surface, except that pictures, certificates, licenses and similar items normally used in Tenant's business may be carefully attached to the walls by Tenant in a manner to be prescribed by Landlord. Upon removal of such items by Tenant any damage to the walls or other surfaces shall be repaired by Tenant. No article may be attached to or hung from ceilings, ceiling grids or light fixtures. Tenant is required to protect carpet within its Premises from damage by the use of chair mats or other means below desks and work stations, and by the use of moisture barriers under plants.
 4. No awning, shade, sign, advertisement, notice or other article shall be inscribed, coated, painted, displayed or affixed on, in or to any window, door or wall, or any other part of the outside or inside of the Building or Premises without the prior written consent of Landlord. No window displays or other public displays shall be permitted without the prior written consent of Landlord. Tenant shall not place anything against or near glass partitions or doors or windows which may appear unsightly from outside of the Premises. All tenant identification in the or on public corridor, lobby or other Common Area walls or doors will be installed by Landlord for Tenant with the cost borne by Tenant. No lettering or signs will be permitted on public corridor, lobby or other Common Area walls or doors except the name of Tenant, with the size, type and color of letters and the manner of attachment, style of display and location thereof to be prescribed by Landlord. The directory of the Building will be provided exclusively for the identification and location of tenants in the Building, and Landlord reserves the right to exclude all other information therefrom. All requests for listing on the Building directory shall be submitted to the office of Landlord in writing. Landlord reserves the right to approve all listing requests. Any change requested by Tenant of Landlord of the name or names posted on directory, after initial posting, will be at the expense of Tenant.
 5. The weight, size and position of all safes and other unusually densely weighted or heavy objects used or placed in the Building shall be subject to approval by Landlord prior to installation and shall, in all cases, be supported and braced as prescribed by Landlord and as otherwise required by law. The repair of any damage done to the Building or property therein by the installation, removal or maintenance of such safes or other unusually heavy objects shall be paid for by Tenant. Tenant shall bear the cost of any consultant services employed by Landlord in evaluating the placement, location or bracing of unusually heavy items.
 6. No improper or unusually loud noises, vibrations or odors are permitted inside or outside the Building. No person shall be permitted to interfere in any way with other tenants in the Project or those having business with them. No person will be permitted to bring or keep within the Building any animal, cycle or vehicle (whether motor driven or otherwise) except with the prior written consent of Landlord. Bicycles of Tenant and its employees, agents and invitees shall be stored only in designated bicycle racks outside of Buildings and in no other location. No person shall dispose of trash, refuse, cigarettes or other substances of any kind any place inside or outside of the Building except in the appropriate refuse containers provided therefor. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of alcohol or drugs or who shall do any act or violation of these rules and regulations.
 7. All keying of office doors, and all reprogramming of Security Access Cards will be at the expense of Tenant. Tenant shall not re-key any door without making prior arrangements with Landlord.
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8. Tenant will not install or use any window coverings except those provided by Landlord, nor shall Tenant use any part of the Building or Phase, other than the Premises, for storage or for any other activity which would detract from the appearance of the Building or the Project or interfere in any way with the use, or enjoyment, of the Building, Phase or Project, by other Tenants. No storage, staging, display or placing of any material, product or equipment outside of Tenant's Premises is permitted except as may be expressly approved in writing by Landlord.
 9. Any Tenant or agent, employee or invites thereof using the Premises after the Building has closed or on non-business days shall lock any entrance doors to the Building used immediately after entering or leaving the Building. No device may be employed to prop or hold open any Building entrance or suite entrance door without the prior written consent of Landlord. No door or passageway may be obstructed.

10. The Building shall be open 7:00 a.m. to 6:00 p.m., Monday through Friday (holidays excepted). The hours during which the Building is open may be different than the Business Hours for the Building.

11. Tenant and Tenant's employees, agents, invitees, etc., shall not use more than Tenant's allocated share of the Building parking as provided in the Lease. Automobile parking shall only be in designated areas. Parking shall be nose in only (backing into parking stalls is prohibited), and entirely within painted parking spaces. Overnight parking and parking by Tenant or Tenant's agents or employees within areas marked visitor is prohibited. Landlord reserves the right to designate exclusive parking for tenants and visitors of the Project, and to require identification of Tenant's and Tenant's employees' vehicles. Vehicles owned or operated by Tenant and its employees, invitees and agents which are parked improperly shall be subject to tow at Tenant's expense. The servicing or repairing of vehicles on the Lot is prohibited. Tenant and its employees, agents and invitees shall obey all traffic signs in the Project. The vehicle speed limit within the Project is fifteen miles per hour (15 mph). Notwithstanding the foregoing, Tenant may park one (1) van in the Phase overnight.

12. All equipment of any electrical or mechanical nature shall be placed and maintained by Tenant in settings approved by Landlord and installed so as to absorb or prevent any vibration, noise, interference or annoyance to Landlord and others, and shall not overload any circuit, nor draw more power than has been previously allocated to Tenant.

13. No air conditioning, heating unit, antenna, electrical panel, alarm, phone system or other similar apparatus shall be installed or used by any Tenant without the prior written consent of Landlord. No modification of any building electrical, mechanical, plumbing or security system is permitted without the prior written consent of Landlord. Tenant is responsible for the proper maintenance and servicing of fire extinguishers and fire protection equipment within the Premises.

14. Tenant and its employees, agents and invitees may not dispose of any refuse or other waste material except within trash containers for the Building of which the Premises are a part, and then only in compliance with applicable law and regulations. Tenants may not place any articles within a trash enclosure other than within a trash bin. Tenants may not place any cardboard boxes within trash containers unless such boxes have been flattened. The cost of storage, handling, hauling and dumping of Tenant's trash in excess of quantities incident to similar office parks located in Menlo Park and Palo Alto shall be borne by Tenant. Tenant shall be responsible for closing and securing trash enclosure gates after Tenant or its agents, employees or invitees use the trash enclosure.

15. No hand trucks may be used in the Building Common Areas except those equipped with rubber tires and rubber side guards. Tenants shall not employ any elevator within any Building for the moving of products, equipment or other non-personnel purposes without first installing proper protective elevator pads (to be provided by Landlord).

16. Tenant shall notify Landlord immediately of any plumbing blockage, leak, electrical or equipment malfunction, broken Building glass, fire or other damage to the Premises or the Building.

17. Landlord shall have the right, exercisable without notice or without liability to Tenant, to change the name and address of the Building and to modify these Rules and Regulations.

18. Tenant shall protect dock areas and pavements from damage due to trucks and trailers.

19. Tenant shall not store trucks or trailers in the Project, nor park trucks or trailers in the automobile parking areas, traffic aisles, walkways or the public streets adjacent to the Project.

20. Tenant is encouraged to participate in local waste recycling programs when feasible.

21. Tenant shall employ warm spectrum fluorescent lights in ceiling fixtures wherever feasible.

22. Tenant shall employ water conservation measures in connection with Tenant's use of water.

23. Tenant shall coordinate with RIDES and SAMTRANS in making carpool, vanpool and transit information available to employees. Tenant shall establish an on-site location for the sale of SAMTRANS and CALTRANS transit tickets.

24. Tenant shall employ vanpool and carpool parking spaces only for the purposes indicated.

25. Tenant is encouraged to establish flextime and/or staggered working hours for employees.

26. Tenant is encouraged to implement an employment program for local residents and to coordinate skill enhancement with local job training centers.

27. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in the Building are prohibited, and each tenant shall cooperate to prevent same.

28. Tenant shall be deemed to have read these Rules and Regulations and agrees to abide by these Rules and Regulations as a covenant of its lease of the Premises. Tenant shall inform all of Tenant's employees, agents and invitees of these Rules and Regulations and shall be responsible for the observance of all of these Rules and Regulations by Tenant's employees, agents and invitees.

29. Capitalized terms used in these Rules and Regulations and not defined herein shall have the meanings set forth in each tenant's lease of space in Menlo Oaks Corporate Center.

EXHIBIT F-1

FIRST EXPANSION OPTION SPACE

Increment of Space

No.	Suite/Building	Approximate Rentable Square Footage	FEOS Current Lease Expiration Date
1	4600 Bohannon Drive (See Exhibit 1)	10,985 rsf	November 20, 1999
2	4600 Bohannon Drive (See Exhibit 1)	14,193 rsf	January 31, 2000

EXHIBIT F-2

SECOND EXPANSION OPTION SPACE

Increment of Space

No.	Suite/Building	Approximate Rentable Square Footage	SEOS Current Lease Expiration Date
1.	4600 Bohannon Drive (See Exhibit 1)	19,946 rsf	October 27, 2001
2.	4700 Bohannon Drive (entire building) See Exhibit 2	62,920 rsf	October 27, 2001

Exhibit 1

[FLOOR PLAN APPEARS HERE]

Exhibit 1

[FLOOR PLAN APPEARS HERE]

Exhibit 2

[MAP APPEARS HERE]

Exhibit G

October 30, 1985
(Revised April 22, 1987)
(Revised March 22, 1988)

MENLO OAKS CORPORATE CENTER

On-Building Signage criteria

1. "on building signs" shall be limited to a maximum of two signs per building and shall be limited to one per elevation.
2. Signage will be restricted to company logo or the spelling out of the company name.
3. The size of the signage will not exceed 42" in height or 15' in length. The total square footage of the area of the outside boundaries of the signage will not exceed twenty-two (22) square feet.
4. Signs may be constructed of plastic or metal and are to be firmly attached to the building concrete. The connection will be reviewed by an

engineer.

5. Signs may not protrude more than 6" from face of building concrete.

6. Signage may be illuminated by internal backlit procedures which result in silhouette letters or logo (commonly thought of as "halo" effect around the signage). Translucent backlit signs will be discouraged. Lighting from the ground will also be discouraged. There are to be no exposed conduits or electrical appurtenances on the building facade.

7. Signage design, lettering style and color are subject to review and approval of the building owner.

EXHIBIT 10.8

SECOND AMENDMENT TO LEASE (4500 BOHANNON DRIVE)

THIS SECOND AMENDMENT TO LEASE (this "Amendment") dated as of March 17, 1999, is entered into between **MENLO OAKS PARTNERS, L.P.**, a Delaware limited partnership ("Landlord"), and **E*TRADE GROUP, INC.**, a Delaware corporation ("Tenant").

THE PARTIES ENTER INTO THIS AMENDMENT based upon the following facts, understandings and intentions:

A. Landlord and Tenant previously entered into that certain Menlo Oaks Corporate Center Standard Business Lease (4500 Bohannon Drive) dated as of August 18, 1998, as amended by that certain letter agreement dated January 18, 1999 (as amended, the "Lease"), pursuant to which Landlord leased to Tenant approximately sixty-two thousand nine hundred twenty (62,920) rentable square feet of space (the "Premises") within the building known as 4500 Bohannon Drive, Menlo Park, California (the "4500 Bohannon Building"), as more particularly described in the Lease. The capitalized terms used in this Amendment and not otherwise defined herein shall have the same meanings given to such terms in the Lease.

B. Pursuant to Section 26.1 of the Lease, Tenant has an option to lease from Landlord (i) approximately ten thousand nine hundred eighty-five (10,985) rentable square feet of additional space (the "First Increment Expansion Space") within the building known as 4600 Bohannon Drive, Menlo Park, California (the "4600 Bohannon Building"), and (ii) approximately fourteen thousand one hundred ninety-three (14,193) rentable square feet of additional space (the "Second Increment Expansion Space") in the 4600 Bohannon Building. The First Increment Expansion Space and the Second Increment Expansion Space (collectively, the "Expansion Space") is more particularly described in the Lease. The Expansion Space is referred to in the Lease as the "First Expansion Option Space."

C. Tenant has exercised the First Expansion Option with respect to both the First Increment Expansion Space and the Second Increment Expansion Space. In connection therewith, Landlord and Tenant are amending the Lease to, among other things, extend the Term, expand the size of the Premises to include the Expansion Space, and increase both the Base Rent and the percentage of Operating Expenses and Impositions for which Tenant is responsible under the Lease, as provided herein.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. First Increment Expansion Space.

1.1. Expansion of Premises. Effective as of the date on which Landlord delivers possession of the First Increment Expansion Space to Tenant in the condition set forth in Section 1.7 below (the "First Increment Effective Date"), the Premises shall be expanded to include, in addition to the space presently leased to Tenant under the Lease, the First Increment Expansion Space. Landlord and Tenant agree that for all purposes under the Lease, the Rentable Area of the First Increment Expansion Space shall be deemed to be the rentable square footage of the First Increment Expansion Space as stated in Recital B of this Amendment.

1.2. Definitions. Effective as of the First Increment Effective Date, the following terms contained in the Lease shall have the meanings set forth below:

1.2.1. Premises. The term "Premises" as used in the Lease shall refer to the existing Premises, the First Increment Expansion Space and the Second Increment Expansion Space (to the extent the Second Increment Effective Date has occurred prior to the First Increment Effective Date).

1.2.2. Building. The term "Building" as used in the Lease shall refer to both the 4500 Bohannon Building and the 4600 Bohannon Building.

1.2.3. Building Common Areas. The term "Building Common Areas" as used in the Lease shall mean (i) the areas and facilities within the 4500 Bohannon Building provided and designated by

Landlord for the general use, convenience or benefit of Tenant and other tenants of the 4500 Bohannon Building (e.g., common stairwells, stairways, hallways, shafts, elevators, restrooms, janitorial telephone and electrical closets, pipes, ducts, conduits, wires and appurtenant fixtures servicing the 4500 Bohannon Building) and (ii) the areas and facilities within the 4600 Bohannon Building provided and designated by Landlord for the general use, convenience or benefit of Tenant and other tenants of the 4600 Bohannon Building (e.g., common stairwells, stairways, hallways, shafts, elevators, restrooms, janitorial telephone and electrical closets, pipes, ducts, conduits, wires and appurtenant fixtures servicing the 4600 Bohannon Building).

1.2.4. Tenant's Building Percentage Share. The term "Tenant's Building Percentage Share" as used in the Lease shall mean (i) one

hundred percent with respect to Operating Expenses and other costs and expenses attributable to or incurred in connection with the operation of the 4500 Bohannon Building and (ii) a percentage equal to the Rentable Area of the Premises in the 4600 Bohannon Building divided by the Rentable Area of the 4600 Bohannon Building with respect to Operating Expenses and other costs and expenses attributable to or incurred in connection with the operation of the 4600 Bohannon Building. If the Rentable Area of the Premises or the Rentable Area of either the 4500 Bohannon Building or the 4600 Bohannon Building is changed, then (i) Tenant's Building Percentage Share with respect to the 4500 Bohannon Building shall be adjusted to a percentage equal to the Rentable Area of the Premises in the 4500 Bohannon Building divided by the Rentable Area of the 4500 Bohannon Building and (ii) Tenant's Building Percentage Share with respect to the 4600 Bohannon Building shall be adjusted to a percentage equal to the Rentable Area of the Premises in the 4600 Bohannon Building divided by the Rentable Area of the 4600 Bohannon Building.

1.2.5. Rent. The term "Rent" shall mean Base Rent, Additional Rent, First Increment Base Rent (defined in Section 1.3), Second Increment Base Rent (defined in Section 2.3) and all other amounts payable by Tenant under the Lease.

1.2.6. Base Rent. For purposes of Sections 6.2(e), 7.2, 12.4, 13.2, 14.1, 16.1, 19.12, 25.2(a) and (b) and 25.4 of the Lease, the term "Base Rent" shall mean both the Base Rent, the First Increment Base Rent and the Second Increment Base Rent.

1.3. First Increment Base Rent. In addition to Tenant's obligation to pay to Landlord the Base Rent described in Section 4.1 of the Lease, Tenant shall pay to Landlord base rent with respect to Tenant's lease of the First Increment Expansion Space in the amount of Thirty-Four Thousand Nine Hundred Sixty-One and 14/100 Dollars (\$34,961.14) per month (the "First Increment Base Rent"). The First Increment Base Rent shall be increased on November 15, 2000, and on each November 15 thereafter during the Term by three and one-half percent (3.5%), regardless of whether the First Increment Effective Date has occurred. Tenant's obligation to pay to Landlord the First Increment Base Rent shall commence on the forty-fifth (45th) day after First Increment Effective Date (hereinafter referred to as the "First Increment Rent Commencement Date") and continue thereafter during the Term. Tenant shall pay to Landlord the First Increment Base Rent in advance, on the First Increment Rent Commencement Date and on the first day of each calendar month thereafter, together with Tenant's payment to Landlord of the Base Rent described in Section 4.1 of the Lease, without deduction, abatement or setoff whatsoever. If the First Increment Rent Commencement Date or the last day of the Term is other than the first or last day of a calendar month, respectively, then the First Increment Base Rent for the partial calendar month in which the First Increment Rent Commencement Date or the end of the Term occurs shall be prorated on a per diem basis, based on the number of days in such calendar month.

1.4. Tenant's Share. Effective as of the First Increment Effective Date, the percentages listed below shall be adjusted as follows:

1.4.1. Tenant's Phase Percentage Share. Tenant's Phase Percentage Share shall be equal to the sum of (i) Tenant's Phase Percentage Share immediately prior to the First Increment Effective Date and (ii) six and 38/100ths percent (6.38%), subject to further adjustments in accordance with Section 1.13 of the Lease.

1.4.2. Tenant's Project Percentage Share. Tenant's Project Percentage Share shall be equal to the sum of (i) Tenant's Project Percentage Share immediately prior to the First Increment Effective Date and (ii) two and 93/100ths percent (2.93%), subject to further adjustments in accordance with Section 1.14 of the Lease.

1.5. Term. Effective as of the First Increment Effective Date, the Term shall be extended until the last day of the tenth (10th) year after the later of (i) the First Increment Effective Date or (ii) the Second Increment Effective Date (defined in Section 2.1), subject to extension pursuant to Section 26.1 (e) of the Lease.

1.6. Parking. Effective as of the First Increment Effective Date, the percentage of the available parking spaces in the Phase that Tenant is entitled to use on a non-exclusive basis shall be equal to the sum of (i) the percentage of available parking spaces in the Phase that Tenant is entitled to use immediately prior to the First Increment Effective Date and (ii) six and 38/100ths percent (6.38%).

1.7. Delivery. Landlord shall use commercially reasonable efforts to recover possession of the First Increment Expansion Space from the existing tenant (the "First Increment Existing Tenant") following the expiration of the First Increment Existing Tenant's lease of the First Increment Expansion Space (hereinafter referred to as the "First Increment Existing Lease"). If the First Increment Existing Tenant fails to surrender possession of the First Increment Expansion Space to Landlord within fourteen (14) days after the expiration of the First Increment Existing Lease, Landlord shall file an unlawful detainer action against the First Increment Existing Tenant for recovery of possession of the First Increment Expansion Space and prosecute the action with reasonable diligence until possession of the First Increment Expansion Space is obtained. Landlord shall deliver possession of the First Increment Expansion Space to Tenant in a broom clean condition, with all building systems in working order and the roof in water-tight condition. Except as provided above, Tenant shall accept delivery of the First Increment Expansion Space in its "as is" condition as of the First Increment Effective Date, without any representation or warranty of any kind from Landlord.

2. Second Increment Expansion Space.

2.1. Expansion of Premises. Effective as of the date on which Landlord delivers possession of the Second Increment Expansion Space to Tenant in the condition set forth in Section 2.6 below (the "Second Increment Effective Date"), the Premises shall be expanded to include, in addition to the space then leased to Tenant under the Lease, the Second Increment Expansion Space. Landlord and Tenant agree that for all purposes under the Lease, the Rentable Area of the Second Increment Expansion Space shall be deemed to be the rentable square footage of the Second Increment Expansion Space as stated in Recital B of this Amendment.

2.2. Definitions. Effective as of the Second Increment Effective Date, the following terms contained in the Lease shall have the meanings set forth below:

2.2.1. Premises. The term "Premises" as used in the Lease shall refer to the existing Premises (to the extent the First Increment Effective Date has occurred prior to the Second Increment Effective Date), the First Increment Expansion Space and the Second Increment Expansion Space.

2.2.2. Tenant's Building Percentage Share. The term "Tenant's Building Percentage Share" as used in the Lease shall mean (i) one

hundred percent with respect to Operating Expenses and other costs and expenses attributable to or incurred in connection with the operation of the 4500 Bohannon Building and (ii) a percentage equal to the Rentable Area of the Premises in the 4600 Bohannon Building divided by the Rentable Area of the 4600 Bohannon Building with respect to Operating Expenses and other costs and expenses attributable to or incurred in connection with the operation of the 4600 Bohannon Building. If the Rentable Area of the Premises or the Rentable Area of either the 4500 Bohannon Building or the 4600 Bohannon Building is changed, then (i) Tenant's Building Percentage Share with respect to the 4500 Bohannon Building shall be adjusted to a percentage equal to the Rentable Area of the Premises in the 4500 Bohannon Building divided by the Rentable Area of the 4500 Bohannon Building and (ii) Tenant's Building Percentage Share with respect to the 4600 Bohannon Building shall be adjusted to a percentage equal to the Rentable Area of the Premises in the 4600 Bohannon Building divided by the Rentable Area of the 4600 Bohannon Building.

2.2.3. Rent. The term "Rent" shall mean Base Rent, Additional Rent, First Increment Base Rent (defined in Section 1.3), Second Increment Base Rent (defined in Section 2.3) and all other amounts payable by Tenant under the Lease.

2.2.4. Base Rent. For purposes of Sections 6.2(e), 7.2, 12.4, 13.2, 14.1, 16.1, 19.12, 25.2(a) and (b) and 25.4 of the Lease, the term "Base Rent" shall mean both the Base Rent, the First Increment Base Rent and the Second Increment Base Rent.

2.2.5. Second Increment Base Rent. In addition to Tenant's obligation to pay to Landlord the Base Rent described in Section 4.1 of the Lease, Tenant shall pay to Landlord base rent with respect to Tenant's lease of the Second Increment Expansion Space in the amount of Forty-Five Thousand One Hundred Seventy-One Dollars (\$45,171.00) per month (the "Second Increment Base Rent"). The Second Increment Base Rent shall be increased on November 15, 2000, and on each November 15 thereafter during the Term by three and one-half percent (3.5%), regardless of whether the Second Increment Effective Date has occurred. Tenant's obligation to pay to Landlord the Second Increment Base Rent shall commence on the forty-fifth (45th) day after Second Increment Effective Date (hereinafter referred to as the "Second Increment Rent Commencement Date") and continues thereafter during the Term. Tenant shall pay to Landlord the Second Increment Base Rent in advance, on the Second Increment Rent Commencement Date and, thereafter, on the first day of each calendar month, together with Tenant's payment to Landlord of the Base Rent described in Section 4.1 of the Lease, without deduction, abatement or setoff whatsoever. If the Second Increment Rent Commencement Date or the last day of the Term is other than the first or last day of a calendar month, respectively, then the Second Increment Base Rent for the partial calendar month in which the Second Increment Rent Commencement Date or the end of the Term occurs shall be prorated on a per diem basis, based on the number of days in such calendar month.

