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FORM 10-Q

E TRADE FINANCIAL CORP - ETFC

Filed: February 14, 2000 (period: December 31, 1999)

Quarterly report with a continuing view of a company's financial position

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

Quarterly Report Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934
for the quarterly period ended December 31, 1999

Commission file number 1-11921

E*TRADE Group, Inc.
(Exact name of registrant as specified in its charter)

Delaware 94-2844166
(State or other jurisdiction (I.R.S. Employer Identification Number)
of incorporation or
organization)

4500 Bohannon Drive, Menlo Park, CA 94025
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: (650) 331-6000

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 [X] No []

Indicate the number of shares outstanding of each of the issuer's classes of
common stock, as of the latest practicable date:

As of February 7, 2000, the number of shares outstanding of the registrant's
common stock was 289,095,417.

E*TRADE Group, Inc.
Form 10-Q Quarterly Report
For the Quarter Ended December 31, 1999

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UNLESS OTHERWISE INDICATED, REFERENCES TO "COMPANY" MEAN E*TRADE GROUP, INC. AND ITS SUBSIDIARIES.

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FORWARD-LOOKING STATEMENTS

Certain statements in this discussion and analysis, including statements regarding the Company's strategy, financial performance and revenue sources, are forward-looking statements based on current expectations and entail various risks and uncertainties. The Company's actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including, but not limited to, those set forth under "Risk Factors" and elsewhere in this report. Readers are urged to carefully review and consider the various disclosures made by the Company in this report and in the Company's other reports filed with the SEC, including the Company's Annual Report on Form 10-K as filed with the SEC, that attempt to advise interested parties of certain risks and factors that may affect the Company's business. Readers are cautioned not to place undue reliance on these forward-looking statements to reflect events or circumstances occurring after the date hereof. The following should be read in conjunction with the Company's financial statements and notes thereto.

PART I. Financial Information

Item 1. Financial Statements

E*TRADE GROUP, INC. AND SUBSIDIARIES

Consolidated Statements of Operations
(in thousands, except per share amounts)
(Unaudited)

	Three Months Ended December 31,	
	1999	1998
	-----	-----
Revenue:		
Transaction revenues.....	\$152,312	\$ 60,320
Global and institutional.....	33,699	28,106
Interest--net of interest expense (A).....	43,341	21,809
Other.....	16,656	5,685
	-----	-----
Net revenues.....	246,008	115,920
	-----	-----
Cost of services.....	107,058	49,399
	-----	-----
Operating expenses:		
Selling and marketing.....	119,492	55,001
Technology development.....	36,294	14,566
General and administrative.....	38,441	17,719
Amortization of goodwill.....	1,654	--
Merger-related expenses.....	3,297	--
	-----	-----
Total operating expenses.....	199,178	87,286
	-----	-----
Total cost of services and operating expenses.....	306,236	136,685
	-----	-----
Operating loss.....	(60,228)	(20,765)
	-----	-----
Non-operating income (expense):		
Gain on sale of investments.....	31,316	--
Unrealized gain on venture funds.....	25,453	--
Equity in losses of investments.....	(3,843)	(103)
Other.....	60	66
	-----	-----
Total non-operating income (expense).....	52,986	(37)
	-----	-----
Pre-tax loss.....	(7,242)	(20,802)
Income tax benefit.....	2,028	9,215
	-----	-----
Net loss.....	(5,214)	(11,587)
Preferred stock dividends.....	--	60
	-----	-----
Loss applicable to common stock.....	\$ (5,214)	\$ (11,647)
	=====	=====
Loss per share (Note 5):		
Basic.....	\$ (0.02)	\$ (0.05)
	=====	=====
Diluted.....	\$ (0.02)	\$ (0.05)
	=====	=====
Shares used in computation of loss per share (Note 5):		
Basic.....	247,163	231,883
Diluted.....	247,163	231,883

(A) Interest is presented net of interest expense. Interest expense for the three months ended December 31, 1999 and 1998 was \$33,628 and \$9,446, respectively.

See notes to consolidated financial statements.