2.3. Tenant's Share. Effective as of the Second Increment Effective Date, the percentages listed below shall be adjusted as follows:

2.3.1. Tenant's Phase Percentage Share. Tenant's Phase Percentage Share shall be equal to the sum of (i) Tenant's Phase Percentage Share immediately prior to the Second Increment Effective Date and (ii) eight and 25/100ths percent (8.25%), subject to further adjustments in accordance with Section 1.13 of the Lease.

2.3.2. Tenant's Project Percentage Share. Tenant's Project Percentage Share shall be equal to the sum of (i) Tenant's Project Percentage Share immediately prior to the Second Increment Effective Date and (ii) three and 6/10ths percent (3.6%), subject to further adjustments in accordance with Section 1.14 of the Lease.

2.4. Term. Effective as of the Second Increment Effective Date, the Term shall be extended until the last day of the tenth (10th) year after the later of (i) the First Increment Effective Date or (ii) the Second Increment Effective Date, subject to extension pursuant to Section 26.2(e) of the Lease.

2.5. Parking. Effective as of the Second Increment Effective Date, the percentage of the available parking spaces in the Phase that Tenant is entitled to use on a non-exclusive basis shall be equal to the sum of (i) the percentage of available parking spaces in the Phase that Tenant is entitled to use immediately prior to the Second Increment Effective Date and (ii) eight and 25/100ths percent (8.25%).

2.6. Delivery. Landlord shall use commercially reasonable efforts to recover possession of the Second Increment Expansion Space from the existing tenant (the "Second Increment Existing Tenant") following the expiration of the Second Increment Existing Tenant's lease of the Second Increment Expansion Space (hereinafter referred to as the "Second Increment Existing Lease"). If the Second Increment Existing Tenant fails to surrender possession of the Second Increment Expansion Space to Landlord within fourteen (14) days after the expiration of the Second Increment Existing Lease, Landlord shall file an unlawful detainer action against the Second Increment Existing Tenant for recovery of possession of the Second Increment Expansion Space and prosecute the action with reasonable diligence until possession of the Second Increment Expansion Space is obtained. Landlord shall deliver possession of the Second Increment Expansion Space to Tenant in a broom clean condition, with all building systems in working order and the roof in water-tight condition. Except as provided above, Tenant shall accept delivery of the Second Increment Expansion Space in its "as is" condition as of the Second Increment Effective Date, without any representation or warranty of any kind from Landlord.

3. Security Deposit. Concurrently with the execution of this Amendment, Tenant shall deliver to Landlord an additional security deposit (the "Additional Security Deposit") in the amount of One Hundred Nine Thousand Two Hundred Eleven and 69/100 Dollars (\$109,211.69). The Additional Security Deposit shall be combined with the Security Deposit and secure the performance of all of Tenant's obligations under the Lease. Tenant shall not be entitled to interest on the Additional Security Deposit. From and after the date of this Amendment, the term "Security Deposit" as used in the Lease shall mean both the original Security Deposit and the Additional Security Deposit.

4. Signage. Notwithstanding anything to the contrary contained in the Lease, Tenant may not install, construct or place any exterior signage on the 4600 Bohannon Building.

5. Tenant Improvement Allowance. Landlord shall not be required to pay to Tenant any tenant improvement allowance or inducement in connection with or as a result of Tenant's lease of the Expansion Space.

6. Entire Agreement. This Amendment represents the entire understanding between Landlord and Tenant concerning the subject matter hereof, and there are no understandings or agreements between them relating to the Lease, the Premises or the Expansion Space not set forth in writing and signed by the parties hereto. No party hereto has relied upon any representation, warranty or understanding not set forth herein, either oral or written, as an inducement to enter into this Amendment.

7. Continuing Obligations. Except as expressly set forth to the contrary in this Amendment, the Lease remains unmodified and in full force and effect. To the extent of any conflict between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

"Landlord"

MENLO OAKS PARTNERS, L.P.,
a Delaware limited partnership

By: AM Limited Partners,
a California limited partnership, its General Partner

By: Amarok Menlo, Inc.,
a California corporation, its General Partner

By: /s/ J.Marty Brill, Jr.

J. Marty Brill, Jr. President

"Tenant"

E*TRADE GROUP, INC.
a Delaware corporation

By: /s/ Robert Clegg

Name: Robert Clegg
Its: Vice President Corp Services

By: /s/ Jerry Dark

Name: Jerry Dark
Its: Vice President, Corp Resources

January 18, 1999

VIA FACSIMILE

E*Trade Group, Inc.
2400 Geng Road
Palo Alto, CA 94303
Attn: Mr. Robert Clegg

Re: Lease of 4500 Bohannon Drive, Menlo Park, California

Dear Robert:

Reference is made to that certain Menlo Oaks Corporate Center Standard Business Lease (4500 Bohannon Drive) (the "Lease") dated as of August 18, 1998, by and between Menlo Oaks Partners, L.P., a Delaware limited partnership ("Landlord"), and E*Trade Group, Inc., a Delaware corporation ("Tenant"). Capitalized terms used herein and not defined herein shall have the meanings set forth in the lease.

This letter (this "Letter Agreement") shall evidence Landlord's and Tenant's amendment of the Lease as follows:

1. Preliminary Plans. Landlord hereby approves Tenant's Preliminary Plans described in Exhibit 1, attached hereto.

2. Restoration/Modification Obligation. Tenant shall deliver to Landlord for Landlord's review and approval Tenant's proposed plans and specifications (the "Modification Work Plans") for the restoration and modification work described in Exhibit 2, attached hereto (hereinafter referred to as the "Modification Work"), not later than one hundred twenty (120) days prior to the expiration of the Term; provided, however, if the Lease is terminated prior to the expiration of the Term, then Tenant shall deliver to Landlord for Landlord's review and approval the Modification Work Plans within ninety (90) days after the termination of the Lease. Landlord shall not unreasonably withhold its approval of the Modification Work Plans. Tenant shall complete the Modification Work by the expiration of the Term; provided, however, if the Lease is terminated prior to the expiration of the Term, Tenant shall commence the Modification Work within ten (10) days after Landlord approves the Modification Work Plans and complete the Modification Work within ninety (90) days after the termination of the Lease.

3. Additional Deposit. Within ten (10) days after the execution of this Letter Agreement, Tenant shall deliver to Landlord an additional deposit (the "Additional Deposit") in the amount of Three Hundred Thousand Dollars (\$300,000.00). The Additional Deposit shall secure Tenant's obligations under this Letter Agreement, including Tenant's obligation to perform the Modification Work.

a. Delivery of Letter of Credit. In lieu of depositing the Additional Deposit in cash, Tenant may deliver to Landlord a clean, irrevocable and unconditional letter of credit (the "LC") in compliance with the terms, provisions and requirements of this Section 3, in the amount of the Additional Deposit and issued by a major California financial institution reasonably acceptable to Landlord.

b. Term and Renewal of Letter of Credit. The LC shall be for a term of one (1) year and shall be automatically renewed each year for an additional twelve (12) months from the date of expiration of the LC through the ninetieth (90th) day after the expiration or earlier termination of the Lease. Tenant shall renew, extend or replace the LC as necessary and deliver written evidence thereof to Landlord at least thirty (30) days prior to the expiration date of the LC so that a valid LC which complies with each requirement of this Section 3 is in effect during the entire period required hereby. If Tenant fails to so renew, extend or replace the LC and deliver such written evidence to Landlord, and such failure continues for a period of five (5) days after the date such evidence is due to Landlord, Landlord shall be entitled to immediately draw the entire amount of the LC, and hold such sum as security deposit for Tenant's faithful performance of its obligations under this Letter Agreement. If Landlord draws down on the LC pursuant to this Section 3.b as a result of Tenant's failure to renew, extend or replace the LC and deliver such written notice to Landlord, then Tenant shall have the option of delivering to Landlord a substitute LC which meets all of the requirements set forth in this Section 3 in exchange for Landlord returning to Tenant the portion of the Additional Deposit held by Landlord in cash.

E*Trade Group, Inc.
Attn: Mr. Robert Clegg

January 18, 1999
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c. Amount of Draw on Letter of Credit. Upon the occurrence of a default by Tenant under this Letter Agreement, Landlord shall be entitled to obtain payment under the LC, in such amount as may be required to satisfy Tenant's outstanding obligations under this Letter Agreement and shall apply such amount to said obligations. Specifically, Landlord shall be entitled to obtain partial draws pursuant to the LC in the amounts that Tenant is in default.

d. Manner of Presentment. Landlord is authorized to draw, for the account of Tenant, the amounts allowable pursuant to this Section 3 by a draft, which shall be payable at sight, accompanied by a statement signed by Landlord that (a) Landlord is entitled to draw on the amount set forth in said draft pursuant to this Letter Agreement, or (b) Landlord is entitled to draw on the full amount of the LC as a result of a failure by Tenant to renew, extend or replace the LC pursuant to the terms of this Letter Agreement. Payment of the draft shall be made in the manner agreed upon by the issuing bank, but Tenant hereby consents to such payment in the manner as Landlord may designate in the draft.

e. Return of Additional Deposit. Provided and on the condition that Tenant has performed all of Tenant's Modification Work, Landlord shall return the Additional Deposit to Tenant within ninety (90) days after the expiration or earlier termination of the Lease. If Landlord sells or otherwise transfers Landlord's rights or interest under the Lease, Landlord shall deliver the Additional Deposit to the transferee whereupon Landlord shall be released from any further liability to Tenant with respect to the Additional Deposit.

4. Failure to Timely Perform the Modification Work. If Tenant fails to deliver to Landlord the Modification Work Plans, commence construction of the Modification Work or complete the Modification Work within the time periods or by the dates required pursuant to Section 2 above, then Landlord, by written notice to Tenant, may, but shall not be obligated to, either (i) perform the Modification Work and apply the Additional Deposit toward the cost of performing the Modification Work or (ii) elect not to perform the Modification Work and retain for Landlord's account all or a portion of the Additional Deposit in an amount equal to the estimated cost of performing the Modification Work, as reasonably determined by Landlord. If the cost of completing the Modification Work or exceeds the amount of the Additional Deposit, Tenant shall pay such excess amount to Landlord within ten (10) days after Landlord's written request therefor.

5. Landlord's Election. Notwithstanding anything to the contrary contained in this Letter Agreement, Landlord may elect for Tenant not to perform the Modification Work by written notice to Tenant not later than (i) one hundred eighty (180) days prior to the expiration of the Term or (ii) if the Lease is terminated prior to the expiration of the Term, within ten (10) days after the termination of the Lease. If Landlord elects for Tenant not to perform the Modification Work, Landlord shall return the Additional Deposit to Tenant.

6. Tenant Improvement Allowance.

a. Basic Lease Information. The provisions titled "Additional Allowance" and "Adjustment for Overage" under the heading "Tenant Improvements" in the Basic Lease Information are hereby deleted.

b. Section 4.1 of Work Letter. The first sentence of Section 4.1 of the Work Letter attached as Exhibit C to the Lease is hereby deleted and replaced by the following:

"Landlord shall pay to Tenant upon the terms and conditions set forth in this Section 4 the amount of Three Hundred Fourteen Thousand Six Hundred Dollars (\$314,600.00) as a tenant improvement allowance (the "Tenant Improvement Allowance") toward the cost of designing, constructing and installing the Tenant Improvements in the Building."

c. Section 4.2 of Work Letter. Section 4.2 of the Work Letter is hereby deleted in its entirety.

7. Commencement of Tenant Improvement Work. The date in Section 3.4.6 of the Work Letter shall be changed to February 1, 1999.

E*Trade Group, Inc.
Attn: Mr. Robert Clegg

January 18, 1999
Page 3

8. Condition Precedent. The effectiveness of this Letter Agreement and the obligations of Landlord and Tenant hereunder are conditioned upon the execution by Landlord and Tenant of a separate letter agreement of even date herewith amending that certain Menlo Oaks Corporate Center Standard Business Lease (4200 Bohannon Drive) dated as of August 18, 1998, by and between Landlord, as landlord, and Tenant, as tenant.

9. Counterparts. This Letter Agreement may be executed in one (1) or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall constitute one (1) and the same instrument. This Letter Agreement shall become binding when (i) the condition precedent set forth in Section 8 herein is met and (ii) any one (1) or more counterparts hereof, individually or taken together, shall bear the signatures of Landlord and Tenant.

10. Conflicts. To the extent that any of the terms contained in this Letter Agreement conflict with the Lease, the terms contained in this Letter Agreement shall control.

E*Trade Group, Inc.
Attn: Mr. Robert Clegg

January 18, 1999
Page 4

Except as modified hereby, the Lease is unmodified and in full force and effect.

Please execute this Letter Agreement in the space below (and return the same to me) to evidence your agreement to the foregoing.

Very truly yours,

MENLO OAKS PARTNERS, L.P.,
a Delaware limited partnership

By: AM Limited Partners, a California limited
partnership, its General Partner

By: Amarok Menlo, Inc., a California
corporation, its General Partner

By: /s/ J. Marty Brill, Jr.

Name: J. Marty Brill, Jr.
Its: President

By: /s/ John B. Harrington

Name: John B. Harrington
Its: Vice President/Secretary

AGREED AND ACCEPTED:

E*TRADE GROUP, INC., a Delaware corporation

By: /s/ Robert Clegg

Name: Robert Clegg
Its: Vice President

By: /s/ Len Purkis

Name: Len Purkis
Its: Chief Financial Officer

EXHIBIT 1

PRELIMINARY PLANS

The term "Preliminary Plans" shall refer to the plans listed below prepared by Studios Architecture.

Sheet No.	Title	Date
A0.00	Cover Sheet	10/30/98
A1.11	Building 4500-First Floor Demo Plan	10/30/98
A1.12	Building 4500-Second Floor Demo Plan	10/30/98
A2.11	Building 4500-First Floor Plan	10/30/98
A2.12	Building 4500-Second Floor Plan	10/30/98
A6.11	Building 4500-First Floor R.C.P.	10/30/98
A6.12	Building 4500-Second Floor R.C.P.	10/30/98

EXHIBIT 2

RESTORATION CONDITION SPECIFICATIONS

All citations to "Sheets" refer to the Preliminary Plans.

Item	Modification Work Required
Restrooms located on first floor of Building	Tenant shall demolish the restrooms constructed by Tenant on the first floor and reconstruct the restrooms in the location where the first floor restrooms are located as of the date of the Lease. The finishes within the restrooms shall be the same as used by Tenant in constructing the first floor restrooms as shown on the Preliminary Plans, subject to Landlord's review and approval of such finishes which are to be specified by Tenant's Architect in the Modification Work Plans.
Training room	Tenant shall convert the training room constructed on the first floor of the Building to general purpose office space, compatible with (and with finishes similar to) other general office space within the Building. The general purpose office space shall include, but not be limited to, electrical distribution and mechanical systems in quantities compatible with (and similar to) other general office space within the Building as reasonably determined by Landlord.
Museum	Tenant shall convert the museum constructed on the first floor of the Building, and the floor area occupied by the first floor restroom constructed by Tenant (and to be demolished as described above), to general purpose office space, compatible with (and with finishes similar to) other general office space within the Building. The general purpose office space shall include, but not be limited to, electrical distribution and mechanical systems in quantities compatible with (and similar to) other general office space within the Building as reasonably determined by Landlord.
Ceiling systems	The reflected ceiling plan of the Preliminary Plans indicates that portions of the ceiling existing as of the date of the Lease are to be removed and, following completion of Tenant's work in the Premises, there shall be no suspended ceiling system in these areas but instead the underside of the structure of the second floor, or roof, as the case may be, shall be exposed. In such areas, Tenant shall install a suspended ceiling system to match the adjacent ceiling system, subject to Landlord's review and approval of such system to be specified in the Modification Work Plans, and which shall be installed with a uniform and level grid, as if all of such areas were finished with the ceiling system at the time of Tenant's construction activities. The finishes, including but not limited to mechanical systems, lighting and other electrical distribution shall conform to other general office space within the Building as reasonably determined by Landlord.

Gypsum board ceiling system	The reflected ceiling plan of the Preliminary Plans indicates that portions of the ceiling existing as of the date of the Lease are to be removed and, following completion of Tenant's work in the Premises, in certain areas including the training room on the first floor, and accent areas between grid line B and D on the second floor, gypsum board ceiling will be installed. In such areas, Tenant shall remove the gypsum board ceiling and install a suspended ceiling system to match the adjacent ceiling system specified in the Modification Work Plans, and which ceiling system shall be installed with a uniform and level grid, as if all of such areas were finished with the ceiling system at the time of Tenant's construction activities. The finishes, including but not limited to mechanical systems, lighting and other electrical distribution shall conform to other general office space within the Building as reasonably determined by Landlord.
Building infrastructure	Six (6) doors with frames in good condition, six (6) doors with frames including integral side lights in good condition and VAV boxes that are demolished by Tenant, shall be palletized and delivered to Landlord's designated storage area.
Lobby	The fire rated condition of the lobby will be restored and the gypsum board finishes to the stairway (excluding the handrail/guardrail), the finishes to the stairway landing columns, gypsum board ceiling, and wall finishes will be restored including but not limited to mechanical systems, lighting and other electrical distribution as reasonably determined by Landlord.
Fire Pole	The fire pole that is being installed at the first and second floor of the building will be removed and the affected areas, including but not limited to repair of the penetration in the second floor, shall be restored to general purpose office as reasonably determined by Landlord.

E*Trade Ventures II, LLC

A Delaware Limited Liability Company

LIMITED LIABILITY COMPANY OPERATING AGREEMENT

June 16, 2000

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E*TRADE VENTURES II, LLC
a Delaware Limited Liability Company

OPERATING AGREEMENT

This Operating Agreement is entered into as of the 16th day of June, 2000, by and among (i) Christos M. Cotsakos and Thomas A. Bevilacqua, as managing members (the "Managing Members"), and (ii) E*Trade Group, Inc. ("E*Trade") and each of the other persons whose names are set forth under the heading "Non-Managing Members" on Exhibit A attached hereto, as non-Managing Members (such persons and any additional non-Managing Member admitted after the date of this Agreement being referred to herein as the "Non-Managing Members"). The Managing Members and the Non-Managing Members are referred to herein collectively as the "Members."

The Members have formed the Company by causing a Certificate of Formation (the "Certificate") conforming to the requirements of the Delaware Revised Limited Liability Company Act (the "Act") to be filed in the Office of the Secretary of State for the State of Delaware.

ARTICLE I
NAME, PURPOSE AND
PRINCIPAL OFFICE OF COMPANY

1.1. Name. The name of the Company is "E*Trade Ventures II, LLC." The affairs of the Company shall be conducted under such name or such other name as the Managing Members may, in their discretion, determine. E*Trade hereby grants the Company the right, at no cost, to use the "E*Trade" name for the term of the Company as set forth in Article II hereof.

1.2. Agreement. In consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members executing this Agreement hereby agree to the terms and conditions of this Agreement, as it may be amended from time to time. It is the express intention of the Members that this Agreement shall be the sole statement of agreement among them, and, except to the extent a provision of this Agreement expressly incorporates matters by express reference, this Agreement shall govern even when inconsistent with or different from the provisions of the Act or any other provision of law.

1.3. Purpose; Powers.

(a) Purpose. The primary purpose of the Company is to act as the general partner of E*Trade eCommerce Fund II, L.P. (the "Fund").

(b) Powers. Subject to all of the terms and provisions hereof, the Company shall have all powers necessary, suitable or convenient for the accomplishment of the purpose of the Company, including, without limitation, the following:

(1) to purchase, sell, invest and trade in securities of every kind, including, without limitation, capital stock, limited partnership interests, bonds, notes, debentures, securities convertible into other securities, trust receipts and other obligations, instruments or evidences of indebtedness, as well as in rights, warrants and options to purchase securities;

(2) to make and perform all contracts and engage in all activities and transactions necessary or advisable to carry out the purposes of the Company, including, without limitation, the purchase, sale, transfer, pledge and exercise of all rights, privileges and incidents of ownership or possession with respect to any Company asset or liability; the borrowing or lending of money and the securing of payment of any Company obligation by hypothecation or pledge of, or grant of a security interest in, Company assets; and the guarantee of or becoming surety for the debts of others; and

(3) otherwise to have all the powers available to it as a limited liability company under the Act.

1.4. Registered Office and Agent. The initial address of the Company's registered office in Delaware is 15 East North Street, Dover, Wilmington, County of Kent, and its initial agent at such address for service of process is Incorporating Services Limited. The Managing Members may change the registered office and agent for service of process as they from time to time may determine.

1.5. Principal Office. The principal office of the Company shall initially be located at 4500 Bohannon Street, Menlo Park, California 94025. The Managing Members may change the location of the principal office of the Company at any time.

1.6. Definitions.

(a) Additional Members. This term shall have the meaning ascribed to it in Paragraph 3.2.

(b) Affiliate. With reference to any person, any other person controlling, controlled by or under direct or indirect common control with

such person.

(c) Agreement. This Operating Agreement of E*Trade Ventures II, LLC, a Delaware limited liability company.

(d) Assignee. This term shall have the meaning ascribed to it in Paragraph 5.4.

(e) Bankruptcy. A person or entity shall be deemed bankrupt if:

(1) any proceeding is commenced against such person or entity as "debtor" for any relief under bankruptcy or insolvency laws, or laws relating to the relief of debtors, reorganizations, arrangements, compositions or extensions and such proceeding is not dismissed within ninety (90) days after such proceeding has commenced, or

(2) such person or entity commences any proceeding for relief under bankruptcy or insolvency laws or laws relating to the relief of debtors, reorganizations, arrangements, compositions or extensions.

(f) Book Value. This term shall have the meaning ascribed to it in Paragraph 6.2(a).

(g) Capital Account. This term shall have the meaning ascribed to it in Paragraph 6.2(b).

(h) Capital Commitment. This term shall have the meaning ascribed to it in Paragraph 5.1.

(i) Capital Contribution. This term shall have the meaning ascribed to it in Paragraph 5.1(b).

(j) Carry. The Company's twenty-five percent (25%) carried interest in the income of the Fund.

(k) Certificate. The Certificate of Formation of E*Trade Ventures II, LLC, a Delaware limited liability company.

(l) Code. The Internal Revenue Code of 1986, as amended from time to time (and any corresponding provisions of succeeding law).

(m) Defaulting Member. This term shall have the meaning ascribed to it in Paragraph 5.4(a).

(n) Fiscal Quarter. This term shall have the meaning ascribed to it in Paragraph 6.2(c).

(o) Fiscal Year. This term shall have the meaning ascribed to it in Paragraph 6.2(d).

(p) Management Fee. The management fee receivable by the Company from the Fund.

(q) Net Income or Net Loss. This term shall have the meaning ascribed to it in Paragraph 6.2(e).

(r) Percentage Interest. This term shall have the meaning ascribed to it in Paragraph 6.2(f).

(s) Sale or Exchange. This term shall have the meaning ascribed to it in Paragraph 6.2(g).

(t) Securities Act. The Securities Act of 1933, as amended from time to time.

(u) Securities. Securities of every kind and nature and rights and options with respect thereto, including stock, notes, bonds, debentures, evidences of indebtedness and other business interests of every type, including interests in partnerships, joint ventures, proprietorships and other business entities.

(v) TMP. This term shall have the meaning ascribed to it in Paragraph 13.16.

(w) Termination Date. This term shall have the meaning ascribed to it in Paragraph 2.1.

(x) Treasury Regulations. The Income Regulations promulgated under the Code, as such Regulations may be amended from time to time (including corresponding provisions of succeeding Regulations).

ARTICLE II TERM AND TERMINATION OF THE COMPANY

2.1. Term. The term of the Company shall continue until one (1) year after the dissolution of the Fund unless sooner terminated as provided in Paragraph 2.2 or by operation of law or extended as provided in Paragraph 2.3. The last day of the term of the Company, as such may be extended as provided herein, is referred to herein as the "Termination Date."

2.2. Termination. The Company shall terminate prior to the end of the period specified in Paragraph 2.1 at the election of the Managing Members. The Managing Members shall deliver notice of such termination to the Non-Managing Members.

2.3. Extension of Term. The term of the Company may be extended by the Managing Members. The Managing Members shall provide notice of any such extension to the Non-Managing Members.

ARTICLE III INITIAL MEMBERS; CHANGES IN MEMBERSHIP

3.1. Name and Address. The persons listed on Exhibit A are hereby admitted as Members of the Company. Exhibit A shall be amended from time to time to reflect changes in the membership of the Company (including the admission of Additional Members). Any such amended Exhibit A shall supersede all prior Exhibit A's and become part of this Agreement and shall be kept on file at the principal office of the Company.

3.2. Admission of Additional Members. Individuals involved in the activities of the Company may be admitted to the Company as additional members ("Additional Members") on such terms and conditions as shall be determined by the Managing Members, in their sole discretion. Each Additional Member shall be admitted only if he shall have executed this Agreement or an appropriate amendment to it in which he agrees to be bound by the terms and provisions of this Agreement as they may be modified by that amendment. Admission of a new Member shall not cause the dissolution of the Company. As reflected on Exhibit A, it is anticipated that Additional Members shall have aggregate Percentage Interests of eighteen percent (18%). Unless otherwise agreed by E*Trade, the Managing Members' Percentage Interests shall be equally diluted (and E*Trade's Percentage Interest shall not be diluted) to the extent of Percentage Interests granted to any Additional Members. In the event the Additional Members have aggregate Percentage Interests of less than eighteen percent (18%) at any time (whether by reason of a determination not to admit Additional Members or the withdrawal or failure to vest of an Additional Member), such shortfall shall revert to and be allocated equally among the Managing Members.

3.3. Death, Disability or Withdrawal of a Managing Member.

(a) In the case of a Managing Member's death, permanent physical or mental disability or withdrawal from the Company, the Company shall not dissolve or terminate, but its business shall be continued without interruption or without any break in continuity by the remaining Members, with the remaining Managing Member continuing to serve as the sole Managing Member unless he appoints an additional Managing Member, in his sole discretion. Any deceased, disabled or withdrawn Managing Member (or the holder of his interest) shall become a Non-Managing Member, and the interest of such Managing Member shall become a Non-Managing Member's interest. Such former Managing Member or the holder of such interest shall have no right to participate in

the management of the Company and no right to consent to or vote upon any matter, except as provided in Paragraph 13.7.

(b) If such change in the former Managing Member's status shall result in multiple ownership of any Non-Managing Member's interest, one or more trustees or nominees may be required to be designated to represent a portion of or the entire Non-Managing Member's interest for the purpose of receiving all notices which may be given and all payments which may be made under this Agreement, and for the purpose of exercising all rights which such Non-Managing Member has pursuant to the provisions of this Agreement.

3.4. Withdrawal of a Member.

(a) Except with the consent of the Managing Members, the interest of a Member may not be withdrawn from the Company in whole or in part except in the event of the death or declaration of legal incompetency of such Member and in such event only if the election to withdraw is given by the personal representative or representatives of such Member in writing to the Managing Members within three (3) months after the date of the appointment of such personal representative or representatives, or within six (6) months from the date of death or declaration of legal incapacity of such Member, whichever is earlier. In the event of such election to withdraw, the interest of such Member shall be withdrawn in its entirety and shall be valued as of the date of withdrawal pursuant to the provisions of Paragraph 12.2 and paid for in the manner hereinafter provided by this paragraph. The Managing Members shall be entitled, in their sole discretion, to make the distribution in respect of the interest of the withdrawing Member in cash, in kind or pursuant to a promissory note due upon termination of the Company, or in any combination thereof. If any distribution is to be made in kind and if such distribution cannot be made in full because of restrictions on the transfer of Securities or for any other reason, distribution may be delayed until an effective transfer and distribution may be made, and Securities that will be transferred in respect of the withdrawing Member's interest shall be designated. Such designated Securities will nevertheless be subject to the full right and power of the Managing Members to deal with them in the best interests of the Company, including the right to substitute other Securities of equivalent value.

(b) In the event of the withdrawal of any Member pursuant hereto, the Percentage Interests and Capital Accounts of the withdrawing Member and the remaining Members shall be appropriately adjusted, including any adjustments required as a result of any vesting provisions applicable to the withdrawing Member's interest.

(c) The withdrawal of a Member shall not be cause for dissolution of the Company.

**ARTICLE IV
MANAGEMENT, DUTIES AND RESTRICTIONS**

4.1. Management. The Managing Members shall have the sole and exclusive control of the management and conduct of the affairs of the Company. Any action shall, unless otherwise specified by the Managing Members, require approval of both Managing Members (or the sole remaining Managing Member). The right, power and authority of the Managing Members to carry on the affairs of the Company and to do any and all acts on behalf of the Company shall, subject to any specific limitations set forth in this Agreement and the Limited Partnership Agreement of the Fund, include without limitation the following:

- (a) To cause the Company to perform the duties and exercise the rights of the general partner of the Fund.
- (b) To purchase, hold, sell or otherwise effect transactions in Securities (whether marketable or unmarketable) and other investments of the Company.
- (c) To incur indebtedness on behalf of the Company and the Fund.
- (d) To guarantee indebtedness on behalf of the Company and the Fund.
- (e) To loan money to any of the Members upon such terms and conditions as the Managing Members may prescribe.
- (f) To deposit or hold Securities and other assets of the Company in the Company's name or in such street or nominee names as may be determined from time to time by the Managing Members, at such

securities firms, banks or depositories as shall be designated by the Managing Members. All withdrawals therefrom or directions with respect thereto shall be made on the signature of either Managing Member.

(g) To provide management services or to designate an entity or entities to manage the Fund and to receive fees from the Fund and to enter into an agreement or agreements with such an entity or entities upon such terms and conditions as the Managing Members shall deem appropriate for the management of the Fund. Such an agreement or agreements may be entered into with firms or business entities controlled by or comprised of either or both Managing Members or an Affiliate of either or both Managing Members.

(h) Generally, to perform all acts deemed by the Managing Members appropriate or incidental to the foregoing and to carry out the purposes and business of the Company and the Fund.

4.2. Conversion of Status as Managing Member. Any Managing Member who has become a Non-Managing Member shall not participate in the control, management and direction of the business of the Company or the Fund.

4.3. Liability of Members to the Company and the Other Members. No Member shall be liable to any other Member for honest mistakes in judgment or for action or inaction taken in good faith for a purpose that was reasonably believed to be in the best interests of the Company, or for losses due to such mistakes, action or inaction, or for the negligence, dishonesty or bad faith of any employee, broker or other agent of the Company; provided that such employee, broker or agent was selected, engaged or retained with reasonable care. Each Managing Member and, with the consent of the Managing Members, a Non-Managing Member, may consult with counsel and accountants on matters relating to Company affairs and shall be fully protected and justified in acting in accordance with the advice of counsel or accountants, provided that such counsel or accountants shall have been selected with reasonable care. Notwithstanding any of the foregoing to the contrary, the provisions of this Paragraph 4.3 shall not be construed so as to relieve (or attempt to relieve) any person of any liability incurred (i) as a result of recklessness or intentional wrongdoing, or (ii) to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, provided that this Paragraph 4.3 shall be construed so as to effectuate the provisions hereof to the fullest extent permitted by law.

4.4. Restrictions on the Members.

(a) Except with the consent of the Managing Members or as otherwise specifically permitted by this Agreement, no Member shall mortgage, encumber, pledge or otherwise dispose of his or her interest in the Company or in the Company's assets or property or enter into any agreement as a result of which any other person shall have rights as a Member of the Company.

(b) No Member may buy from or sell to the Company any Securities without the prior written consent of the Managing Members except purchases or sales explicitly permitted by this Agreement.

(c) No Member shall do any act in contravention of this Agreement or the Fund's Limited Partnership Agreement.

4.5. Additional Restrictions on Non-Managing Members.

(a) The Non-Managing Members shall take no part in the control or management of the affairs of the Company nor shall Non-Managing Members have any power or authority to act for or on behalf of the Company as a result of this Agreement except as expressly authorized from time to time by the Managing Members.

(b) Except as otherwise required by law or as expressly provided herein, the Non-Managing Members shall have no rights to vote, call meetings of the Members or otherwise exercise any similar rights or powers.

4.6. Officers. The Managing Members may appoint such officers of the Company as they shall deem advisable and shall have the discretion to remove any officers at any time.

**ARTICLE V
CAPITAL CONTRIBUTIONS**

5.1. Capital Commitments and Membership Interests of the Members. Set forth opposite the name of each Member listed on Exhibit A attached hereto is such Member's "Capital Commitment" to the Company and its percentage membership interest in the Company ("Percentage Interest"). Each Member's Capital Commitment represents the aggregate amount of capital that such Member has agreed to contribute to the Company in accordance with the terms hereof in order to fund the Company's capital commitment to the Fund. Exhibit A shall be amended from time to time to reflect any changes to the Capital Commitments and Percentage Interests of the Members.

(a) The Managing Members shall provide at least twelve (12) business days' prior written notice of any required contribution to the capital of the Company, specifying the amount thereof. The Members shall make their contributions to the Company's capital in cash, except as otherwise determined by the Managing Members (who may allow contributions in the form of promissory notes). No Member shall be required to contribute any amount in excess of such Member's Capital Commitment (as such Capital Commitment may be increased pursuant to subparagraph (a)) without such Member's written consent. Any capital contributions hereunder with respect to the Capital Commitments of the Members (each a "Capital Contribution") shall be made in such amount as shall be specified by the Managing Members and any such contributions required hereunder shall be in proportion to the Members' respective Capital Commitments.

(b) In addition to the Capital Commitments set forth on Exhibit A, E*Trade shall make Capital Contributions (up to a maximum of \$250,000) to fund any excess of the Company's operating expenses in excess of the Management Fee. E*Trade's Percentage Interest shall not be increased as a result of such Capital Contributions.

5.2. Liability of the Members.

(a) Except as expressly set forth herein, or as otherwise required by law, no Member shall be liable for any debts or obligations of the Company.

(b) Each Member acknowledges the obligation of the Company pursuant to the Limited Partnership Agreement of the Fund to contribute to the capital of the Fund cash or Securities to satisfy the Company's "clawback" obligation to the Fund. Each Member agrees that, in the event the Company is required to make a "clawback" payment pursuant to the Limited Partnership Agreement of the Fund, he or she will return any or all distributions made to him or her pursuant to this Agreement attributable to the Company's carried interest in the Fund as may be required to satisfy such obligation, with each Member being severally (but not jointly) liable, in proportion to their respective shares in such distributions.

5.3. Liability of Transferees. For purposes of this Agreement, any transferee of an interest in the Company, whether or not admitted as a substitute Member or treated as a transferee or successor in interest who has not been admitted as a substitute Member (an "Assignee") hereunder, shall be treated as having contributed the amounts contributed to the Company by the transferor, as having received distributions made to the transferor, and as having been allocated any Net Income or Net Loss allocated to the transferor of the interest in the Company held by the transferee. In addition, the transferee shall be liable for the transferor's liability for future contributions to the Company. Notwithstanding the above, the transfer of an interest shall not relieve the transferor from any liability hereunder except to the extent that the transferee has actually made all contributions or payments required of the transferor.

5.4. Defaulting Members.

(a) If a Non-Managing Member fails to pay any amount which it is required to pay to the Company on or before the date when such amount is due and payable, such Non-Managing Member shall be deemed to be in default hereunder (a "Defaulting Member"), and written notice of default shall be given to such Non-Managing Member by the Managing Members. The Company shall be entitled to enforce the obligations of each Non-Managing Member to make the contributions to capital specified in this Agreement, and the Company shall have all remedies available at law or in equity in the event any such contribution is not so made. In the event of any legal proceedings relating to a default by a Defaulting Member, such Defaulting Member shall pay all costs and expenses incurred by the Company, including attorneys' fees, if the Company shall prevail. Further, such Defaulting Member shall be obligated to pay the Company interest with respect to the amount of any capital contribution not

made when required by this Agreement, with such interest commencing on the date such contribution is initially due and ending on the date such contribution is made to the Company. Such interest shall be calculated on the basis of the then current reference rate announced by Wells Fargo Bank, N.A., or by any other U.S. commercial bank with capital in excess of Five Hundred Million Dollars (\$500,000,000) selected by the Managing Members, plus two percent (2%) per annum.

(b) In addition to the remedies provided under Paragraph 5.4(a), if the Defaulting Member does not remedy a default in the payment of a required contribution within ten (10) business days of the receipt of the notice specified in Paragraph 5.4(a): (i) the Defaulting Member shall no longer have the right (if any) to vote on any Company matter, and (ii) if the Managing Members so elect, the other Members shall have the option to pay the remaining capital contributions of the Defaulting Member in accordance with any procedures and in such proportions as may be established by the Managing Members. In such event, such Defaulting Member shall be deemed to have withdrawn from the Company and to have forfeited its interest in the Net Income and Net Losses of the Company. Such Defaulting Member shall be entitled to receive only the amount of its Capital Account at the time of the default, with such amount payable, without interest, to the Defaulting Member upon the dissolution of the Company.

ARTICLE VI CAPITAL ACCOUNTS AND ALLOCATIONS

6.1. Capital Accounts. A Capital Account shall be maintained on the Company's books for each Member. In the event any interest in the Company is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

6.2. Definitions. Unless the context requires otherwise, the following terms have the meanings specified below for purposes of this Agreement:

(a) Book Value. The Book Value with respect to any asset shall be the asset's adjusted basis for federal income tax purposes, except as follows:

(1) The initial Book Value of any asset contributed by a Member to the Company shall be the fair market value of such asset at the time of contribution, as determined by the contributing Member and the Company.

(2) In the discretion of the Managing Members, the Book Values of all Company assets may be adjusted to equal their respective fair market values, as determined by the Managing Members, and the amount of such adjustment shall be treated as Net Income or Net Loss and allocated to the Capital Accounts of the Members, as of the following times: (A) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* capital contribution; and (B) the distribution by the Company to a Member of more than a *de minimis* amount of Company assets in connection with an adjustment of such Member's interest in the Company.

(3) The Book Values of all Company assets shall be adjusted to equal their respective fair market values, as determined by the Managing Members, and the amount of such adjustment shall be treated as Net Income or Net Loss and allocated to the Capital Accounts of the Members, as of the following times: (A) the date the Company is liquidated within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g); and (B) the termination of the Company pursuant to the provisions of this Agreement.

(4) The Book Values of the Company's assets shall be increased or decreased to the extent required under Treasury Regulation Section 1.704-1(b)(2)(iv)(m) in the event that the adjusted tax basis of the Company's assets is adjusted pursuant to Code Section 732, 734 or 743.

(5) The Book Value of a Company asset shall be adjusted by the depreciation, amortization or other cost recovery deductions, if any, taken into account by the Company with respect to such asset in computing Net Income or Net Loss.

(b) Capital Account. An account maintained by the Company with respect to each Member in accordance with the following provisions:

The Capital Account of each Member shall be increased by:

(1) the amount of money and the fair market value of any property contributed to the Company by such Member (in the case of a contribution of property, net of any liabilities secured by such property that the Company is considered to assume or hold subject to for purposes of Section 752 of the Code),

(2) such Member's share of Net Income (or items thereof) allocated to his Capital Account pursuant to this Agreement, and

(3) any other amounts required by Treasury Regulation Section 1.704-1(b), provided the Managing Member determines that such increase is consistent with the economic arrangement among the Members as expressed in this Agreement.

and shall be decreased by:

(A) the amount of money and the fair market value of any property distributed by the Company (determined pursuant to Paragraph 12.2 hereof as of the date of distribution) to such Member pursuant to the provisions of this Agreement (net of any liabilities secured by such property that such Member is considered to assume or hold subject to for purposes of Section 752 of the Code),

(B) such Member's share of or Net Loss (or items thereof) allocated to his Capital Account pursuant to this Agreement, and

(C) any other amounts required by Treasury Regulation Section 1.704-1(b), provided the Managing Member determines that such decrease is consistent with the economic arrangement among the Members as expressed in this Agreement.

(c) Fiscal Quarter. The Fiscal Quarters of the Company shall begin on January 1, April 1, July 1 and October 1, and end on March 31, June 30, September 30 and December 31, respectively, except that the Company's first Fiscal Quarter shall begin on the date of this Agreement and end on the next regular quarterend.

(d) Fiscal Year. The Company's first Fiscal Year shall begin on the date of this Agreement and end on December 31, 2000. Thereafter, the Company's Fiscal Year shall commence on January 1 of each year and end on December 31 of such year or, if earlier, the date the Company terminated during such year. The Managing Members may at any time elect a different Fiscal Year if permitted by the Code and the applicable Treasury Regulations.

(e) Net Income and Net Loss. The net book income or loss of the Company for any relevant period, as computed in accordance with federal income tax principles and as adjusted pursuant to the following provisions, under the method of accounting elected by the Company for federal income tax purposes. The Net Income or Loss of the Company shall be computed, *inter alia*, by:

(1) including as income or deductions, as appropriate, any tax-exempt income and related expenses that are neither properly included in the computation of taxable income nor capitalized for federal income tax purposes;

(2) including as a deduction when paid or incurred (depending on the Company's method of accounting) any amounts utilized to organize the Company or to promote the sale of (or to sell) an interest in the Company, except that amounts for which an election is properly made by the Company under Section 709(b) of the Code shall be accounted for as provided therein;

(3) including as a deduction any losses incurred by the Company in connection with the sale or exchange of property notwithstanding that such losses may be disallowed to the Company for federal income tax purposes under the related party rules of Code Section 267(a)(1) or 707(b); and

(4) calculating the gain or loss on disposition of Company assets and the depreciation, amortization or other cost recovery deductions, if any, with respect to the Company's assets by reference to their Book Value rather than their adjusted tax basis.

(f) Percentage Interest. The Percentage Interest for each Member shall generally be as set forth on Exhibit A, as it may be amended from time to time. The sum of the Members' Percentage Interests shall be one hundred percent (100%).

(g) Sale or Exchange. A sale, exchange, liquidation or similar transaction, event or condition with respect to any assets (except realizations of purchase discounts on commercial paper, certificates of deposit or other money-market instruments) of the Company of the type that would cause any realized gain or loss to be recognized for income tax purposes under the Code (as determined without giving effect to the related party rules of Code Sections 267(a)(1) and 707(b)).

6.3. Allocation of Net Income or Loss.

(a) All Net Income or Loss of the Company attributable to the Company's investment in the Fund shall be allocated among the Members in proportion to their Capital Contributions used to fund such investment.

(b) All Net Income or Loss attributable to the Company's Carry shall be allocated among the Members in proportion to their Percentage Interests; provided that the Managing Members may, in their discretion, determine to allocate up to twenty percent (20%) of E*Trade's allocable share of the Net Income attributable to the Carry realized in a particular year to other Members. The Managing Members shall make any determination to make such an allocation within two (2) months after the end of each Fiscal Year.

(c) Any Net Income attributable to the Company's operations shall be allocated among the Members previously allocated any cumulative Net Loss attributable to the Company's operations in the reverse order of, and in proportion to, such previous allocations, with any such remaining Net Income being allocated entirely to E*Trade. Any Net Loss attributable to the Company's operations shall be allocated entirely to E*Trade to the extent of the sum of any cumulative Net Income previously allocated to E*Trade and any Capital Contributions made by E*Trade to fund such Net

Losses pursuant to Paragraph 5.1(c), with any such remaining Net Loss being allocated among the Members in proportion to their Capital Contributions (other than pursuant to Paragraph 5.1(c)). For this purpose, Net Income or Loss attributable to the Company's operations shall mean the Management Fee received by the Company reduced by all expenses of the Company other than expenses directly attributable to the Company's investment in the Fund or the Company's Carry, as determined by the Managing Members, in their discretion. Notwithstanding the foregoing, if there is a change in control of E*Trade, the Managing Members may, in their discretion, allocate any Net Income attributable to the Company's operations among the Members in the manner they deem appropriate.

ARTICLE VII EXPENSES

The Company will pay all costs and expenses incurred in connection with its activities. The Members shall be entitled to reimbursement by the Company for expenses incurred by them relating to the Company's business, as determined by the Managing Members in their discretion.

ARTICLE VIII DISTRIBUTIONS

8.1. Interest. No interest shall be paid to any Member on account of his interest in the capital of, or on account of his investment in, the Company.

8.2. Mandatory Distributions. Promptly upon receipt of any tax distributions from the Fund, the Managing Members shall distribute such tax distributions to the Members in proportion to their interests in the taxable income of the Company for the period to which such distributions relate.

8.3. Discretionary Distributions. The Managing Members may in their discretion make additional distributions of cash or Securities among the Members (not including any Defaulting Members).