E*TRADE GROUP, INC. AND SUBSIDIARIES

Consolidated Balance Sheets
(in thousands, except share amounts)

	December 31, 1999	September 30, 1999
	-----	-----
	(Unaudited)	
ASSETS -----		
Current assets:		
Cash and equivalents.....	\$ 98,650	\$ 85,734
Cash and investments required to be segregated under Federal or other regulations.....	808,953	103,500
Investment securities.....	103,921	189,145
Brokerage receivables--net.....	4,243,618	2,912,581
Other assets.....	65,012	41,987
	-----	-----
Total current assets.....	5,320,154	3,332,947
Property and equipment--net.....	168,617	155,785
Investments.....	781,013	424,293
Goodwill--net.....	356,167	--
Other assets.....	68,316	13,955
	-----	-----
Total assets.....	\$6,694,267	\$3,926,980
	=====	=====
LIABILITIES AND SHAREOWNERS' EQUITY -----		
Liabilities:		
Brokerage payables.....	\$4,758,423	\$2,824,212
Bank loans payable.....	107,785	3,000
Deferred income taxes.....	144,501	23,256
Capital lease obligations.....	31,698	--
Accounts payable, accrued and other liabilities...	207,452	162,845
	-----	-----
Total liabilities.....	5,249,859	3,013,313
	-----	-----
Commitments and contingencies (Note 8)		
Shareowners' equity:		
Common stock, \$.01 par value; shares authorized, 600,000,000; shares issued and outstanding: December 1999, 252,896,567; September 1999, 239,822,663.....	2,529	2,398
Additional paid-in capital.....	1,105,496	763,958
Accumulated deficit.....	(26,088)	(20,874)
Accumulated other comprehensive income.....	362,471	168,185
	-----	-----
Total shareowners' equity.....	1,444,408	913,667
	-----	-----
Total liabilities and shareowners' equity.....	\$6,694,267	\$3,926,980
	=====	=====

See notes to consolidated financial statements.

E*TRADE GROUP, INC. AND SUBSIDIARIES

Consolidated Statements of Cash Flows

(in thousands)
(Unaudited)

Three Months Ended
December 31,

1999 1998

CASH FLOWS FROM OPERATING ACTIVITIES:

Net loss.....	\$ (5,214)	\$ (11,587)
Reconciliation to net cash provided by (used in) operating activities:		
Deferred income taxes.....	(2,552)	--
Depreciation and amortization.....	19,343	5,537
Equity in losses of investments.....	3,843	103
Stock compensation expense.....	2,638	2,200
Gain on sale of investments.....	(31,316)	--
Unrealized gain on venture funds.....	(25,453)	--
Other.....	(200)	(200)
Net effect of changes in brokerage-related assets and liabilities:		
Cash and investments required to be segregated under Federal or other regulations.....	(705,453)	(16,500)
Brokerage receivables.....	(1,331,037)	(176,127)
Brokerage payables.....	1,934,211	212,366
Other changes, net:		
Other assets.....	(17,635)	(11,290)
Accounts payable, accrued and other liabilities....	68,207	(2,055)
Net cash provided by (used in) operating activities.....	(90,618)	2,447

CASH FLOWS FROM INVESTING ACTIVITIES:

Purchase of property and equipment, net of capital lease.....	(30,521)	(3,383)
Purchase of investment securities.....	(358,686)	(1,862,406)
Purchase of investments.....	(23,865)	(777)
Sale/maturity of investment securities.....	443,910	1,878,366
Proceeds from sale of investments.....	39,393	--
Restricted deposits.....	(49,759)	--
Cash used in acquisitions.....	(26,707)	--
Net cash provided by (used in) investing activities.....	(6,235)	11,800

CASH FLOWS FROM FINANCING ACTIVITIES:

Proceeds from bank loans, net of transaction costs..	102,535	--
Proceeds from employee stock transactions.....	7,214	1,696
Other.....	20	(54)
Net cash provided by financing activities.....	109,769	1,642

INCREASE IN CASH AND EQUIVALENTS.....	12,916	15,889
CASH AND EQUIVALENTS--Beginning of period.....	85,734	47,776

CASH AND EQUIVALENTS--End of period.....	\$ 98,650	\$ 63,665
--	-----------	-----------

SUPPLEMENTAL DISCLOSURES:

Cash paid for interest.....	\$ 24,991	\$ 10,141
Cash paid for income taxes.....	\$ 503	\$ 47
Non-cash activities:		
Unrealized gain on available-for-sale securities...	\$ 327,909	\$ 44,236
Assets acquired under capital lease obligations....	\$ 31,698	--
Acquisitions, net of cash acquired:		
Common stock issued and stock options assumed.....	\$ 323,967	--
Cash paid, less acquired.....	26,707	--
Liabilities assumed.....	6,000	--

Carrying value of joint-venture investment.....	5,343	--

Fair value of assets acquired (including goodwill of \$357,397).....	\$ 362,017	--
	=====	

See notes to consolidated financial statements.