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(a) The distribution pursuant to this Paragraph 8.3 shall be made among the Members as follows (with the source of a particular distribution being in the discretion of the Managing Members):

(1) To E*Trade or other Members allocated Net Income pursuant to Paragraph 6.3(c), to the extent of and in proportion to their respective shares of the cumulative amount of such undistributed Net Income allocated to them, to the extent attributable to any excess of the Management Fee received over the Company's operating expenses (taking into account as current or projected expenses any payments of compensation to the Managing Members for their management of the Company if they are no longer employed by E*Trade).

(2) Among the Members in proportion to their respective shares of the cumulative amount of undistributed Net Income attributable to the Company's Carry to the extent made from such undistributed Net Income.

(3) Among the Members in proportion to their respective shares of the cumulative amount of undistributed Net Income attributable to the Company's investment in the Fund to the extent made from such undistributed Net Income.

(4) Among the Members in proportion to their Capital Contributions to the extent constituting a return of capital.

(b) Immediately prior to any distribution in kind of Securities (or other assets) pursuant to any provision of this Agreement, the difference between the fair market value and the Book Value of any Securities (or other assets) distributed shall be allocated to the Capital Accounts of the Members as Net Income or Net Loss pursuant to Article VI.

(c) Securities distributed in kind pursuant to this Paragraph 8.3 shall be subject to such conditions and restrictions as the Managing Members determine are legally required.

ARTICLE IX ASSIGNMENT OR TRANSFER OF MEMBERS' INTERESTS

9.1. Restrictions on Transfer of Members' Interests. No Member may sell, assign, pledge, mortgage or otherwise dispose of all or any portion of his interest in the Company without the consent of the Managing Members.

9.2. Opinion of Counsel. Notwithstanding any other provision of this Agreement, no transfer or other disposition of an interest in the Company shall be permitted until the Managing Members shall have received, or waived receipt of, an opinion of counsel reasonably satisfactory to them that the effect of such transfer or disposition would not:

(a) result in a violation of the Securities Act;

(b) require the Company to register as an investment company under the Investment Company Act of 1940, as amended;

(c) require the Company or the Fund to register as an investment adviser under the Investment Advisers Act of 1940, as amended;

(d) result in a termination of the Company for tax purposes, if such termination would have a material adverse effect on the Members;

(e) result in a violation of any law, rule or regulation by the Members or the Company;

(f) cause the Company to be characterized as a "publicly traded partnership" (within the meaning set forth in Sections 512, 7704(b) and 469(k) of the Code) or materially increase the risk that the Company will be so characterized.

Such legal opinion shall be provided to the Managing Members by the Company's counsel. All costs associated with such opinion shall be borne by the transferring Member.

9.3. Violation of Restrictions. In the event of any purported transfer or other disposition of any Member's interest in the Company in violation of the provisions of this Article IX, without limiting any other rights of the Company, the Managing Members shall have the option, in their sole discretion, to treat the Member as having withdrawn from the Company and to purchase or cause the Company to purchase such Member's interest for cash at a price equal to the value thereof determined by the Managing Members as of a date selected by them. In the event of purchase, the terminated Member's and the remaining Members' interests in the Company shall be appropriately adjusted, and the subject Member (and his purported transferee) shall have no further interest in the Company except to receive the purchase price, if any, for his interest as determined by the Managing Members. Such option must be exercised, if at all, by written notice to the affected Member (or his successor(s) in interest) given not later than ninety (90) days after the Managing Members are advised in writing of the purported transfer or disposition, and the purchase or withdrawal shall be consummated on the date specified in such notice, which shall not be later than sixty (60) days after it is given.

9.4. Agreement Not to Transfer. Each of the Members agrees with all other Members that he, she or it will not make any disposition of his, her or its interest in the Company, except as permitted by the provisions of this Article IX.

9.5. Multiple Ownership. In the event of any disposition which shall result in multiple ownership of any Member's interest in the Company, the Managing Members may require one or more trustees or nominees to be designated to represent a portion of or the entire interest transferred for the purpose of receiving all notices which may be given and all payments which may be made under this Agreement and for the purpose of exercising all rights which the transferor as a Member had pursuant to the provisions of this Agreement.

9.6. Substitute Members. No transferee of a Member's interest may be admitted to the Company as a substitute Member without the consent of the Managing Members, which consent shall be subject to the sole discretion of the Managing Members and shall not be subject to challenge by any transferor or transferee.

ARTICLE X VESTING OF PERCENTAGE INTERESTS

10.1. Vesting of Managing Members' and E*Trade's Interests. The Managing Members' and E*Trade's interests in the Company shall be one hundred percent (100%) vested as of the date hereof.

10.2. Vesting of Other Non-Managing Members' and Additional Members' Interests. The interest in the Company of any Non-Managing Member (other than E*Trade) and of any Additional Member shall vest in accordance with a vesting schedule (if any) established by the Managing Members for such other Non-Managing Member or Additional Member. Any amounts allocated Non-Managing Members or Additional Members that, for any reason, do not vest shall revert to the Members whose interest in such amounts were diluted by the original allocation of such amounts to such Non-Managing Member or Additional Member.

ARTICLE XI DISSOLUTION AND LIQUIDATION OF THE COMPANY

11.1. Liquidation Procedures. Upon termination of the Company in accordance with Article II:

- (a) The affairs of the Company shall be wound up and the Company shall be dissolved. The Managing Members shall serve as the liquidators.
- (b) Distributions in dissolution may be made in cash or in kind or partly in cash and partly in kind.
- (c) The Managing Members shall use their best judgment as to the most advantageous time for the Company to sell investments or to make distributions in kind provided that any such sales shall be made as promptly as is consistent with obtaining the fair value thereof.
- (d) The proceeds of dissolution shall be applied to payment of liabilities of the Company and distributed to the Members in the following order:
 - (1) to the creditors of the Company in the order of priority established by law;

- (2) to the Members, in respect of the positive balances in their Capital Accounts, after all Net Income or Net Loss arising upon the liquidation (including amounts arising in connection with a distribution of Securities) has been allocated among the Members.

ARTICLE XII FINANCIAL ACCOUNTING AND REPORTS

12.1. Tax Accounting and Reports. The Managing Members shall cause the Company's tax return and IRS Form 1065, Schedule K-1, to be prepared and delivered in a timely manner to the Non-Managing Members (but in no event later than ninety (90) days after the close of each of the Company's Fiscal Years).

12.2. Valuation of Securities and Other Assets Owned by the Company.

- (a) Subject to the specific standards set forth below, the valuation of Securities and other assets and liabilities under this Agreement shall be at fair market value. In determining the value of the interest of any Member or in any accounting between the Members, no value shall be placed on the goodwill or the name of the Company. Upon dissolution of the Company, the Company's name and any goodwill associated with the name shall be distributed to E*Trade.
- (b) The following criteria shall be used for determining the fair market value of Securities.

(1) Securities not subject to investment letter or other similar restrictions on free marketability:

(A) If traded on one (1) or more securities exchanges or traded on NASDAQ, the value of each Security shall be deemed to be the Security's closing price as reported in the Wall Street Journal or another nationally recognized publication or service that reports such data for the valuation date.

(B) If actively traded over-the-counter (but not on NASDAQ), the value shall be deemed to be the closing bid price of such Security on the valuation date.

(C) If there is no active public market, the Managing Members shall make a determination of the fair market value on the valuation date, taking into consideration developments concerning the issuing company subsequent to the acquisition of its Securities, the pricing of other private placements of Securities by the issuer, the price of the Securities of other companies comparable to the issuer, any financial data and projections of the issuing company provided to the Managing Members and such other factor or factors as the Managing Members may deem relevant.

(2) In the case of Securities subject to legal or contractual restrictions on free marketability, appropriate adjustments to the value determined under Paragraph 12.2(b)(1) above shall be made to reflect the effect of the restrictions on transfer.

(3) The value of the Company's interest in the Fund shall be the fair market value of the Company's interest in the Securities (and other assets) of the Fund.

(4) If the Managing Members in good faith determine that, because of special circumstances, the valuation methods set forth in this Paragraph 12.2 do not fairly determine the value of a Security, the Managing Members shall make such adjustments or use such alternative valuation method as they deem appropriate.

12.3. Supervision; Inspection of Books. Proper and complete books of account of the affairs of the Company shall be kept under the supervision of the Managing Members at the principal office of the Company. Such books shall be open to inspection by a Non-Managing Member, at any reasonable time, upon reasonable notice, during normal business hours.

12.4. Confidentiality. All information provided to Non-Managing Members under this Article XII shall be used by Non-Managing Members in furtherance of their interests as Non-Managing Members and, subject to

disclosures required by applicable law, each Non-Managing Member hereby agrees to maintain the confidentiality of such financial statements and other information provided to Non-Managing Members hereunder.

ARTICLE XIII OTHER PROVISIONS

13.1. Execution and Filing of Documents. The Managing Members shall execute and file a Certificate conforming to the requirements of the Act in the office of the Secretary of State for the State of Delaware and shall execute a fictitious business name statement and file or cause such statement to be filed if required by Delaware law.

13.2. Other Instruments and Acts. The Members agree to execute any other instruments or perform any other acts that are or may be necessary to effectuate and carry on the Company.

13.3. Binding Agreement. This Agreement shall be binding upon the transferees, successors, assigns and legal representatives of the Members.

13.4. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware as applied to agreements among Delaware residents made and to be performed entirely within Delaware.

13.5. Notices. Any notice or other communication that a Member desires to give to another Member shall be in writing and shall be deemed effectively given upon personal delivery or upon deposit in any United States mail box, by registered or certified mail, postage prepaid, or upon transmission by telegram or telecopy, addressed to the other Member at the address shown in the exhibits attached to this Agreement or at such other address as a Member may designate by fifteen (15) days' advance written notice to the other Members.

13.6. Power of Attorney. By signing this Agreement, each Non-Managing Member designates and appoints each of the Managing Members as its true and lawful attorney, in its name, place and stead to make, execute, sign and file such instruments, documents or certificates that may from time to time be required of the Company by the laws of the United States of America, the laws of the State of Delaware or any other state in which the Company shall conduct its investment activities in order to qualify or otherwise enable the Company to conduct its affairs in such jurisdictions; provided, however, that in no event shall the Managing Members be deemed to have the authority under this Paragraph 13.6 to take any action that would result in any Non-Managing Member losing the limitation on liability afforded hereunder.

13.7. Amendment Procedure. This Agreement (and any exhibits to this Agreement) may be amended only with the written consent of the Managing Members. No amendment shall, however, (i) enlarge the obligations of any Member under this Agreement without the written consent of such Member, (ii) dilute the relative interest of any Member in the Net Income, Net Loss, distributions or capital of the Company without the written consent of such Member (except such dilution as may result from additional capital contributions from the Members or the admission of Additional Members as specifically permitted pursuant to this Agreement or as a result of a termination or withdrawal of a Non-Managing Member), or (iii) alter or waive the terms of this Paragraph 13.7 or Paragraphs 13.14 and 13.17. The Managing Members shall promptly furnish copies of any amendments to this Agreement and the Company's Certificate to all Members.

13.8. Effective Date. This Agreement shall be effective on the date set forth in the first paragraph of this Agreement.

13.9. Entire Agreement. This Agreement constitutes the entire agreement of the Members and supersedes all prior agreements between the Members with respect to the Company.

13.10. Titles; Subtitles. The titles and subtitles used in this Agreement are used for convenience only and shall not be considered in the interpretation of this Agreement.

13.11. Company Name. The Company shall have the exclusive ownership and right to use the Company name (and any name under which the Company shall elect to conduct its affairs) as long as the Company continues.

13.12. Exculpation. Neither the Managing Members nor their Affiliates shall be liable to a Non-Managing Member or the Company for honest mistakes of judgment, for action or inaction taken reasonably and in good faith for a purpose that was reasonably believed to be in the best interests of the Company, for losses

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due to such mistakes, action or inaction, or to the negligence, dishonesty or bad faith of any employee, broker or other agent of the Company, the Managing Members or their Affiliates provided that such employee, broker or agent was selected, engaged or retained and supervised with reasonable care, provided that this Paragraph 13.12 shall not extend to any action which constitutes fraud, willful misconduct or gross negligence. The Managing Members may consult with counsel and accountants in respect of Company affairs and be fully protected and justified in any action or inaction that is taken in accordance with the advice or opinion of such counsel or accountants, provided that they shall have been selected with reasonable care. Notwithstanding any of the foregoing to the contrary, the provisions of this Paragraph 13.12 and of Paragraph 13.13 hereof shall not be construed so as to relieve (or attempt to relieve) any person of any liability by reason of recklessness or intentional wrongdoing or to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but shall be construed so as to effectuate the provisions of this Paragraph 13.12 and of Paragraph 13.13 to the fullest extent permitted by law.

13.13. Indemnification. The Company agrees to indemnify, out of the assets of the Company only, the Managing Members and their Affiliates (and their agents), to the fullest extent permitted by law and to save and hold them harmless from and in respect of all (a) reasonable fees, costs, and expenses paid in connection with or resulting from any claim, action or demand against the Managing Members, their Affiliates or any agent thereof, the Company or their agents that arise out of or in any way relate to the Company, its properties, business or affairs and (b) such claims, actions and demands and any losses or damages resulting from such claims, actions and demands, including amounts paid in settlement or compromise of any such claim, action or demand; provided, however, that this indemnity shall not extend to conduct not undertaken in good faith nor to any fraud, willful misconduct or gross negligence. Any person receiving an advance with respect to expenses shall be required to agree to return such advance to the Company in the event it is subsequently determined that such person was not entitled to indemnification hereunder. Any indemnified party shall promptly seek recovery under any other indemnity or any insurance policies by which such indemnified party may be indemnified or covered or from any portfolio company in which the Company has an investment, as the case may be. No payment or advance may be made to any person under this Paragraph 13.13 to any person who may have a right to any other indemnity (by insurance or otherwise) unless such person shall have agreed, to the extent of any other recovery, to return such payments or advances to the Company.

13.14. Limitation of Liability of Members. Except as otherwise expressly provided herein or as required by Delaware law, no Member shall be bound by, nor be personally liable for, the expenses, liabilities or obligations of the Company in excess of the balance of such Member's Capital Commitment to the Company.

13.15. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in San Francisco, California, in accordance with the rules, then obtaining, of the American Arbitration Association. Any award shall be final, binding and conclusive upon the parties. A judgment upon the award rendered may be entered in any court having jurisdiction thereof.

13.16. Tax Matters Partner. Thomas A. Bevilacqua shall be the Company's Tax Matters Partner under the Code ("TMP"). The TMP shall have the right to resign by giving thirty (30) days' written notice to the Members. Upon the resignation, dissolution or Bankruptcy of the TMP, a successor TMP shall be elected by a majority in interest of the other Members. The TMP shall employ experienced tax counsel to represent the Company in connection with any audit or investigation of the Company by the Internal Revenue Service ("IRS") and in connection with all subsequent administrative and judicial proceedings arising out of such audit. The fees and expenses of such, and all expenses incurred by the TMP in serving as the TMP, shall be Company expenses and shall be paid by the Company. Notwithstanding the foregoing, it shall be the responsibility of the Members, at their expense, to employ tax counsel to represent their respective separate interests. If the TMP is required by law or regulation to incur fees and expenses in connection with tax matters not affecting each of the Members, then the TMP may, in his sole discretion, seek reimbursement from or charge such fees and expenses to the Members on whose behalf such fees and expenses were incurred. The TMP shall keep the Members informed of all administrative and judicial proceedings, as required by Section 6223(g) of the Code, and shall furnish a copy of each notice or other communication received by the TMP from the IRS to each Member, except such notices or communications as are sent directly to such Member by the IRS. The relationship of the TMP to the Members is that of a fiduciary, and the TMP has a fiduciary obligation to perform his duties as TMP in such manner as will serve the best interests of the Company and all of the Company's Members. To the fullest extent permitted by law, the Company agrees to indemnify the TMP and his agents and save and hold them harmless from and in respect to all (i) reasonable fees, costs and expenses in connection with or resulting from any claim, action or demand against the TMP, the Managing Members or the Company that arise out of or in any way relate to the TMP's status as TMP for

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the Company, and (ii) all such claims, actions and demands and any losses or damages therefrom, including amounts paid in settlement or compromise of any such claim, action or demand; provided that this indemnity shall not extend to conduct by the TMP adjudged (i) not to have been undertaken in good faith to promote the best interests of the Company or (ii) to have constituted recklessness or intentional wrongdoing by the TMP.

13.17. Taxation as Company. The Managing Members, while serving as such, agree to use their best efforts to avoid taking any action that would cause the Company to be classified as other than a partnership for federal income tax purposes.

ARTICLE XIV MISCELLANEOUS TAX COMPLIANCE PROVISIONS

14.1. Substantial Economic Effect. The provisions of this Agreement are intended to comply generally with the provisions of Treasury Regulation Section 1.704-1, and shall be interpreted and applied in a manner consistent with such Regulations; and, to the extent the subject matter thereof is otherwise not addressed by this Agreement, the provisions of Treasury Regulations Section 1.704-1 are hereby incorporated by reference unless the Managing Members shall determine that such incorporation will result in economic consequences inconsistent with the economic arrangement among the Members as expressed in this Agreement. In the event the Managing Members shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed or allocated or the manner in which distributions and contributions upon liquidation (or otherwise) of the Company (or any Member's interest therein) are effected in order to comply with such Regulations and other applicable tax laws, or to assure that the Company is treated as a partnership for tax purposes, or to achieve the economic arrangement of the Members as expressed in this Agreement, then, notwithstanding anything in this Agreement to the contrary, the Managing Members may make such modification, provided that it is not likely to have a material detrimental effect on the tax consequences and total amounts distributable to any Non-Managing Member pursuant to Articles VIII and XI as applied without giving effect to such modification. The Managing Members shall also (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes pursuant to this Agreement, in accordance with Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events (such as the incurrence of nonrecourse indebtedness) might otherwise cause the allocations under this Agreement not to comply with Treasury Regulations Section 1.704, provided in each case that the Managing Members determine that such adjustments or modifications shall not result in economic consequences inconsistent with the economic arrangement among the Members as expressed in this Agreement.

14.2. Income Tax Allocations.

(a) Except as otherwise provided in this paragraph or as otherwise required by the Code and the rules and Treasury Regulations promulgated thereunder, income, gain, loss, deduction, or credit of the Company for income tax purposes shall be allocated in the same manner the corresponding book items are allocated pursuant to this Agreement.

(b) In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any asset contributed to the capital of the Company shall, solely for tax purposes, be allocated between the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Book Value.

(c) In the event the Book Value of any Company asset is adjusted pursuant to the terms of this Agreement, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder.

14.3. Withholding. The Company shall at all times be entitled to make payments with respect to any Member in amounts required to discharge any obligation of the Company to withhold or make payments to any governmental authority with respect to any federal, state, local or other jurisdictional tax liability of such Member arising as a result of such Member's interest in the Company. Any such withholding payment shall be charged to the Member's Capital Account.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Members have executed this Agreement as of the date first above written.

MANAGING MEMBERS

/s/ Christos M. Cotsakos

Christos M. Cotsakos

/s/ Thomas A. Bevilacqua

Thomas A. Bevilacqua

NON-MANAGING MEMBER

E*Trade Group, Inc.

By: /s/ Leonard C. Purkis

Leonard C. Purkis
Title: Chief Financial Officer

EXHIBIT A

MEMBERS' CAPITAL COMMITMENTS
AND PERCENTAGE INTERESTS

<u>Name/Address</u>	<u>Capital Commitment</u>	<u>Percentage Interest</u>
Managing Members:		
Christos M. Cotsakos	\$ 250,000	25%
Thomas A. Bevilacqua	250,000	25%
Non-Managing Members:		
E*Trade Group, Inc.	320,000	32%(1)
Anticipated Additional Non-Managing Members (Aggregate)(2)	180,000	18%
	<u>\$ 1,000,000</u>	<u>100%</u>

(1) Subject to reduction (but not below 25.6%) with respect to the allocation of the Company's Carry, as described in Section 6.3(b) of the Agreement.

(2) The aggregate Capital Commitments and Percentage Interests of the Additional Members are based on the anticipated admission of such Additional Members. Any Percentage Interests that remain unallocated to Additional Members for any reason shall be allocated to the Managing Members (to be shared equally between them), and the corresponding Capital Commitment obligation shall become an obligation of the Managing Members (such obligation being shared equally between them).

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E*TRADE GROUP, INC.

NOTE SECURED BY DEED OF TRUST

\$1,600,000.00

February 28, 2000
Menlo Park, California

FOR VALUE RECEIVED, DENNIS LUNDIEN ("Maker") promises to pay to the order of E*TRADE Group, Inc. ("Corporation"), at its corporate offices at 4500 Bohannon Drive, Menlo Park, CA 94025, the principal sum of One Million Six Hundred Thousand Dollars (\$1,600,000.00), together with all accrued interest thereon (the "Loan"), upon the terms and conditions specified below.

1. Interest. Interest shall accrue on the unpaid balance outstanding from time to time under this Note at six and two tenths percent (6.2%), compounded annually. All computations of interest shall be made on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Anything herein to the contrary notwithstanding, if during any period for which interest is computed hereunder the amount of interest computed on the basis provided for in this Note, together with all fees, charges and other payments which are treated as interest under applicable law, as provided for herein or in any other document executed in connection herewith, would exceed the amount of such interest computed on the basis of the Highest Lawful Rate (as defined below), Maker shall not be obligated to pay, and Corporation shall not be entitled to charge, collect, receive, reserve or take, interest in excess of the Highest Lawful Rate, and during any such period the interest payable hereunder shall be computed on the basis of the Highest Lawful Rate. As used herein, "Highest Lawful Rate" means the maximum non-usurious rate of interest, as in effect from time to time, which may be charged, contracted for, reserved, received or collected by Corporation in connection with this Note under applicable law.

2. Principal. The entire principal balance of this Note, together with all accrued and unpaid interest, shall become due and payable in one lump sum on March 1, 2002.

3. Payment. All payments of principal and interest on the Loan shall be made without offset or deduction and shall be made in immediately available lawful tender of the United States and shall be applied first to the payment of all accrued and unpaid interest and then to the payment of principal. Prepayment of the principal balance of this Note, together with all accrued and unpaid interest, may be made in whole or in part at any time without penalty. Whenever any payment hereunder shall be stated to be due, or whenever any interest payment date or any other date specified hereunder would otherwise occur, on a day other than a Business Day (as defined below), then such payment shall be made, and such interest payment date or other date shall occur, on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest hereunder. As used herein, "Business Day" means a day (i) other than Saturday or Sunday, and (ii) on which commercial banks are open for business in San Francisco, California.

4. Representations and Warranties. Maker represents and warrants to Corporation that this Note does not contravene any contractual or judicial restriction binding on or affecting Maker and that this Note is the legal, valid and binding obligation of Maker enforceable against Maker in accordance with its terms.

5. Notice. Maker agrees to notify Corporation of the incurrence of any other indebtedness secured by the Collateral (as defined below) prior to the incurrence thereof.

6. Events of Acceleration. The entire unpaid principal balance of this Note, together with all accrued and unpaid interest, shall become immediately due and payable prior to the specified due date of this Note upon the occurrence of one or more of the following events:

a. the failure to make any payment of principal, interest or any other amount payable hereunder when due under this Note or the breach of any other condition, obligation or covenant under this Note;

b. the breach of any representation or covenant under the Deed of Trust (as defined below);

c. the filing of a petition by or against Maker under any provision of the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or recodified from time to time, or under any similar law relating to bankruptcy, insolvency or other relief for debtors and the continuation of such petition without dismissal for a period of thirty (30) days or more, or appointment of a receiver, trustee, custodian or liquidator of or for all or any part of the assets or property of Maker; or the insolvency of Maker; or the making of a general assignment for the benefit of creditors by Maker;

d. Maker's death or incapacity;

e. any of the documents relating to the Collateral after delivery thereof shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect, or Maker or any other person shall contest in any manner the validity or enforceability thereof, or Maker or any other person shall deny that it has any further liability or obligation thereunder; or any of the documents relating to the Collateral for any reason, except to the extent permitted by the terms thereof, shall cease to create a valid and perfected first priority lien in any of the Collateral purported to be covered thereby;

f. the expiration of the thirty (30)-day period following the date Maker ceases for any reason to remain in Corporation's employ;

g. the incurrence by Maker of any other indebtedness secured by the Collateral which has not been consented to by the Corporation;

h. an acquisition of Corporation (whether by merger or acquisition of all or substantially all of Corporation's assets or outstanding voting stock) for consideration payable in cash or freely-tradable securities; provided, however, that if the Pooling of Interest Method, as described in Accounting Principles Board Opinion No. 16, is used to account for the acquisition for financial reporting purposes, acceleration shall not occur prior to the end of the sixty (60)-day period immediately following the end of the applicable restriction period required under Accounting Series

- i. the occurrence of any event of default under the Deed of Trust securing this Note or any obligation secured thereby.

7. Special Acceleration Event. From the date of this Note until the day on which this Note is secured by the Collateral, if Maker sells any shares of the common stock of Corporation acquired through the exercise of one or more employee stock options, the unpaid principal balance of this Note shall become immediately due and payable to the extent of one hundred percent (100%) of the after-tax proceeds realized upon such sale, and Maker shall promptly deliver those after-tax proceeds to the Company to the extent necessary to satisfy the accelerated balance of this Note.

8. Late Fee; Default.

a. If any payment hereunder is not paid on or before the fifth (5th) business day of the month during which any such payment first became due and payable, Maker shall pay to Corporation a reasonable late or administrative charge in the amount of five percent (5%) of the amount so unpaid.

b. Upon and after the occurrence of a default hereunder or any other agreement or instrument evidencing, governing or securing this Loan (an "Event of Default"), the Loan shall bear interest, payable upon demand, at the lesser of twelve percent (12%) or the maximum rate allowed by law (the "Default Rate").

c. If any interest payment hereunder is not paid on or before the fifth (5th) business day of the month during which such payment first became due and payable, any interest so unpaid shall bear interest from the first day of the month during which such payment first became due and payable until paid at the Default Rate. Interest on the amount of interest so unpaid shall be compounded monthly and shall be payable upon demand.

d. Maker and Corporation agree that the actual damages and costs sustained by Corporation due to the failure to make timely payments would be extremely difficult to measure and that the charges specified herein represent a reasonable estimate by Maker and Corporation of a fair average compensation for such damages and costs. Such charges shall be paid by Maker without prejudice to the right of Corporation to collect any other

amounts provided to be paid under this Note or any other agreement or, with respect to late payments, to declare an Event of Default.

9. Employment. For purposes of applying the provisions of this Note, Maker shall be considered to remain in Corporation's employ for so long as Maker renders services as a full-time employee of Corporation, any successor entity or one or more of Corporation's fifty percent (50%)-or-more owned (directly or indirectly) subsidiaries.

10. Security. The obligations of Maker under this Note shall be secured by a deed of trust recorded against real property (the "Collateral") owned by Maker and _____. The Collateral shall have a fair market value, as reasonably determined by Corporation, of not less than _____ Dollars (\$_____) and otherwise be acceptable to Corporation in its sole and absolute discretion. Within sixty (60) days after the date of this Note, Maker shall provide to Corporation (i) a written description (including address) of the property on which Maker proposes to grant to Corporation a deed of trust (hereinafter referred to as the "Designated Property"), (ii) a copy of a recent preliminary title report (the "Preliminary Report") for the Designated Property and all documents listed as exceptions to title in the Preliminary Report and (iii) such other documentation or information regarding the Designated Property as Corporation shall reasonably require. Corporation shall notify Maker in writing as to whether the Designated Property is acceptable to Corporation within twenty (20) days after Corporation receives Maker's written notice identifying the Designated Property and all of the documentation required in the preceding sentence. Corporation may accept or reject the Designated Property as security for Maker's obligations under this Loan for any or no reason whatsoever in its sole and absolute discretion. If Corporation notifies Maker that it will accept a lien on the Designated Property as security for Maker's obligations under this Note, Maker shall execute and deliver to Corporation a deed of trust encumbering the Designated Property in the form attached hereto as Exhibit A. If Corporation notifies Maker that it will not accept a lien on the Designated Property as security for Maker's obligations under this Note, Maker shall provide Corporation with a lien of a deed of trust on other real property acceptable to Corporation in its sole and absolute discretion. If Corporation fails to notify Maker in writing of its acceptance of the Designated Property as security for Maker's obligations under this Note within the twenty (20) day period referenced above, Corporation shall be deemed to have rejected the Designated Property as security for Maker's obligations under this Note. In addition, the failure of Maker to execute and deliver to Corporation a deed of trust in the form of Exhibit A, attached hereto, on real property acceptable to Corporation within ninety (90) days after the date of this Note shall constitute a default by Maker hereunder. Maker shall remain personally liable for payment of this Note, and any other assets of Maker, in addition to the Collateral, may be applied to the satisfaction of Maker's obligations hereunder.

11. Collection. Maker agrees to pay on demand all the losses, costs, and expenses (including, without limitation, attorneys' fees and disbursements) which Corporation incurs in connection with enforcement or attempted enforcement of this Note, or the protection or preservation of Corporation's rights under this Note, whether by judicial proceedings or otherwise. Such costs and expenses include, without limitation, those incurred in connection with any workout or refinancing, or any bankruptcy, insolvency, liquidation or similar proceedings.

12. Waiver. A waiver of any term of this Note, the Deed of Trust or of any of the obligations secured thereby must be made in writing and signed by a duly-authorized officer of Corporation and any such waiver shall be limited to its express terms. No delay by Corporation in acting with respect to the terms of this Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure of a condition under this Note, the Deed of Trust or the obligations secured thereby. No single or partial exercise of any power under this Note shall preclude any other or further exercise of such power or exercise of any other power. Maker waives presentment, demand, notice of dishonor, notice of default or delinquency, notice of acceleration, notice of protest and nonpayment, notice of costs, expenses or losses and interest thereon, notice of interest on interest and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights or interests in or to properties securing payment of this Note. Maker agrees to make all payments under this Note without set-off or deduction and regardless of any counterclaim or defense.

13. Conflicting Agreements. In the event of any inconsistencies between the terms of this Note and the terms of any other document

related to the loan evidenced by the Note, the terms of this Note shall prevail.

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14. Governing Law. This Note shall be construed in accordance with the laws of the State of California. This Note shall be binding on Maker and his successors, assigns, personal representatives, heirs, and legatees, and shall be binding upon and inure to the benefit of Corporation, any future holder of this Note and their respective successors and assigns. Maker may not assign or transfer this Note or any of his obligations hereunder without Corporation's prior written consent.

15. Time of Essence. Time is of the essence with respect to every provision hereof.

/s/ Dennis Lundien

DENNIS LUNDIEN

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EXHIBIT A
DEED OF TRUST

EXHIBIT A

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO: E*Trade Group, Inc.

c/o Brobeck, Phleger & Harrison LLP

One Market

Spear Street Tower

San Francisco, CA 94105

Attn:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST WITH ASSIGNMENT OF RENTS

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS (this "Deed of Trust") is made as of this ____ day of February, 2000, by Dennis Lundien and _____, husband and wife (collectively, "Trustor"), whose address is _____, to CHICAGO TITLE COMPANY, a California corporation ("Trustee"), for the benefit of E*TRADE GROUP, INC., a Delaware corporation ("Beneficiary").

Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale that certain property located in _____, California, more particularly described in Exhibit 1 attached hereto, together with all improvements thereon, rights appurtenant thereto and the rents, issues and profits thereof (collectively, the "Property"), subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits, for the purpose of securing: (i) payment of the sum of One Million Six Hundred Thousand and No/100 Dollars (\$1,600,000.00) together with all interest thereon according to the terms of that certain Note Secured by Deed of Trust dated as of February __, 2000 ("Note") made by Dennis Lundien and payable to the order of Beneficiary, and extensions or renewals thereof; (ii) the performance of each agreement of Trustor incorporated by reference or contained herein or reciting it is so secured; and (iii) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or their successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust. The Property and any and all other collateral pledged as security to Beneficiary are collectively referred to herein as the "Collateral."

A. To protect the security of this Deed of Trust, and with respect to the Property, Trustor agrees:

(1) To keep the Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary insurance policies satisfactory to and with loss payable to Beneficiary. The amount collected under any earthquake, fire or other insurance policy may be applied by Beneficiary to any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to the Note or otherwise.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary or Trustee to foreclose this Deed of Trust.

(4) To pay, at least ten days before delinquency, all taxes and assessments affecting the Property, including assessments on appurtenant water stock; and to pay, when due, all encumbrances, charges and

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liens, with interest, on the Property or any part thereof, which appear to be prior or superior hereto and all costs, fees and expenses incurred by Beneficiary or Trustee in connection with this Deed of Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto and, in exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount then applicable under the Note, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby, any amount demanded by Beneficiary or Trustee not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is further agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received in the same manner and with the same effect as above provided for disposition of proceeds of insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Beneficiary or Trustee may reconvey any part of the Property, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these trusts to collect the rents, issues and profits of the Property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder or under the Note, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default by Trustor in the payment of any indebtedness secured hereby or in performance of any agreement hereunder, or upon the occurrence of any Event of Acceleration or any other default by Trustor in the payment or performance of any obligation under the Note, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause the Property to be sold, which notice Trustee shall cause

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to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in said notice for

sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone the sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of many matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of (in the following order of priority): all sums owing under the terms hereof or under the Note, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary or any successor in ownership of any indebtedness secured hereby may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from Trustee's predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

(8) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall mean the owner and holder, including pledgees, of the Note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

(9) Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

(10) Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge thereof does not exceed the maximum allowed by law.

(11) The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him or her at his or her address hereinbefore set forth.

(12) This Deed of Trust is further subject to the terms and conditions set forth in Addendum to this Deed of Trust attached hereto and incorporated herein by this reference.

(13) This Deed of Trust shall be governed by the laws of the state of California and all applicable federal laws.

(14) Any married person who executes this Deed of Trust as a Trustor and who is obligated under the Note or any other instrument relating thereto or hereto agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of fleet married person secured by this Deed of Trust may be collected by execution upon that person's separate property and any community property of which that person is a manager.

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IN WITNESS WHEREOF, Trustor has executed this Deed of Trust effective as of the date first set forth above.

[name]

[spouse]

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STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2000 before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and th at by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Signature of Notary

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2000 before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Signature of Notary

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EXHIBIT 1

Property

ADDENDUM

THIS ADDENDUM is attached to, and made a part of, that certain Deed of Trust With Assignment of Rents (the "Deed of Trust") dated February __, 2000 executed by _____ and _____, as Trustor, to CHICAGO TITLE COMPANY, a California corporation, as Trustee, for the benefit and security of E*TRADE GROUP, INC., a Delaware corporation, as Beneficiary. Capitalized terms used herein and not otherwise defined herein shall have the same meaning as in the Deed of Trust.

In addition to the terms and conditions set forth in the Deed of Trust, the following provisions are hereby incorporated as if fully set forth therein.

1. Due on Sale or Encumbrance. If Trustor shall convey or alienate the Property or any part thereof or interest therein, or shall be divested of its title to the Property in any manner, whether voluntary or involuntary, any indebtedness or obligation secured by the Deed of Trust, irrespective of the maturity date expressed in the Note, shall become immediately due and payable at the option of Beneficiary, without demand or notice.

2. Hazardous Materials. Trustor represents and warrants that, to the best of its knowledge, no hazardous materials (which shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a hazardous waste, hazardous substance, pollutant or contaminant under any environmental laws or regulations or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous) are located at, on, in, under or about the Property and that the Property is in full compliance with all such environmental laws and regulations. Trustor shall comply in all respects with all environmental laws and regulations and will not generate, release, store, handle, process, dispose of or otherwise use any hazardous materials on or about the Property, Trustor shall defend, indemnify and hold harmless Beneficiary and its officers, directors and shareholders from and against any and all claims, demands, penalties, causes of actions, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise arising out of, or in any way related to (i) any breach by Trustor of the provisions of this paragraph, (ii) the release, disposal, spillage, discharge, emission, leakage, generation, release or threatened release of any hazardous materials in, on, under or about the Property, (iii) any personal injury arising out of or related thereto or (iv) any violation of any such environmental laws or regulations. To the extent applicable, Beneficiary shall have all the rights and remedies under California Code of Civil Procedure Sections 564(c) and 726.5 and California Civil Code Section 2929.5.

3. Events of Default. In addition to the defaults set forth in the Deed of Trust (which shall be deemed "Events of Acceleration" for purposes of the Note), each of the following events shall also constitute an Event of Default:

a. Trustor shall become insolvent or generally shall not be paying its debts as they become due, as defined in the Bankruptcy Reform Act, Title 11 of the United States Code, as amended from time to time (the "Bankruptcy Code") or shall file a voluntary petition in bankruptcy seeking to effect a plan or other arrangement with creditors or seek any other relief under the Bankruptcy Code or under any other state or federal law relating to bankruptcy or other relief for debtors;

b. Any court or similar tribunal shall enter a decree or order appointing a receiver, trustee, assignee in bankruptcy or insolvency of Trustor or of the Property or shall enter a decree or order for relief in any involuntary case under the Bankruptcy Code; or

c. The occurrence of any breach, default or failure under any other deed of trust, mortgage or other security agreement or interest encumbering the Property.

d. The failure of Trustor to pay any principal or interest evidenced by that certain Note Secured by Deed of Trust (the "Note") of even date herewith from Trustor to Beneficiary, within five (5) days of the date so provided for therein;

e. The failure by Trustor to perform or comply with any other material obligation, covenant or condition contained in this Deed of Trust within ten (10) days following written notice from Beneficiary of such failure; or

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f. If any hazardous materials are found in, on, under or about the Property, or if Trustor becomes subject to any proceeding or investigation pertaining to the release by Trustor or any other person of any hazardous materials into the environment or to any violation of any environmental laws and Trustor fails to cure the same within such time as may be provided by applicable law.

"Trustor"

Dennis Lundien

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STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2000 before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and th at by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Signature of Notary

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2000 before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and tha t by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Signature of Notary

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E*TRADE GROUP, INC.

MANAGEMENT CONTINUITY AGREEMENT

June 9, 1999

Mitchell H. Caplan

Dear Mitchell:

We are pleased to offer you the position of President and Chief Executive Officer. This letter, if accepted, sets forth the terms of your employment with E*TRADE Group, Inc. (hereafter "E*TRADE" or the "Company"), following the Closing. As used in this agreement, "E*TRADE" and "Company" refer to E*TRADE Group, Inc. and each of its subsidiaries including, after the Closing, Telebank Financial Corporation. As a full-time employee, you would receive an annual base salary of \$ 250,000, paid biweekly, less all applicable deductions. All Telebank Financial Corporation ("TFC") and its subsidiaries' employee benefits will continue uninterrupted until E*TRADE transitions your benefits coverage from TFC benefits to E*TRADE benefits. The transition to E*TRADE benefits is expected to occur during the first few months after the Closing. The Company wants to make this transition as smooth as possible. Following the transition, you will be eligible to participate in Company-sponsored benefits on the same basis as other full-time E*TRADE employees.

This offer is contingent on the occurrence of the Closing of E*TRADE's acquisition (the "Acquisition") of TFC and, if you accept this offer, it would take effect as of that Closing Date. The remaining terms of your employment would be as follows:

Bonus Participation

You will be eligible to receive a Closing Period Bonus within thirty (30) days of the Closing Date equal to a pro-rata portion of the TFC bonus you received for the 1998 calendar year (or the annualized equivalent if you were employed for less than one (1) full year by TFC during 1998) which is \$ 250,000 (the "1998 Bonus Amount"). The amount of the Closing Period Bonus for which you will be eligible will be equal to the 1998 Bonus Amount times a fraction, the numerator of which will be the number of days in 1999 up until the Closing and the denominator of which will be 365. You will earn this Closing Period Bonus if TFC meets its performance objectives, as previously agreed to by TFC and E*TRADE, for the period January 1, 1999 through the Closing Date. The determination as to whether you have met the performance objectives sufficient to receive the Closing Period Bonus will be made by the President of TFC, Mitch Caplan. The Closing Period Bonus will be paid no later than thirty (30) days after the Closing Date.

You will be eligible to receive a bonus not less than the 1998 Bonus upon your completion of twelve (12) months of continuous service to E*TRADE following the Closing (the "Term"), but only if E*TRADE pays a Team Quality Incentive ("TQI") bonus either the period running from October 1, 1999 through March 31, 2000 or April 1, 2000 through September 30, 2000 (the "Term Bonus"). If you voluntarily resign your employment, except for "Good Reason," you will not earn or be paid any Term Bonus. If your employment is terminated by E*TRADE during the Term without "Cause," or in the event you resign for "Good Reason," then you will be paid a pro-rata share of the Term Bonus for the period measured from the Closing until the date of the termination of your employment. This payment will be made on the date of termination. If your employment is terminated by E*TRADE during the Term for "Cause," then you will not earn or be paid any Term Bonus.

If your employment continues beyond the Term, you would then be eligible to participate in the E*TRADE TQI Bonus Program subject to the same terms and conditions applicable to other E*TRADE employees.

Stock Options

E*TRADE will recommend to the Company's Board of Directors (the "Board") that at the next meeting in which the Board grants stock options you be granted an option to purchase 50,000 shares of the Company's common stock at an exercise price per share equal to the fair market value of the Company's common stock on the effective date of the grant. This stock option grant would be contingent on you executing E*TRADE's standard stock option

agreement, and will be subject to the E*TRADE 1996 Stock Incentive Plan. Your stock option would be subject to a one year cliff vesting date, and will vest at 25% per year over a four (4) year period, pursuant to the E*TRADE Plan and your stock option agreement.

Term of Employment

You commit to remaining employed by E*TRADE for a period of twelve (12) months following the Closing Date (the "Term"). However, you will be permitted to resign your employment with "Good Reason" without being deemed to have breached this Agreement. A resignation for "Good Reason" will occur if you resign your employment within thirty (30) days after the occurrence of either of the following events: (i) a requirement by E*TRADE that you relocate to an office more than thirty-five (35) miles from your current office; or (ii) a substantial reduction in your base salary, title, compensation, duties or benefits, as described herein. In any event, E*TRADE may terminate your employment at any time for any reason during this period, with or without cause, by giving written notice of such termination.

If E*TRADE terminates your employment "Without Cause" or if you resign for Good Reason during the Term, then E*TRADE will continue to pay your base salary, less applicable deductions, through the earlier of: (i) six (6) months; or (ii) upon the date you commence employment elsewhere (the "Severance Period"). If you commence employment elsewhere during the Severance Period, E*TRADE will pay the difference between your base salary effective on the date your employment with E*TRADE terminates, and your new base salary. Such severance payment would be in lieu of any entitlement you may have to notice of termination, pay in lieu of notice of termination, or severance pay under any Company policy or practice. If you are eligible to receive a greater amount of severance from any other source or based on any written commitment, then you will have the option of selecting that severance payment or this one, but not both. All benefits and future stock and option vesting would terminate as of the date of termination of your employment. You would, of course, be paid your salary through your date of

termination and for the value of all unused vacation earned through that date, and be allowed to continue your medical coverage to the extent provided for by COBRA, but you would not be entitled to any additional payments or benefits except as set forth herein. You would be allowed to exercise your vested options during the time period set forth in and in accordance with your option agreement and Stock Option Assumption Agreement.

If the Company were to terminate your employment for "Cause" within twelve (12) months after the Closing Date, then you would be paid all salary and benefits, as well as the value of your accrued but unused vacation, through the date of termination of your employment, but nothing else. A termination for "Cause" shall mean a termination for any of the following reasons: (i) your material failure to perform the duties of your position after receipt of a written warning specifying the performance problem, provided that you are given a thirty (30) day opportunity to cure; (ii) engaging in misconduct as set out in the E*TRADE Code of Conduct published on the Company's internal web site; (iii) being convicted of a felony; (iv) committing an act of fraud against, or the misappropriation of property belonging to, the Company or any of its employees; or (v) a material breach of this agreement or of any confidentiality or proprietary information agreement between you and the Company. E*TRADE will provide written notice of the reason for termination in the case of any termination for Cause. A termination for any other reason shall be a termination "Without Cause."

If your employment were to continue after twelve (12) months beyond the Closing Date, then your employment would be on an "at-will" basis. This means that either you or E*TRADE could terminate your employment at any time for any reason with or without cause and without the obligation to pay you, or your right to, any severance payment except as may be provided at such time under E*TRADE's employee benefit plans for which you are eligible.

Your Position

You will initially have the title of President and Chief Executive Officer. You will have whatever reasonable duties are assigned to you consistent with your title and position. E*TRADE may change your title, duties, compensation, and benefits as it reasonably sees fit.