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E*TRADE GROUP, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 1.--Basis of Presentation

The accompanying unaudited interim consolidated financial statements include E*TRADE Group, Inc. and its subsidiaries (collectively, the "Company"), including E*TRADE Securities, Inc. ("E*TRADE Securities"), a securities broker-dealer, and TIR (Holdings) Limited ("TIR"), a provider of global securities brokerage and other related services to institutional customers.

These interim consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") and, in the opinion of management, reflect all normal recurring adjustments necessary to present fairly the financial position, results of operations and cash flows for the periods presented in conformity with generally accepted accounting principles. All significant intercompany accounts and transactions have been eliminated. These interim consolidated financial statements should be read in conjunction with the audited annual consolidated financial statements and notes thereto included in the Company's Annual Report to Shareowners on Form 10-K for the fiscal year ended September 30, 1999.

Note 2.--Net Brokerage Receivables and Payables

Net brokerage receivables and payables consists of the following (in thousands):

	December 31, 1999	September 30, 1999
	-----	-----
Receivable from customers and non-customers (less allowance for doubtful accounts of \$2,955 at December 31, 1999 and \$975 at September 30, 1999) ..	\$3,782,599	\$2,559,283
Receivable from brokers, dealers and clearing organizations:		
Net settlement and deposits with clearing organizations.....	34,092	20,066
Deposits paid for securities borrowed.....	396,829	306,326
Securities failed to deliver.....	4,423	7,508
Other.....	25,675	19,398
	-----	-----
Total brokerage receivables, net.....	\$4,243,618	\$2,912,581
	=====	=====
Payable to customers and non-customers.....	\$1,286,794	\$ 946,760
Payable to brokers, dealers and clearing organizations:		
Deposits received for securities loaned.....	3,434,902	1,806,590
Securities failed to receive.....	14,370	7,235
Other.....	22,357	63,627
	-----	-----
Total brokerage payables.....	\$4,758,423	\$2,824,212
	=====	=====

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 finance their purchases of securities on margin. At December 31, 1999 and September 30, 1999, credit

extended to customers and non-customers with respect to margin accounts was \$3,776 million and \$2,452 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.

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Note 3.-- Investments

Investments consist of the following (in thousands):

	December 31, 1999	September 30, 1999
	-----	-----
Publicly-traded equity securities, at market (cost of \$36,455 and \$35,533 at December 31, 1999 and September 30, 1999, respectively)....	\$646,619	\$317,788
Equity method investments:		
Joint ventures (see Note 9).....	13,285	20,862
Archipelago.....	25,162	25,149
Venture funds.....	65,473	36,270
E*OFFERING.....	15,898	11,391
KAP Group.....	2,000	2,000
Other investments.....	12,576	10,833
	-----	-----
Total investments.....	\$781,013	\$424,293
	=====	=====

Publicly-traded Equity Securities

The Company has investments in several companies that are publicly traded. These companies include Knight/Trimark Inc., CriticalPath, Digital Island, Message Media, E-LOAN and Versus. During the first quarter of fiscal 2000, the Company sold shares of Knight/Trimark generating proceeds of \$30,001,000, resulting in a pre-tax gain of \$29,923,000. The Company accounts for these investments as long-term marketable equity securities held available-for-sale under the provisions of SFAS No. 115, Accounting for Certain Investments in Debt and Equity Securities. Accordingly, these investments are carried at fair value. Unrealized gains were \$610,164,000 and \$282,255,000 at December 31, 1999 and September 30, 1999, respectively. There were no unrealized losses at December 31, 1999 and September 30, 1999. Certain of these investments are currently subject to sale restriction agreements.

Equity Method Investments

The Company had investments in four electronic commerce companies, which were contributed on October 1, 1999 to form the E*TRADE eCommerce Fund, L.P. (the "Fund"). The Fund raised additional capital from third parties totaling approximately \$75 million and will invest primarily in companies in the electronic commerce industry, as well as Internet infrastructure companies and other enabling technologies. The Company received a general and limited partnership interest of approximately 25% in the Fund. The Company also has a limited partnership interest in a privately-managed venture capital fund.

In the quarter ended December 31, 1999, the Company invested an additional \$5,000,000 in E*OFFERING in the form of a subordinated note, which was utilized by E*OFFERING for its Internet-based investment banking activities. The note has been classified as part of the investment at December 31, 1999 and was subsequently repaid in January 2000. E*OFFERING has since completed additional rounds of financing whereby the Company's ownership position was reduced to approximately 26%.