Non-Competition

You understand and agree that this agreement is entered into in connection with the acquisition by E*TRADE of all of the outstanding stock of TFC. You further understand and agree that you were a substantial shareholder or optionholder of TFC; a key and significant member of the management of TFC; and that E*TRADE

paid substantial consideration in order to purchase your stock and/or option interest in TFC. In addition, the parties agree that, prior to acquisition by E*TRADE of the stock of TFC, TFC had customers in each of the fifty states of the United States. E*TRADE represents and you understand that, following the acquisition by E*TRADE of the stock of TFC, E*TRADE will continue conducting such business in all parts of the United States.

You agree that during your employment with E*TRADE you will not engage in any other employment, business, or business-related activity unless you receive E*TRADE's prior written approval to hold such outside employment or engage in such business or activity. Such written approval will not be unreasonably withheld if such outside employment, business or activity would not in any way be competitive with the business or proposed business of E*TRADE or otherwise conflict with or adversely affect in any way your performance of your employment obligations to E*TRADE.

You acknowledge and agree that as part of performing your job duties during your employment with TFC, you had access to highly sensitive Proprietary Information (as defined in the attached Proprietary Information and Inventions Agreement), including confidential information and trade secrets related to the development of TFC's business model, pricing strategy, product positioning, competitive analysis, marketing strategy, and other information that would be highly injurious if divulged to or used by a competitor. You also acknowledge and agree that in your capacity as President and Chief Executive Officer you were involved in top-level decisions related to the design, development, marketing and sale of each of TFC's online, telephonic, and ATM banking products and services and online securities brokerage products and services (hereafter referred to as the "the Business"). You further acknowledge and agree that as President and Chief Executive Officer you will continue to have access, and be involved in decisions regarding, Proprietary Information of E*TRADE including the Company's business model, pricing strategy, product positioning, competitive analysis, marketing strategy and other highly sensitive and confidential information. You agree that as pioneers in the field of online banking, TFC and E*TRADE have made substantial investments in creating unique business approaches to banking, which other banks and businesses will have incentive to replicate; hence, TFC had and now E*TRADE has a substantial interest in ensuring that its competitors do not gain access to the proprietary knowledge that you acquired during your employment with TFC or E*TRADE.

Therefore, commencing on the Closing Date and continuing for one (1) year from the date of termination of your employment with E*TRADE, except as provided below, you will not, as an employee, agent, consultant, advisor, independent contractor, general partner, officer, director, stockholder, investor, lender or guarantor of any corporation, partnership or other entity, or in any other capacity directly or indirectly:

1. engage in any activity in which you participate, supervise or advise in the design, development, marketing, sale or servicing of any online, telephonic or ATM banking product or service, or any online securities brokerage product or service, in the United States. Notwithstanding the foregoing, nothing in this paragraph would prevent you from working within the banking industry for an organization in which online banking products or services, or online securities brokerage products or services do not constitute a substantial portion of its business, so long as you do not engage in any activity in which you participate, supervise or advise in the design, development, marketing, sale or servicing of any online or telephonic banking product or service, or any online securities brokerage product or service.
2. induce, solicit or encourage any individual who was employed with the Company within six (6) months of the termination date of your employment with the Company to leave the Company for any reason, or to employ, interview or arrange to have business opportunities offered to any such individual;
3. permit your name to be used in connection with a business which is competitive with or substantially similar to the Business; or
4. communicate with any individual or entity that is a customer of the Company for the purpose of soliciting or offering services substantially

similar to the Business, or request, suggest, encourage or advise in any manner, any individual or entity who is presently a customer served to withdraw, curtail, limit, cancel, terminate or not renew their existing or future business with the Company or its affiliates.

Notwithstanding the foregoing, you may own, directly or indirectly, solely as an investment, up to one percent (1%) of any class of "publicly traded securities" of any person or entity which owns a business that is competitive or substantially similar to the Business. The term "publicly traded securities" shall mean securities that

are traded on a national securities exchange or listed on the National Association of Securities Dealers Automated Quotation System.

Enforcement of Non-Competition

You acknowledge that the services that you provided to TFC, and that you will provide to E*TRADE under this Agreement, are unique and that irreparable harm will be suffered by E*TRADE in the event of a material breach by you of any of your obligations under this agreement, and that E*TRADE will be entitled, in addition to its other rights, to enforce by an injunction or decree of specific performance the obligations set forth in this agreement.

If any restriction set forth in the Non-Competition provision section is found by a court to be unreasonable, then the parties agree, and hereby submit, to the reduction and limitation of such prohibition to such area or period as shall be deemed reasonable. In addition, the parties agree that if any provision of the Non-Competition section is found to be unenforceable, it shall not affect the enforceability of the remaining provisions and the court shall enforce all remaining provisions to the extent permitted by law.

You agree that if the Company establishes that you, or those acting in concert with you or on your behalf, materially violate the Non-Competition provision in any way, the Company shall be entitled to recover the reasonable attorneys' fees and litigation expenses incurred, arising out of or relating to the Company's efforts to prevent the breach, to establish that a breach has occurred, to enforce the Non-Competition provisions or to seek to redress a breach, including any appeals if necessary. If the Company fails to establish that you, or those acting in concert with you or on your behalf, have materially violated any of the Non-Competition provisions in any way, you shall be entitled to reimbursement of reasonable attorneys' fees and litigation expenses incurred in your defense.

Arbitration

The parties agree that any and all disputes between us which arise out of your employment, the termination of your employment, or under the terms of this Agreement, except as expressly noted below, shall be resolved through final and binding arbitration. This shall include, without limitation, disputes relating to this Agreement, any disputes regarding your employment by E*TRADE or the termination thereof, claims for breach of contract or breach of the covenant of good faith and fair dealing, and any claims of discrimination or other claims under any federal, state or local law or regulation now in existence or hereinafter enacted and as amended from time to time concerning in any way the subject of your employment with E*TRADE or its termination. The only claims not covered by this section are the following: (i) claims arising out of your violation or alleged violation of the Non-Competition provisions in this agreement; (ii) claims for benefits under the unemployment insurance or workers' compensation laws (or claims which by law must be adjudicated in a court of law); and (iii) claims concerning the validity, infringement or enforceability of any trade secret, patent right, copyright, trademark or any other intellectual property held or sought by E*TRADE, or which E*TRADE could otherwise seek; in each of these instances such disputes or claims shall not be subject to arbitration but, rather, will be resolved pursuant to applicable law. Binding arbitration will be conducted in the Arlington, Virginia area in accordance with the rules and regulations of the American Arbitration Association. If, however, you do not reside within one hundred (100) miles of Arlington at the time the dispute arose, then the arbitration may take place in the largest metropolitan area within fifty (50) miles of your place of residence when the dispute arose. The parties will split the cost of the arbitration filing and hearing fees and the cost of the arbitrator; each side will bear its own attorneys' fees, unless otherwise decided by the arbitrator. You understand and agree that arbitration shall be instead of any civil litigation, that each side waives its right to a jury trial, and that the arbitrator's decision shall be final and binding to the fullest extent permitted by law and enforceable by any court having jurisdiction thereof.

Miscellaneous Provisions

This agreement and the accompanying Proprietary Information and Inventions Agreement will be the entire agreement between you and E*TRADE relating to your employment and the additional matters provided for herein. This agreement supersedes and replaces (i) any prior verbal or written agreements between the parties except as provided for herein, and (ii) any prior verbal or written agreements between the undersigned employee and TFC relating to the subject matter hereof. This Agreement may be amended or altered only in a writing signed by you and the Vice President, Associates and Work Environment of E*TRADE.

This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Each provision of this Agreement is severable from the others, and if any provision hereof shall be to any extent unenforceable it and the other provisions shall continue to be enforceable to the full extent allowable, as if such offending provision had not been a part of this Agreement. This offer is also contingent on you executing the E*TRADE Proprietary Information and Invention Agreement, a copy of which is attached hereto.

If you have any questions about this offer, please contact me at (650) 842-8797. Please sign and date this letter below and return it to me.

Sincerely,

E*TRADE GROUP, INC.

/s/ Jerry A. Dark

Jerry A. Dark
Vice President, Associates and Work Environment

I agree to the terms and conditions in this offer.
Dated: May 31, 1999

/s/ Mitchell H. Caplan

Signature

MODEL MANAGEMENT CONTINUITY AGREEMENT**[FOR UNITED STATES EMPLOYEES]****E*TRADE GROUP, INC.**

July 7, 1999

Jarrett Lilien

Dear Jarrett:

We are pleased to offer you the position of CEO—TIR. This letter, if accepted, sets forth the terms of your employment with E*TRADE Group, Inc. (hereafter “E*TRADE” or the “Company”), following the Closing (as defined in the Exchange Agreement). As a full-time employee, you would receive an annual base salary of \$200,000.00, paid biweekly, less all applicable deductions.

All TIR (Holdings) LTD (“TIR”) employee benefits will continue uninterrupted until E*TRADE transitions your benefits coverage from TIR benefits to E*TRADE benefits. You will be offered E*TRADE’s standard Company-sponsored benefits which will ensure that you receive benefits consistent with and comparable to those offered similarly situated E*TRADE employees. You will, in particular, participate in E*TRADE’s existing paid time off plan and will be eligible to accrue paid time off based on your prior years of service with TIR. It is E*TRADE’s intention to transition your benefits coverage from TIR benefits to E*TRADE benefits during the first few months after the Closing. The Company wants to make this transition as smooth as possible.

Commencement Date

This offer is contingent on the occurrence of the closing of E*TRADE’s acquisition (the “Acquisition”) of TIR, and, if you accept this offer, it would take effect as of that Closing Date.

Bonus Participation

Upon achievement of the mutually agreed-upon operating milestones ending in fiscal years 2000 and 2001, as set out in Exhibit “A” hereto, you will be entitled to participate in a special bonus pool set aside for TIR Executive Committee members in lieu of the Team Quality Incentive (“TQI”) Bonus Program. Milestone factors for the special bonus pool shall be equally weighted among three categories of performance including the following: (1) individual performance; (2) integration; and (3) project leadership. Such bonuses shall be payable in two installments in October and April of each applicable fiscal year. The management of TIR may recommend individual allocations of bonus amounts from such bonus pool; however, E*TRADE shall make the final determinations of eligibility and bonus awards. The TIR special bonus program will terminate at the end of E*TRADE’s fiscal year 2001, and you will no longer be eligible for any further bonus payments under that plan. Beginning in E*TRADE’s fiscal year 2002, that is, September 1, 2001, you will be eligible to participate in the E*TRADE bonus program, subject to the same terms and conditions applicable to other similarly situated E*TRADE employees.

Stock Options

Your existing and outstanding stock options with TIR have been assumed by E*TRADE in accordance with your Stock Option Assumption Agreement. In addition, at the Closing you will be granted an option to purchase 20,000 shares of E*TRADE common stock under the Company’s 1996 Stock Incentive Plan. The per-share exercise price of the option will be equal to the per-share fair market value of the common stock on the Closing Date, as determined by the E*TRADE Board of Directors. The option will be evidenced by E*TRADE’s standard stock option agreement. So long as you continue in service with E*TRADE, the option will vest and become exercisable with respect to twenty-five percent (25%) of the option shares on the one-year anniversary of your employment start

date and with respect to the balance at 25% upon each anniversary of the Closing Date until the fourth anniversary of the Closing Date.

Term of Employment

You commit to remaining employed by E*TRADE for a period of three (3) years following the Closing Date (the “Term”). Nevertheless, E*TRADE may terminate your employment at any time for any reason, during the Term, with or without cause, by giving written notice of such termination. Similarly, you may resign your employment for “Good Reason,” as defined in this Agreement, without being deemed to have breached this Agreement. In addition, if E*TRADE wishes to terminate your employment for any reason within three (3) years after the Closing Date, it must obtain the written approval of the Chief Executive Officer—TIR, the President—TIR, the President of E*TRADE International and E*TRADE’s Vice President, Associates and Work Environment before taking such action. If any one of these four (4) individuals is not employed by E*TRADE at the time of the action in question, then such termination will require the approval of that individual’s replacement. E*TRADE will also provide you with one (1) month’s notice prior to the termination of your employment for any reason.

Termination of Employment

For the purposes of this Agreement, a termination by E*TRADE for “Cause” shall mean a termination for any of the following reasons: (i) your failure to perform the duties of your position after receipt of a written warning and thirty (30) days in which to cure; (ii) engaging in misconduct as described in E*TRADE’s “Standards of Business Conduct”; (iii) being convicted of a felony; (iv) committing an act of fraud against or the misappropriation of property belonging to the Company or any of its employees; or (v) a material breach of this agreement or any confidentiality or proprietary information agreement between you and the Company. E*TRADE will provide written notice of the reason for termination in the case of any termination for “Cause.” A termination by E*TRADE for any other reason shall be a termination “Without Cause.”

For the purposes of this Agreement, a resignation for "Good Reason" will occur if you resign your employment within thirty (30) days after the occurrence of either of the following events: (i) a reduction in your base salary or benefits; (ii) a material diminution in your duties, responsibilities, position, or authority as described herein; (iii) failure by E*TRADE to establish and administer the bonus pool for fiscal years ending in 2000 and 2001, as set out herein and in Exhibit A; or (iv) failure by E*TRADE to comply with and satisfy any other material provision of this Agreement.

If E*TRADE terminates your employment "Without Cause" or you terminate your employment for "Good Reason" prior to the end of the Term, then E*TRADE will pay you a lump sum payment equal to (i) one (1) month's salary for each year of service with TIR, providing for the continuity of your service with any E*TRADE business entity, not to exceed twelve (12) months and excluding the one month's notice provision provided herein; and (ii) that amount of the bonus pool for which you are eligible prorated to the date of termination of your employment, less applicable deductions and withholdings, as severance ("Severance Payment"). Such Severance Payment would be in lieu of any entitlement you may have to notice of termination, pay in lieu of notice of termination, or severance pay under any Company policy or practice. If you are eligible to receive a greater amount of severance from any other source or based on any written commitment, then you will have the option of selecting that severance benefit or this one, but not both. All benefits and future stock and option vesting would terminate as of the date of termination of your employment. You would, of course, be paid your salary through your date of termination and for the value of all unused paid time off earned through that date and allowed to continue your medical coverage to the extent provided for by COBRA, but you would not be entitled to any additional payments or benefits except as set forth herein. You would be allowed to exercise your vested options during the time period set forth in and in accordance with your option agreement and Stock Option Assumption Agreement.

If you were to resign your employment other than for "Good Reason" or your employment were to be terminated for "Cause" within three (3) years after the Closing Date, then you would be paid all salary and benefits through the date of termination of your employment, but nothing else.

If your employment were to continue beyond the Term, then your employment would be on an "at-will" basis. This means that either you or E*TRADE could terminate your employment at any time for any reason with or without cause and without the obligation to pay you, or your right to, any severance payment except as may be provided at such time under E*TRADE's employee benefit plans for which you are eligible.

Your Position

You will initially have the title of CEO—TIR in your present work location; however, you may be relocated with the written approval of the Chief Executive Officer—TIR, the President—TIR, the President of E*TRADE International and E*TRADE's Vice President, Associates and Work Environment, in consultation with you. You will have whatever reasonable duties are assigned to you consistent with your title and position as agreed to by the Chief Executive Officer—TIR, the President—TIR and the President of E*TRADE International. The President of E*TRADE International, with input from the Chief Executive Officer—TIR, the President—TIR and E*TRADE's Vice President, Associates and Work Environment, may change your title, duties, compensation, and benefits as they reasonably see fit. In addition, the Company acknowledges that it will attempt to provide you with employment with E*TRADE International focusing on global operations, at a later time consistent with the development of this entity and to the extent possible; however, this acknowledgement shall not give you "Good Reason" to terminate your employment pursuant to this Agreement.

Non-Competition

You understand and agree that this Agreement is entered into in connection with the acquisition by E*TRADE of all of the outstanding stock of TIR. You further understand and agree that you were a shareholder or optionholder of TIR; a key and significant member of the management of TIR; and that E*TRADE paid substantial consideration in order to purchase your stock and/or option interest in TIR. In addition, the parties agree that, prior to acquisition by E*TRADE of the stock of TIR, TIR was engaged in its business in the United States and throughout the world. E*TRADE represents and you understand that, following the acquisition by E*TRADE of the stock of TIR, E*TRADE will continue conducting such business in the United States and throughout the world.

You agree that during your employment with E*TRADE you will not engage in any other employment, business, or business related activity unless you receive E*TRADE's prior written approval to hold such outside employment or engage in such business or activity, except that E*TRADE agrees that you will be allowed to continue your membership on the Board of Directors of Barton Mines Corporation and Barton Joint Venture Corporation (BJVC) and devote up to ten (10) business days per year in such capacity. Such written approval will not be unreasonably withheld if such outside employment, business or activity would not in any way be competitive with the business or proposed business of E*TRADE or otherwise conflict with or adversely affect in any way your performance of your employment obligations to E*TRADE.

Subject to the approval of the Vice President, Associates and Work Environment or his replacement, commencing on the date of termination of your employment with E*TRADE and continuing for a period equal to one (1) month for each year of service with TIR (providing for the continuity of your service with any E*TRADE business entity and excluding the one (1) month's notice provision provided herein) but not to exceed twelve (12) months, you will not, except as provided below, as an employee, agent, consultant, advisor, independent contractor, general partner, officer, director, stockholder, investor, lender or guarantor of any corporation, partnership or other entity, or in any other capacity directly or indirectly:

1. engage in any activity, in any market where E*TRADE conducts business, in which you participate, manage or advise in the design, development, marketing, sale or servicing of any product related to global institutional and retail internet securities trading, clearing services or execution (hereafter referred to as "the Business");
2. induce, encourage or solicit any individual who was employed by E*TRADE within six (6) months of the date your employment with E*TRADE terminates to leave the Company for any reason or to accept employment with any other company, or to employ, interview or arrange to have business opportunities offered to any such individual; or
3. permit your name to be used in connection with a business which is competitive or substantially similar to the Business.

Notwithstanding the foregoing, you may own, directly or indirectly, solely as an investment, up to one percent (1%) of any class of "publicly traded securities" of any person or entity which owns a business that is competitive or substantially similar to the Business. The term "publicly traded securities" shall mean securities that are traded on a national securities exchange or listed on the National Association of Securities Dealers Automated Quotation System.

If any restriction set forth in this non-competition section is found by a court to be unreasonable, then you agree, and hereby submit, to the reduction and limitation of such prohibition to such area or period as shall be deemed reasonable. You acknowledge that the services that you will provide to E*TRADE under this Agreement are unique and that irreparable harm will be suffered by E*TRADE in the event of the breach by you of any of your obligations under this Agreement, and that E*TRADE will be entitled, in addition to its other rights, to enforce by an injunction or decree of specific performance the obligations set forth in this Agreement. Any claims asserted by you against E*TRADE shall not constitute a defense in any injunction action brought by E*TRADE to obtain specific enforcement of said paragraphs.

You agree that if the Company establishes that you, or those acting in concert with you or on your behalf, materially violate the Non-Competition provision in any way, the Company shall be entitled to recover the reasonable attorneys' fees and litigation expenses incurred, arising out of or relating to the Company's efforts to prevent the breach, to establish that a breach has occurred, to enforce the Non-Competition provisions or to seek to redress a breach, including any appeals if necessary. If the Company fails to establish that you, or those acting in concert with you or on your behalf, have materially violated any of the Non-Competition provisions in any way, you shall be entitled to reimbursement of reasonable attorneys' fees and litigation expenses incurred in your defense.

Arbitration

We each agree that any and all disputes between us which arise out of your employment, the termination of your employment, or under the terms of this Agreement shall be resolved through final and binding arbitration. This shall include, without limitation, disputes relating to this Agreement, any disputes regarding your employment by E*TRADE or the termination thereof, claims for breach of contract or breach of the covenant of good faith and fair dealing, and any claims of discrimination or other claims under any federal, state or local law or regulation now in existence or hereinafter enacted and as amended from time to time concerning in any way the subject of your employment with E*TRADE or its termination. The only claims not covered by this section are the following: (i) claims for benefits under the unemployment insurance or workers' compensation laws; (ii) claims concerning the validity, infringement or enforceability of any trade secret, patent right, copyright, trademark or any other intellectual property held or sought by E*TRADE, or which E*TRADE could otherwise seek; in each of these instances such disputes or claims shall not be subject to arbitration, but rather, will be resolved pursuant to applicable California law. Binding arbitration will be conducted in Santa Clara County in accordance with the rules and regulations of the American Arbitration Association. The parties will split the cost of the arbitration filing and hearing fees and the cost of the arbitrator; each side will bear its own attorneys' fees, unless otherwise decided by the arbitrator. You understand and agree that arbitration shall be instead of any civil litigation, that each side waives its right to a jury trial, and that the arbitrator's decision shall be final and binding to the fullest extent permitted by law and enforceable by any court having jurisdiction thereof.

Miscellaneous Provisions

This Agreement and the accompanying Proprietary Information and Inventions Agreement will be the entire agreement between you and E*TRADE relating to your employment and the additional matters provided for herein. This Agreement supersedes and replaces (i) any prior verbal or written agreements between the parties except as provided for herein and (ii) any prior verbal or written agreements between the undersigned employee and TIR relating to the subject matter hereof. This Agreement may be amended or altered only in a writing signed by you and the President of E*TRADE International. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Each provision of this Agreement is severable from the others, and if any provision hereof shall be to any extent unenforceable it and the other provisions shall continue to be enforceable to the full extent allowable, as if such of fending provision had not been a part of this Agreement. This offer is also contingent on your executing the E*TRADE Proprietary Information and Invention Agreement, a copy of which is attached hereto.

As used in this Agreement, "E*TRADE Group, Inc." and "Company" refer to E*TRADE and each of its subsidiaries.

If you have any questions about this offer, please contact me at (650) 331-6097. Please sign and date this letter below and return it to me.

Sincerely,

E*TRADE GROUP INCORPORATED

/s/ Jerry A. Dark
Jerry A. Dark, Vice President
Associates and Work Environment

I agree to the terms and conditions in this offer.

Dated: July 12, 1999

/s/ Jarrett Lilien

Jarrett Lilien

Exhibit A

Bonus Milestones

Milestone Factors for Determining Bonus Pool Pay-Outs:

1. Individual Performance: The following criteria, to the extent applicable, will be used to determine the degree to which an individual has met his or her individual performance milestone.

- a. Business unit financial performance
 - i. Includes budget management
 - ii. Performance over revenue targets
- b. Key business initiatives
 - i. Includes performance compared with growth targets for sales, volumes by geography/line of business/function
 - ii. Customer growth and retention
- c. Personal impact on business results
- d. Participation and leadership in performance management process throughout the Company
- e. Remaining "engaged" and productive post-merger

2. Integration: Degree to which the employee contributes to a seamless and effective transition:

- a. Contribution to employee selection and retention
- b. Leadership and participation in H&G/E*TRADE integration teams
- c. Facilitating successful cultural assimilation
 - i. Including positive, open, two-way communications, technology transfers and learning
- d. Succession planning to ensure smooth transitions for all key, high-impact positions.

3. Project Leadership: Degree to which employee takes an active and effective role in identified projects. (Note: all existing projects will be reviewed and new projects may be jointly identified by Chief Executive Officer—TIR and President—E*TRADE International. The new projects may differ from the existing "godfather" strategic projects and may include projects necessary as part of integration.)

Evaluation and "Fine Tuning" of Milestone Performance: Performance results associated with the three milestones will be "fine tuned" as follows:

1. Internal Comparisons: Executive Committee members will be ranked approximately 1-12 relative to his or her peers.

- a. Factors used for "relative" ranking:
 - i. Executive Committee member's success in attracting new talent
 - ii. Relative performance of regional offices/functions
 - iii. Motivation level

2. External Comparisons: To ensure retention, market competitiveness of total compensation will be considered in light of planned bonus payouts.

Process For Determining Bonus Pool Pay-Outs:

1. Goals for TIR group to be set out by Executive Committee and finalized by the Chief Executive Officer—TIR and the President of E*TRADE International.
2. Quarterly review of process executed by the Chief Executive Officer—TIR and the President of E*TRADE International, with input from E*TRADE's Vice President, Associates and Work Environment
3. Final determination of bonus pay-outs per individual by the Chief Executive Officer—TIR, the President—TIR, and the President of E*TRADE International, with input from E*TRADE's Vice President, Associates and Work Environment

EMPLOYMENT AGREEMENT

This Agreement is made effective this 1st day of June, 2000 (the "Effective Date"), by and between E*TRADE Group, Inc., a Delaware corporation ("Company"), and Jerry Gramaglia ("Executive").

BACKGROUND

Executive is serving as President and Chief Operating Officer of the Company. The parties desire to enter into a formal employment agreement with respect to the continued employment of Executive by Company, which shall automatically become effective as of the Effective Date.

TERMS AND CONDITIONS

In consideration of the premises and the mutual covenants and agreements set forth below, the parties agree as follows:

1. **Termination of Prior Agreements.** Subject to the provision of Section 9 herein, any prior agreement shall terminate and be of no further force and effect as of the execution of this Agreement.
2. **Employment.** Executive agrees to serve as President and Chief Operating Officer of Company for the term of this Agreement, subject to the terms set forth in this Agreement and the provisions of the Bylaws of Company. During his employment, Executive shall devote his effort and attention, on a full-time basis, to the performance of the duties required of him as an executive of Company.
3. **Compensation.** As compensation for his services during the term of this Agreement, Executive shall receive the amounts and benefits set forth in this Section 3 all effective as of the Effective Date unless otherwise specified:
 - (a) An annual salary of \$425,000 ("Base Salary") prorated for any partial year of employment. As soon as reasonably practicable after the close of Company's current fiscal year and the close of each fiscal year thereafter, the Base Salary shall be subject to review by the Compensation Committee of the Company's Board of Directors for increases in light of the size and performance of Company. The Base Salary, as adjusted in accordance with this subsection (a), shall remain in effect unless and until it is increased in accordance with this subsection (a). Executive's salary shall be payable semimonthly or in accordance with Company's regular payroll practices in effect from time to time for officers of his level in Company.
 - (b) Participation in E*TRADE's gr2 (Success Sharing) Bonus Plan. The Executive will be eligible to receive an incentive bonus of 80% of his base salary, which may be increased as determined by the Chairman/Chief Executive Officer and the Compensation Committee of the Company.
 - (c) Participation in the employee benefit plans maintained by Company and in other benefits provided by Company to senior executives, including retirement and 401(k) plans, deferred compensation, medical and dental, annual vacation, paid holidays, sick leave, and similar benefits, which are subject to change from time to time at the reasonable discretion of Company.
 - (d) Reimbursement for financial counseling not to exceed \$10,000 per year and for annual physical examinations for the executive and his wife not to exceed \$20,000 per year.
 - (e) It is acknowledged that Executive has received option grants in accordance with the terms of this contract. Company agrees that there will be no change made in any Stock Option during the term of Executive's employment hereunder which adversely affects Executive's rights as established by the foregoing documents, without the prior written consent of Executive.
 - (f) Lease of automobile for company use, of a mutually agreeable make and model of a value not to exceed \$50,000, and reimbursement of reasonable operating expense.
 - (g) Reimbursement of all reasonable business-related expenses, including without limitation business- travel conducted pursuant to Company's travel policy.

(h) Reimbursement of the reasonable maintenance costs of a comprehensive security and monitoring system installed in the Executive's primary residence.

(i) Executive will be eligible for full relocation benefits as provided by our executive relocation policy.

4. **Term.** The term of this Agreement and the termination rights are as follows:

- (a) This Agreement and Executive's employment under this Agreement shall be effective as of the Effective Date and shall continue for a term ending on May 31, 2004 (the "Initial Term").
- (b) This Agreement and Executive's employment may be terminated by either party prior to the end of the Initial Term (or any renewal period) upon 30 days' prior written notice to the other party, provided that, in the event of such termination, Company shall be obligated to make the payments and provide the benefits described in Section 6 below.

5. Executive will be given the option of a fully secured first mortgage loan of up to \$10,000,000 for the purchase of a house in the San Francisco area. The terms and conditions of this fully secured and full recourse loan will be set forth in a separate writing.

6. **Termination Payments.** Upon termination of Executive's employment, Company shall pay to Executive, within three business days after the end of the 30-day notice period provided in Section 4 above, a payment in cash equal to subsection (a) of this Section 6, and shall for the

period or at the time specified provide the other benefits described in subsection (b) of this Section 6 if: (i) Executive's employment is terminated by Company, other than for Cause, within three years after any "Change in Control" of Company as defined in subsection (d) of this Section 6, or at the request of or pursuant to an agreement with a third party who has taken steps reasonably calculated to effect a Change in Control, or otherwise in connection with or in anticipation of a Change in Control

(a) Eighteen (18) months of Executive's current Base Salary.

(b) In addition to the amount payable to Executive under subsection (a) of this Section 6, upon termination of Executive for any reason the health care (including medical and dental) and life insurance benefits coverage benefits provided to Executive at his date of termination shall be continued at the same level and in the same manner as if his employment had not terminated (subject to the customary changes in such coverages if Executive reaches age 65 or similar events), together with the benefits described in subsections (d) and (f) of Section 3 beginning on the date of such termination and ending on the later of: (a) the end of the term of this Agreement or (b) the date eighteen (18) months following the date of the Executive's termination, followed by COBRA election rights. Any additional coverages Executive had at termination, including dependent coverage, will also be continued for such period on the same terms. Any costs Executive was paying for such coverages at the time of termination shall continue to be paid by Executive. If the terms of any benefit plan referred to in this section do not permit continued participation by Executive, then Company will arrange for other coverage providing substantially similar benefits at the same contribution level of Executive.

(c) For purposes of this Agreement, the following definitions shall apply:

(i) The "**Board**" shall mean the Board of Directors of Company.

(ii) The "**Incumbent Board**" shall mean the members of the Board as of the date of this Agreement and any person becoming a member of the Board hereafter whose election, or nomination for election by Company's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of Company).

(iii) "**Change in Control**" shall mean:

(A) The acquisition (other than from Company) by any person, entity or "group," within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act (excluding, for this purpose, any employee benefit plan of Company or its subsidiaries which acquires beneficial ownership of voting securities of Company) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50%

or more of either the then outstanding shares of Common Stock or the combined voting power of Company's then outstanding voting securities entitled to vote generally in the election of directors; or

(B) The failure for any reason of individuals who constitute the Incumbent Board to continue to constitute at least a majority of the Board; or

(C) Approval by the stockholders of Company of a reorganization, merger, consolidation, in each case, with respect to which the shares of Company voting stock outstanding immediately prior to such reorganization, merger or consolidation do not constitute or become exchanged for or converted into more than 50% of the combined voting power entitled to vote generally in the election of directors of the reorganized, merged or consolidated company's then outstanding voting securities, or a liquidation or dissolution of Company or of the sale of all or substantially all of the assets of Company.

(iv) "**Current Total Annual Compensation**" shall be the greater of (i) Executive's Base Salary for the calendar year in which his employment terminates or (ii) such salary for the calendar year prior to the year of such termination.

(v) "**Disability**" shall mean the total and permanent inability of Executive due to illness, accident or other physical or mental incapacity to perform the usual duties of his employment under this Agreement, as determined by a physician selected by Company and acceptable to Executive or Executive's legal representative (which agreement as to acceptability shall not be unreasonably withheld).

(vi) The "**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.

(vii) "**Cause**" shall be defined solely as (i) Executive's defalcation or misappropriation of funds or property of the Company, or the commission of any other illegal act in the course of his employment with Company which, in the reasonable judgment of the Board of Directors, has a material adverse financial effect on the Company or on Executive's ongoing abilities to carry out his duties under this Agreement; (ii) Executive's conviction of a felony or of any crime involving moral turpitude, and affirmation of such conviction following the exhaustion of any appeals; (iii) refusal of Executive to substantially perform all of his duties and responsibilities, or Executive's persistent neglect of duty or chronic unapproved absenteeism (other than for a temporary or permanent Disability), which remains uncured following thirty days after written notice of such alleged Cause by the Board of Directors; or (iv) any material and substantial breach by Executive of other terms and conditions of this Agreement, which, in the reasonable judgment of the Board of Directors, has a material adverse financial effect on the Company or on Executive's ongoing abilities to carry out his duties under this Agreement and which remains uncured following thirty days after written notice of such alleged Cause by either the Board of Directors, or Company's chairman and Chief Executive Officer.

7. Executive agrees that during his employment with E*TRADE Executive will not engage in any other employment, business, or business related activity unless Executive receives E*TRADE's prior written approval to hold such outside employment or engage in such business or activity. Such written approval will not be unreasonably withheld if such outside employment, business or activity would not in any way be competitive with the business or proposed business of E*TRADE or otherwise conflict with or adversely affect in any way his performance of his employment obligations to E*TRADE.

Subject to the approval of the Chief People Officer or his replacement, commencing on the date of termination of his employment with E*TRADE and continuing for a period not to exceed twelve (12) months, Executive will not, except as provided below, as an employee, agent, consultant, advisor, independent contractor, general partner, officer, director, stockholder, investor, lender or guarantor of any corporation,

partnership or other entity, or in any other capacity directly or indirectly:

i. engage in any activity, in any market where E*TRADE conducts business, in which Executive participate, manage or advise in the design, development, marketing, sale or servicing of any product related to global institutional and retail internet securities trading, clearing services or execution (hereafter referred to as "the Business");

ii. induce, encourage or solicit any individual who was employed by E*TRADE within six (6) months of the date his employment with E*TRADE terminates to leave the Company for

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any reason or to accept employment with any other company, or to employ, interview or arrange to have business opportunities offered to any such individual; or

iii. permit his name to be used in connection with a business which is competitive or substantially similar to the Business.

Notwithstanding the foregoing, Executive may own, directly or indirectly, solely as an investment, up to one percent (1%) of any class of "publicly traded securities" of any person or entity which owns a business that is competitive or substantially similar to the Business. The term "publicly traded securities" shall mean securities that are traded on a national securities exchange of listed on the National Association of Securities Dealers Automated Quotation System.

If any restriction set forth in this non-competition section is found by a court to be unreasonable, then Executive agrees, and hereby submit, to the reduction and limitation of such prohibition to such area or period as shall be deemed reasonable. Executive acknowledges that the services that Executive will provide to E*TRADE under this Agreement are unique and that irreparable harm will be suffered by E*TRADE in the event of the breach by Executive of any of his obligations under this Agreement, and that E*TRADE will be entitled, in addition to its other rights, to enforce by an injunction or decree of specific performance the obligations set forth in this Agreement. Any claims asserted by Executive against E*TRADE shall not constitute a defense in any injunction action brought by E*TRADE to obtain specific enforcement of said paragraphs.

Executives agree that if the Company establishes that Executive, or those acting in concert with Executive or on his behalf, materially violate the Non-Competition provision in any way, the Company shall be entitled to recover the reasonable attorneys' fees and litigation expenses incurred, arising out of or relating to the Company's efforts to prevent the breach, to establish that a breach has occurred, to enforce the Non-Competition provisions or to seek to redress a breach, including any appeals if necessary. If the Company fails to establish that Executive, or those acting in concert with Executive or on his behalf, have materially violated any of the Non-Competition provisions in any way, Executive shall be entitled to reimbursement of reasonable attorneys' fees and litigation expenses incurred in his defense.

8. Arbitration. We each agree that any and all disputes between us which arise out of his employment, the termination of his employment, or under the terms of this Agreement shall be resolved through final and binding arbitration. This shall include, without limitation, disputes relating to this Agreement, any disputes regarding his employment by E*TRADE or the termination thereof, claims for breach of contract or breach of the covenant of good faith and fair dealing, and any claims of discrimination or other claims under any federal, state or local law or regulation now in existence or hereinafter enacted and as amended from time to time concerning in any way the subject of his employment with E*TRADE or its termination. The only claims not covered by this section are the following: (i) claims for benefits under the unemployment insurance or workers' compensation laws; (ii) claims concerning the validity, infringement or enforceability of any trade secret, patent right, copyright, trademark or any other intellectual property held or sought by E*TRADE, or which E*TRADE could otherwise seek; in each of these instances such disputes or claims shall not be subject to arbitration, but rather, will be resolved pursuant to applicable California law. Binding arbitration will be conducted in Santa Clara County in accordance with the rules and regulations of the American Arbitration Association. The parties will split the cost of the arbitration filing and hearing fees and the cost of the arbitrator; each side will bear its own attorneys' fees, unless otherwise decided by the arbitrator. Executive understand and agree that arbitration shall be instead of any civil litigation, that each side waives its right to a jury trial, and that the arbitrator's decision shall be final and binding to the fullest extent permitted by law and enforceable by any court having jurisdiction thereof.

9. Miscellaneous Provisions. This Agreement, the stock options grant agreements and the previously executed Proprietary Information and Inventions Agreement will be the entire agreement between Executive and E *TRADE relating to his employment and the additional matters provided for herein. This Agreement supersedes and replaces (i) any prior verbal or written agreements between the parties except as provided for herein and (ii) any prior verbal or written agreements between the undersigned Executive and the Company relating to the subject matter hereof. This Agreement may be amended or altered only in a writing signed by Executive and the Company. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Each provision of this Agreement is severable from the others, and if any provision hereof shall be to any extent unenforceable it and the other provisions shall continue to be enforceable to the full extent allowable, as if such offending provision had not been a part of this Agreement.

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10. Assignment; Successors. Any assignment of this Agreement shall be in accordance with the following:

(a) The rights and benefits of Executive under this Agreement, other than accrued and unpaid amounts due hereunder, are personal to him and shall not be assignable by Executive, except with the prior written consent of Company.

(b) Subject to the provisions of subsection (c) of this Section 6, this Agreement shall not be assignable by Company, provided that with the consent of Executive, Company may assign this Agreement to another corporation wholly owned by it either directly or through one or more other corporations, or to any corporate successor of Company or any such corporation.

(c) Any business entity succeeding to substantially all of the business of Company, by purchase, merger, consolidation, sale of assets or otherwise, shall be bound by and shall adopt and assume this Agreement, and Company shall require the assumption of this Agreement by such successor as a condition to such purchase, merger, consolidation, sale of assets or other similar transaction.

11. **Notices.** Any notice or other communications under this Agreement shall be in writing, signed by the party making the same, and shall be delivered personally or sent by certified or registered mail, postage prepaid, addressed as follows:

If to Executive: Mr. Jerry Gramaglia
c/o E*Trade Group, Inc.
4500 Bohannon Drive
Menlo Park, CA 94025

If to Company: Chief Legal Affairs Officer
c/o E*Trade Group, Inc.
4500 Bohannon Drive
Menlo Park, CA 94025

or such other address or agent as may hereafter be designated by either party hereto. All such notices shall be deemed given on the date personally delivered or mailed.

12. **Full Settlement and Legal Expenses.** In no event shall Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Executive under any of the provisions of this Agreement. The prevailing party shall be entitled to recover all legal fees and expenses which such party may reasonably incur as a result of any legal proceeding relating to the validity, enforceability, or breach of, or liability under, any provision of this Agreement or any guarantee of performance (including as a result of any contest by Executive about the amount of any payment pursuant to Section 6 of this Agreement), plus in each case interest at the applicable Federal Rate provided for in Section 7872(f)(2) of the Code.

13. **Governing Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, except that any arbitration shall be governed by the Federal Arbitration Act.

14. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provisions in every other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

E*TRADE GROUP, INC.

By: /s/ Christos M. Cotsakos

Christos M. Cotsakos
Chairman & Chief Executive Officer

EXECUTIVE

/s/ Jerry Gramaglia

Jerry Gramaglia

AMENDED EMPLOYMENT AGREEMENT

This Agreement is made effective this 1st day of October, 2000 (the "Effective Date"), by and between E*TRADE GROUP, INC., a Delaware corporation ("Company"), and CHRISTOS M. COTSAKOS, ("Executive").

BACKGROUND

Executive, Chairman of the Board and Chief Executive Officer of Company, began his service with the Company pursuant to an Employment Agreement dated as of March 15, 1996 (the "Prior Agreement"). Effective June 1, 1999 Executive and the Company entered into a new employment agreement (the "Employment Agreement") the terms of which superseded the Prior Agreement.

The Board of Directors of the Company and the Compensation Committee of the Company recognize the unique and singular contribution that the Executive has made to the Company. Paramount to the Company's interest is insuring the Executive's retention and securing that his skills and abilities remain focused on the continued growth and leadership of the Company. The vision and energetic commitment that the Executive has demonstrated during his tenure as Chief Executive Officer has been and continues to be a fundamental and essential asset of the Company. The efforts of the Executive are recognized as profoundly and positively impacting on the long-term value of the shareowners interests in the Company. The Executive has left an indelible mark on the Company's culture and its values. In addition he has and continues to greatly influence the course of e-commerce and the financial services industry at large.

As part of the Annual review of the Executive performance and compensation arrangement with the Company, the Company wishes to make certain changes and modifications to the Executive's Employment Agreement. The Committee has made note of management's ability to exceed the performance expectation for the Company in both positive and negative market conditions, as illustrated by the Company this year breaking the \$1 Billion revenue level (\$1.4 Billion) and achieving profitability 12 months earlier than expected. Accordingly, in order to achieve the objects set forth above, the parties now wish to amend the Employment Agreement with respect to the continued employment of Executive by the Company, modifying certain terms of the Employment Agreement and adding certain other terms to the Employment Agreement.

Therefore, in consideration of the promises and the mutual covenants and agreements set forth herein, the parties agree to enter into this Amended Employment Agreement as follows:

TERMS AND CONDITIONS

In consideration of the premises and the mutual covenants and agreements set forth below, the parties agree as follows:

1. **Termination of Prior Agreement.** The Prior Agreement shall terminate and be of no further force and effect as of the date of this Agreement.
2. **Employment.** Executive agrees to serve as Chief Executive Officer of Company, and as Chairman of the Company's Board of Directors, for the term of this Agreement, subject to the terms set forth in this Agreement and the provisions of the Bylaws of Company. During his employment, Executive shall devote his effort and attention, on a full-time basis, to the performance of the duties required of him as an executive of Company. Notwithstanding the foregoing, Executive shall be entitled to serve as director (including service as the Board chairman) on the governing boards of other for-profit or not-for-profit entities and to retain any compensation and benefits resulting from such service, so long as such service does not unduly interfere with his duties under this Agreement.
3. **Compensation.** As compensation for his services during the term of this Agreement, Executive shall receive the amounts and benefits set forth in this Section 3 all effective as of the Effective Date unless otherwise specified:

 - (a) An annual salary of \$690,000 ("Base Salary") prorated for any partial year of employment. As soon as reasonably practicable after the close of Company's current fiscal year and the close of each fiscal year thereafter, the Base Salary shall be subject to review by the Compensation Committee of the Company's Board of Directors for increases in light of the size and performance of Company. The Base Salary, as adjusted in accordance with this subsection (a), shall remain in effect unless and until it is increased in accordance with this subsection (a). Executive's salary shall be payable semimonthly or in accordance with Company's regular payroll practices in effect from time to time for officers of his level in Company.
 - (b) Participation in the Company's management bonus plan, with bonus payments to be determined and paid in accordance with the terms of the plan. The bonus will be determined by multiplying: (x) the percentage established by the Compensation Committee (not to be less than 3 times); and (y) the Executive's then current base salary.
 - (c)(i) Participation in the employee benefit plans maintained by Company and in other benefits provided by Company to senior executives, including retirement and 401(k) plans, deferred compensation, medical and dental, annual vacation, paid holidays, sick leave, and similar benefits, which are subject to change from time to time at the reasonable discretion of Company.
 - (c)(ii) Participation in the Supplemental Executive Retirement Plan specifically including the term "Covered Wages" to be defined as the total of the base salary as of the termination date and the targeted bonus at a minimum of three times base salary (or such higher amount then in effect pursuant to sections 3 (a) & (b)) for the plan year which includes the termination.
 - (d) Participation in any Company sponsored incentive arrangements, including participation as a partner in any venture arrangements originated or sponsored by Company.
 - (e) Reimbursement of membership dues and related ongoing costs of appropriate club and professional organizations; and dues, costs and expenses for appropriate, continuing professional education, financial and legal counseling, planning and administration (including any reasonable legal insurance costs).

(f) It is acknowledged that Executive has received option with specific terms and conditions provided therein. Company agrees that there will be no change made in any Stock Option during the term of Executive's employment hereunder which adversely affects Executive's rights as established by the foregoing documents, without the prior written consent of Executive. With respect to the stock option grant dated April 22, 1999 and with respect to any subsequent stock options granted to Executive, regardless of any other terms to the contrary, in no event with the expiration date for exercise be less than 10 years from date of grant. In the event of death or disability, all time-based vesting restrictions applicable to all stock options, current and hereinafter granted, and outstanding to Executive at the time of his death or disability shall accelerate as of such time and thereafter not restrict the exercisability of any such options held by Executive or his estate. In the event of an involuntary termination of Executive associated with a Change in Control, as defined in Section 6(f)(iii), all time-based vesting restrictions applicable to all stock options, current and hereinafter granted, and outstanding to Executive at the time the Change in Control shall accelerate as of such time and thereafter not restrict the exercisability of any such options held by Executive.

(g) Lease of automobile for company use and reimbursement of reasonable operating expense.

(h) Reimbursement of all reasonable business-related expenses, including without limitation first-class air travel or chartered aircraft. At the discretion of Executive, immediate family members are permitted to accompany Executive.

(i) Reimbursement of tuition, fees, books, ancillary expenses including the cost of research assistants, travel, hotel and meal expenses relating to completion of Ph.D. program, or other executive projects such as speech writing, publishing and similar endeavors.

(j) Reimbursement for the cost of a comprehensive security, executive protection and monitoring system that may be installed in Executive's vehicles and or aircraft and at Executive's residences (and the residences and vehicles of immediate family members), including (but not limited to) structural costs and related equipment. Included in this area are reimbursement for the cost of equipment, labor or other costs associated

with the installation of technology and communication equipment in Executive's residences integrated with the equipment and transmission and reception capabilities in Executive's corporate office.

(k) Reimbursement for the use of aircraft owned or controlled by Executive (and/or by his affiliates), all in accordance with the policies to be determined in conjunction with Company.

(l) Company shall purchase a split-dollar insurance policy on Executive's life, payable to Executive's designated beneficiary, in the face amount of \$10,000,000. Company shall also establish a bonus arrangement to enable a "roll-out" of the policy on a tax-free basis to Executive at his targeted retirement date, as defined by Executive in writing. In the event of a termination of employment prior to retirement, Executive shall be entitled to receipt of the policy and a bonus in the amount required to cover all applicable income taxes on such transfer, fully grossed up.

(m) Executive shall be provided, at his discretion, with a loan at the lowest applicable interest rate, to purchase from the company or its subsidiaries any transportation equipment.

(n) "Gross-up" payments to cover taxes due in the event any of the benefits described in subsections (e), (g), (h), (i), (j), (k) and (l) above, or in Section 6(c), are taxable to Executive.

4. In addition to any other compensation paid to Executive pursuant to this agreement or otherwise awarded to Executive by the Compensation Committee of the Company's Board of Directors, Executive will receive the Special Enterprise Enhancement Payment award provided by this section. The award will be paid within 30 days after the closing of a "qualified event". For this purpose, a "qualified event" is an event consummated prior to January 3, 2000, and defined in Section 6(f)(iii) entitled "Change in Control" hereinafter provided. The amount of the award will be based on the increase of the Enterprise Value (i.e. of the Company as hereinbefore defined) from August 12, 1999, to the qualified event (based on the respective closing market prices as represented on the established exchange on which the company's shares are regularly traded. If, however, a greater per share price is stated in any document creating, upon closing, a "qualified event" then that price shall be utilized herein.) The Enterprise Value shall be the market capitalization to be calculated inclusive of all fully diluted shares as represented on the financial statements of the Company on which the company's independent accountants render an opinion thereon. For this purpose only, the initial value will use the share information as of August 12, 1999 with the appropriate market price as of the same date for the effective date of this measurement. To the extent there has been an increased value as of the "qualified event", the Executive will receive an award of eighteen thousands of one percent (0.018%) multiplied by such increase.

5. Term. The term of this Agreement and the termination rights are as follows:

(a) This Agreement and Executive's employment under this Agreement shall be effective as of the Effective Date and shall continue for a term ending on May 31, 2002 (the "Initial Term"). This Agreement and Executive's employment shall automatically continue for successive one-year periods at the end of the Initial Term, unless either party gives written notice to the other of its intent to terminate this Agreement and Executive's employment not less than 180 days prior to the commencement of any such one-year renewal period. In the event such notice to terminate is properly given, this Agreement and Executive's employment shall terminate at the end of the Initial Term or the one-year renewal period during which the notice is given.

(b) This Agreement and Executive's employment may be terminated by either party prior to the end of the Initial Term (or any renewal period) upon 30 days' prior written notice to the other party, provided that, in the event of such termination, Company shall be obligated to make the payments and provide the benefits described in Section 6 below.

6. Termination Payments. Upon termination of Executive's employment, Company shall pay to Executive, within three business days after the end of the 30-day notice period provided in Section 5 above, a payment in cash determined under subsection (a) or (b) of this Section 6 and shall for the period or at the time specified provide the other benefits described in subsections (c) and (e) of this Section 6:

(a) The payment shall be equal to five full years of Executive's "Current Total Annual Compensation" as defined in subsection (f) of this Section 6, if: (i) Executive's employment is terminated by Company, other than for Cause, within three years after any "Change in Control" of

Company as defined in subsection (f) of this Section 6, or at the request of or pursuant to an agreement with a third party who has taken steps reasonably calculated to effect a Change in Control, or otherwise in connection with or in anticipation of a

Change in Control; or (ii) Executive elects to terminate employment for Good Reason within three years after any Change in Control of Company. In addition, in the event that Executive's employment is terminated in the circumstances described in this subsection, the Company shall also forgive any and all loans between Executive and the Company or its subsidiaries that are outstanding at the time of such termination, whether such loans are for the exercise of stock options or any other purpose. The Company shall also pay Executive a "gross-up" payment to cover taxes due from the forgiveness of any such loan.

(b) The payment shall be equal to four full years of Executive's Current Total Annual Compensation if (i) Executive's employment is terminated by Company, other than for Cause, and such termination is not described in (a) above; or (ii) Executive elects to terminate his employment for "Good Reason," as defined in subsection (f) of this Section 6, and such termination is not described in (a) above. In addition, in the event that Executive's employment is terminated in the circumstances described in this subsection, the Company shall also forgive any and all loans between Executive and the Company or its subsidiaries that are outstanding at the time of such termination, whether such loans are for the exercise of stock options or any other purpose. The Company shall also pay Executive a "gross-up" payment to cover taxes due from the forgiveness of any such loan.

(c) In addition to the amount payable to Executive under subsection (a) or (b) of this Section 6, Executive shall be entitled to the following upon termination for any reason:

(i) The health care (including medical and dental) and life insurance coverage benefits provided to Executive and his Spouse at his date of termination, shall be continued at the same level and in the same manner for the rest of their lives. Any additional coverages Executive had at termination, including dependent coverage, will also be continued for such period on the same terms. Any costs Executive was paying for such coverages at the time of termination shall continue to be paid by Executive. If the terms of any benefit plan referred to in this section do not permit continued participation by Executive, then Company will arrange for other coverage providing substantially similar benefits at the same contribution level of Executive.

(ii) Reasonable relocation expenses for Executive and his dependents to any location within the continental United States incurred for the purpose of new employment on or within eighteen months of the effective termination date of this Agreement. Such expenses shall include without limitation first-class airfare and other travel for Executive and his family; moving and storage expenses; real estate closing fees and costs upon the sale of his residence and purchase of a new residence; all other expenses reasonably incurred in relocating to a location other than Menlo Park, California or environs; and an amount equal to Ten Percent (10%) of his Current Total Annual Compensation to cover all incidental relocation expenses.

(iii) Outplacement and financial and legal counseling services selected by Executive, up to a maximum of \$100,000 each (net of tax, if any).

(iv) A mutually acceptable office, together with secretarial assistance and customary office facilities and services, located at Company (or in lieu thereof reimbursement for same at another location), for up to 36 months following the effective termination date of this Agreement, for the purpose of facilitating Executive's search for new employment.

(d) The Employee's employment shall terminate in the event of death. The Company shall pay to the Executive's surviving spouse or family trust (if estate, if none), the payment provided under this Section 6 and shall continue to pay the Base Salary plus most recent bonus amount for the remaining term of the contract. The Executive's rights under the benefit plans of the Company shall be determined under the provisions of those plans.

(e) The Company may terminate the Employee's employment for Disability by giving the Employee six months' advance notice in writing. Disability is defined in subsection (f)(vi) of this Section 6. Upon the effective date of a termination for Disability, the Company will pay to the Executive the payment provided under subsection (b) of this Section 6. In the event of disability, the Executive's rights under the benefit plans of the Company shall be determined under the provisions of those plans.

(f) For purposes of this Agreement, the following definitions shall apply:

(i) The "**Board**" shall mean the Board of Directors of Company.

(ii) The "**Incumbent Board**" shall mean the members of the Board as of the date of this Agreement and any person becoming a member of the Board hereafter whose election, or nomination for election by Company's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of Company).

(iii) "**Change in Control**" shall mean:

(A) The acquisition (other than from Company) by any person, entity or "group," within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act (excluding, for this purpose, any employee benefit plan of Company or its subsidiaries which acquires beneficial ownership of voting securities of Company) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 40% or more of either the then outstanding shares of Common Stock or the combined voting power of Company's then outstanding voting securities entitled to vote generally in the election of directors; or

(B) The failure for any reason of individuals who constitute the Incumbent Board to continue to constitute at least a majority of the Board; or

(C) Approval by the stockholders of Company of a reorganization, merger, consolidation, in each case, with respect to which the shares of Company voting stock outstanding immediately prior to such reorganization, merger or consolidation do not constitute or become exchanged for or converted into more than 40% of the combined voting power entitled to vote generally in the election of directors of the reorganized, merged or consolidated company's then outstanding voting securities, or a liquidation or dissolution of Company or of the sale of all or substantially all of the assets of Company.

(iv) **"Good Reason"** shall mean:

(A) The assignment to Executive of any duties inconsistent in any respect with Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 2 above, or any other action by Company which results in a diminution of such position, authority, duties or responsibilities, excluding for this purpose any action taken with the consent of Executive and any isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by Company promptly after receipt of notice of such action given by Executive;

(B) A reduction in the overall level of Executive's compensation or benefits as provided in Section 3;

(C) Company's requiring Executive to be based at any office or location other than Company's executive offices in Menlo Park, California environs, except for travel reasonably required in the performance of Executive's responsibilities;

(D) Any purported termination by Company of Executive's employment otherwise than as expressly permitted by this Agreement; or

(E) Any failure by Company to comply with and satisfy Section 7 below.

(F) The nomination by the Board of a Chairman (or person serving in a similar capacity) of a person other than Executive.

For purposes of this Agreement, any good-faith determination of "Good Reason" made by Executive shall be conclusive.

(v) **"Current Total Annual Compensation"** shall be the total of the following amounts: (A) the greater of (i) Executive's Base Salary for the greater of the calendar or fiscal year (the "Applicable Year") in which his employment terminates or (ii) such salary for the Applicable Year prior to the year of such termination; and (B) the greater of (i) any total that became payable to Executive under the Bonus Plan during the Applicable Year prior to the Applicable Year in which his employment terminates and (ii) the maximum total bonus amount to which Executive would be and had been paid for the Applicable Year in which his employment terminates as if all Bonus Plan criteria had been or are met, regardless of when such amounts are

actually to be paid or had been paid. Any longer term Bonus Plan payments are to be accelerated and included within the meaning of this definition.

(vi) **"Disability"** shall mean the total and permanent inability of Executive due to illness, accident or other physical or mental incapacity to perform the usual duties of his employment under this Agreement, as determined by a physician selected by Company and acceptable to Executive or Executive's legal representative (which agreement as to acceptability shall not be unreasonably withheld).

(vii) The **"Exchange Act"** shall mean the Securities Exchange Act of 1934, as amended.

(viii) **"Cause"** shall be defined solely as (i) Executive's defalcation or misappropriation of funds or property of the Company, or the commission of any other illegal act in the course of his employment with Company which, in the reasonable judgment of the Board of Directors, has a material adverse financial effect on the Company or on Executive's ongoing abilities to carry out his duties under this Agreement; (ii) Executive's conviction of a felony or of any crime involving moral turpitude, and affirmance of such conviction following the exhaustion of any appeals; (iii) refusal of Executive to substantially perform all of his duties and responsibilities, or Executive's persistent neglect of duty or chronic unapproved absenteeism (other than for a temporary or permanent Disability), which remains uncured following thirty days after written notice of such alleged Cause by the Board of Directors; or (iv) any material and substantial breach by Executive of other terms and conditions of this Agreement, which, in the reasonable judgment of the Board of Directors, has a material adverse financial effect on the Company or on Executive's ongoing abilities to carry out his duties under this Agreement and which remains uncured following thirty days after written notice of such alleged Cause by the Board of Directors.

(g) In addition to the amounts payable and/or forgiven under subsection (a), (b) or (c) of this Section 6, Company shall pay Executive a tax equalization payment in accordance with this subsection. The tax equalization payment shall be in an amount which, when added to the other amounts payable to Executive under this Section 6, will place Executive in the same after-tax position as if the excise tax penalty of Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), or any successor statute of similar import, did not apply to any of the amounts payable under this Section 6 including any amounts paid under this subsection (g). The amount of this tax equalization payment shall be determined by Company's independent accountants and shall be payable to Executive at the same time as the payment under subsection (a) or (b) of this Section 6.

7. Assignment; Successors. Any assignment of this Agreement shall be in accordance with the following:

(a) The rights and benefits of Executive under this Agreement, other than accrued and unpaid amounts due hereunder, are personal to him and shall not be assignable by Executive, except with the prior written consent of Company.

(b) Subject to the provisions of subsection (c) of this Section 7, this Agreement shall not be assignable by Company, provided that with the consent of Executive, Company may assign this Agreement to another corporation wholly owned by it either directly or through one or more other corporations, or to any corporate successor of Company or any such corporation.

(c) Any business entity succeeding to substantially all of the business of Company, by purchase, merger, consolidation, sale of assets or otherwise, shall be bound by and shall adopt and assume this Agreement, and Company shall require the assumption of this Agreement

by such successor as a condition to such purchase, merger, consolidation, sale of assets or other similar transaction.

8. **Notices.** Any notice or other communications under this Agreement shall be in writing, signed by the party making the same, and shall be delivered personally or sent by certified or registered mail, postage prepaid, addressed as follows:

If to Executive; Mr. Christos M. Cotsakos
 c/o E*Trade Group, Inc.
 4500 Bohannon Drive
 Menlo Park, California 94025

If to Company; The Board of Directors
 c/o E*Trade Group, Inc.
 4500 Bohannon Drive
 Menlo Park, California 94025

or such other address or agent as may hereafter be designated by either party hereto. All such notices shall be deemed given on the date personally delivered or mailed.

9. **Full Settlement and Legal Expenses.** Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counter-claim, recoupment, defense or other claim, right or action which Company may have against Executive or others. In no event shall Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Executive under any of the provisions of this Agreement. The prevailing party shall be entitled to recover all legal fees and expenses which such party may reasonably incur as a result of any legal proceeding relating to the validity, enforceability, or breach of, or liability under, any provision of this Agreement or any guarantee of performance (including as a result of any contest by Executive about the amount of any payment pursuant to Section 6 of this Agreement), plus in each case interest at the applicable Federal Rate provided for in Section 7872(f)(2) of the Code.

10. **Governing Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, except that any arbitration shall be governed by the Federal Arbitration Act.

11. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provisions in every other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

12. **Entire Agreement.** This Agreement (including all Exhibits) contains the entire agreement of the parties with respect to the subject matter contained in this Agreement. There are no restrictions, promises, covenants, or undertakings between Company and Executive, other than those expressly set forth in this Agreement. This Agreement supersedes all prior agreements and understandings between the parties. This Agreement may not be amended or modified except in writing executed by the parties.

13. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in accordance with the American Arbitration Association's National Rules for the Resolution of Employment Disputes, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. Any arbitration shall be held in Santa Clara County, California, unless otherwise agreed in writing by the parties.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

E*TRADE GROUP, INC.

[CORPORATE SEAL]

/s/ David Hayden

David Hayden
Audit Committee

/s/ William Ford

William Ford
Compensation Committee

EXECUTIVE

/s/ Christos M. Cotsakos

Christos M. Cotsakos

STATEMENT RE: COMPUTATION OF RATIO OF EARNINGS

	Years Ended September 30,				
	2000	1999	1998	1997	1996
Statement of Earnings to Fixed Charges	(dollars in thousands)				
Fixed Charges:					
Interest expense	\$ 630,397	\$ 215,523	\$ 120,355	\$ 61,189	\$ 37,266
Amortization of debt issuance costs	1,788	230	281	204	127
Estimated interest within rental expense	14,202	12,213	7,281	4,152	1,181
Preference securities dividend requirement of consolidated subsidiaries	—	6,083	6,840	2,203	208
Total fixed charges	\$ 646,387	\$ 234,049	\$ 134,757	\$ 67,748	\$ 38,782
Earnings:					
Income (loss) before income taxes, minority interest, extraordinary item and cumulative effect of accounting change less equity in income (losses) of investments	\$ 115,962	\$ (74,568)	\$ 2,312	\$ 33,218	\$ 5,537
Fixed charges	646,387	234,049	134,757	67,748	38,782
Less:					
Preference securities dividend requirement of consolidated subsidiaries	—	(6,083)	(6,840)	(2,203)	(208)
Earnings	\$ 762,349	\$ 153,398	\$ 130,229	\$ 98,763	\$ 44,111
Ratio of earnings to fixed charges	1.18	0.66	0.97	1.46	1.14
Pro forma ratio of earnings to fixed charges	1.13	—	—	—	—
Excess (deficiency) of earnings to fixed charges	\$ 115,962	\$ (80,651)	\$ (4,528)	\$ 31,015	\$ 5,329
Pro forma excess (deficiency) of earnings to fixed charges	\$ 88,858	\$ —	\$ —	\$ —	\$ —

The ratio of earnings to fixed charges is computed by dividing fixed charges into income (loss) before income taxes, minority interest, extraordinary items and the cumulative effect of accounting change less equity in the income (losses) of investments plus fixed charges less the preference securities dividend requirement of consolidated subsidiaries. Fixed charges include, as applicable, interest expense, amortization of debt issuance costs, the estimated interest component of rent expense, and the preference securities dividend requirement of consolidated subsidiaries.

The pro forma ratio gives effect to the issuance of the 6% Convertible Subordinated Notes as of the beginning of fiscal 2000, and the repayment of bank borrowings with the proceeds from the offering for the year ended September 30, 2000.

E*TRADE GROUP, INC. SUBSIDIARIES

Name

E*TRADE Securities, Inc.
 E*TRADE Capital, Inc.
 E*TRADE Asset Management, Inc.
 E*TRADE Business Solutions Group, Inc.
 E*TRADE International Ltd.
 E*TRADE Global Ltd.
 E*TRADE Asia Limited
 ClearStation, Inc.
 TradePlus Brokerage, Inc.
 Confluent, Inc.
 E*TRADE Online Ventures, Inc.
 E*TRADE International Equipment Management Corporation
 E*TRADE UK (Holdings) Limited
 Electronic Shares Information Ltd.
 E*TRADE UK, Ltd.
 E*TRADE Germany AG
 Nordic AB
 Difko Borsmaeglerselskab A/S (Denmark)
 E*TRADE Sweden AB
 E*TRADE Norge ASA (Norway)
 E*TRADE Japan K.K
 PrivateAccounts, Inc.
 E*TRADE Systems Holdings Limited
 E*TRADE Institutional Securities, Inc.
 TIR Investor Select, Inc.
 E*TRADE Investor Select, Inc.
 Investor Select Advisors, Inc.
 Marquette Securities, Inc.
 Investor Select Advisors Limited
 E*TRADE Securities Limited
 E*TRADE Securities (Hong Kong) Limited
 TIR Securities Australia Ltd.

E*TRADE Institutional Securities Limited
 TIR Securities UK Ltd.
 E*TRADE Systems India Private Limited

E*TRADE Institutional Holdings, Inc.
E*TRADE Asia Services Ltd.
TIR Systems Holdings Ltd.
TIR Holdings Brazil Ltd.
E*TRADE Europe Securities Limited
E*TRADE Europe Services Limited
E*TRADE Web Services Limited
TIR Securities Philippines Corp
TIR Currency Management UK Ltd.
Tireless Nominees Pty Ltd.
Tiresome Nominees Pty Ltd.
Tirade Nominees Pty Ltd.
E*TRADE Nominees Limited
TIR Currency Management Ltd.
E*TRADE Financial Corporation
E*TRADE Bank
E*TRADE Capital Markets
Telebanc Capital Trust I
Telebanc Capital Trust II
Telebanc Technology Solutions, Inc.
Telebanc Mortgage Funding Corp.
TM1 Funding LLC
TM2 Securitization LLC
TM2 Securitization QSPE LLC
E*TRADE Access, Inc.
North American Cash Systems, Inc.
ATM Ventures, LLC
CCS Holding Company
Card Capture Services (Canada), Inc.
CCS Mexico, S.A. de C.V.
VERSUS Technologies, Inc.
U.S. Raptor One, Inc. (subsidiary of VERSUS)
U.S. Raptor Two, Inc. (subsidiary of VERSUS)
U.S. Raptor Three, Inc. (subsidiary of VERSUS)

3045175 Nova Scotia Company
EGI Canada Corporation
E*TRADE Brokerage Services, Inc.
E*TRADE Technologies Corporation

E*TRADE Fairvest Securities Corporation

W&L Aviation, Inc.

E*TRADE Africa (60% owned)

E*TRADE South Africa (subsidiary of E*TRADE Africa)

CONSENT OF INDEPENDENT AUDITORS

We consent to the incorporation by reference in Registration Statements No. 333-12503, No. 333-52631, No. 333-62333, No. 333-72149, No. 333-35068, No. 333-35074, No. 333-37892, No. 333-44608 and No. 333-44610 of E*TRADE Group, Inc. on Form S-8, Registration Statements No. 333-86925, No. 333-89809, No. 333-90557, No. 333-90963, No. 333-91527, No. 333-94457, No. 333-35802, No. 333-36748, No. 333-41628 and No. 333-44538 of E*TRADE Group, Inc. on Form S-3, and Registration Statement No. 333-91467 of E*TRADE Group, Inc. on Form S-4, of our report dated October 19, 2000 appearing in this Annual Report on Form 10-K of E*TRADE Group, Inc. for the year ended September 30, 2000.

/s/ Deloitte & Touche LLP

San Jose, California
November 6, 2000

CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation of our report included in this Form 10-K, into the Company's previously filed Registration Statements File No. 333-12503, No. 333-52631, No. 333-62333, No. 333-72149, No. 333-44608 and No. 333-44610 of E*TRADE Group, Inc. on Form S-8, Registration Statements File No. 333-86925, No. 333-89809, No. 333-90557, No. 333-90963, No. 333-91527, No. 333-94457, No. 333-41628 and No. 333-44538 of E*TRADE Group, Inc. on Form S-3, and Registration Statement File No. 333-91467 of E*TRADE Group, Inc. on Form S-4.

/s/ Arthur Andersen

Vienna, Virginia
November 8, 2000

<ARTICLE> BD
 <LEGEND> THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM
 THE FINANCIAL STATEMENTS INCLUDED IN THIS REGISTRATION STATEMENT FILING AND IS
 QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.
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