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Note 4.--Comprehensive Income

On October 1, 1998, the Company adopted Statement of Financial Accounting Standards No. 130, Reporting Comprehensive Income, which requires that an enterprise report, by major components and as a single total, the change in net assets during the period from non-owner sources. The reconciliation of net loss to comprehensive income is as follows (in thousands):

	Three Months Ended December 31,	
	1999	1998
Net loss.....	\$ (5,214)	\$(11,587)
Changes in other comprehensive income:		
Unrealized gain on available-for-sale securities, net of tax.....	194,202	26,303
Cumulative translation adjustments.....	84	658
Total comprehensive income.....	\$189,072	\$ 15,374

Note 5.--Loss Per Share

The Company reported a net loss for the three months ended December 31, 1999 and 1998; therefore, the calculation of diluted earnings per share does not include common stock equivalents as it would result in a reduction of net loss per share. If the Company had reported net income for the three months ended December 31, 1999 and 1998, there would have been 16,187,000 and 11,857,000 additional shares in the calculation of diluted earnings per share, respectively.

The following options to purchase shares of common stock were not included in the computation of diluted earnings per share because the options' exercise prices were greater than the average market price of the Company's common stock for the periods stated, and therefore are not common stock equivalents for purposes of this calculation (in thousands, except exercise price data):

	Three Months Ended December 31,	
	1999	1998
Options excluded from computation of diluted net loss per share.....	969	3,060
Exercise price ranges:		
High.....	\$58.75	\$14.05
Low.....	\$29.55	\$ 6.13

Note 6.--Bank Loans

In November 1999, the Company obtained a \$50 million line of credit under an agreement with a bank that expires on November 30, 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 on the day of the advance. The agreement requires the Company to meet certain financial covenants; as of December 31, 1999, the Company was in compliance with all such covenants. As of December 31, 1999, the Company had \$34.8 million outstanding under this line of credit.

In December 1999, the Company obtained a \$150 million line of credit agreement with a syndicate of banks that expires on March 31, 2000. The line of credit is collateralized by publicly-traded investments owned by the Company. Borrowings under the line of credit bear interest at 0.25% above LIBOR. The agreement requires the Company to meet certain financial covenants and

prohibits the assumption of any major debt, except for equipment leases; as of December 31, 1999, the Company was in compliance with all such covenants. As of December 31, 1999, the Company had \$70.0 million outstanding under this line of credit.

Note 7.--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 SEC and the National Association of Securities Dealers, Inc. ("NASD"), 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 2 percent of aggregate debit balances arising from customer transactions, as defined. E*TRADE Securities had amounts in relation to the Rule as follows (in thousands, except percentage data):

	December 31, 1999	September 30, 1999
	-----	-----
Net capital.....	\$239,353	\$162,729
Percentage of aggregate debit balances.....	6.0%	6.2%
Required net capital.....	\$ 79,218	\$ 52,206
Excess net capital.....	\$160,135	\$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 brokerage subsidiary companies are also subject to net capital requirements. These companies are located in the United States, Australia, Hong Kong, Ireland, the Philippines and the United Kingdom. The companies outside the United States have various and differing capital requirements, all of which were met at December 31, 1999 and September 30, 1999. The net capital requirements of TIR's brokerage subsidiary companies located in the United States are summarized as follows:

TIR Securities, Inc. and TIR Investor Select, Inc.--TIR Securities, Inc. and TIR Investor Select, Inc. are subject to the Rule and are required to maintain net capital equal to the greater of \$5,000 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. TIR Securities, Inc. is also subject to the Commodity Futures Trading Commission ("CFTC") Regulation 1.17, which requires the maintenance of net capital of 4% of the funds required to be segregated in accordance with Section 4d(2) of the Commodities Exchange Act or \$30,000, whichever is greater. TIR Securities, Inc. is required to maintain net capital in accordance with Rule or CFTC Regulation 1.17, whichever is greater.

Marquette Securities, Inc.--Marquette Securities, Inc. is subject to the Rule and is required to maintain net capital equal to the greater of \$250,000 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 above companies (in thousands):

December 31, 1999		September 30, 1999	
-----		-----	
Required	Excess	Required	Excess

	net capital	Net capital	net capital	net capital	Net capital	net capital
	-----	-----	-----	-----	-----	-----
TIR Securities, Inc.	\$65	\$1,398	\$1,333	\$82	\$2,289	\$2,207
TIR Investor Select, Inc.	5	39	34	5	254	249
Marquette Securities, Inc.	250	445	195	250	445	195

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Note 8.--Commitments, Contingencies and Regulatory Matters

The Company is a defendant in civil actions arising in the normal course of business, including several putative class action filings. The matters alleged by the plaintiffs include:

- . False and deceptive advertising and other communications regarding the Company's commission rates and ability to provide account access and to timely execute and confirm online transactions;
- . Damages arising from alleged problems in accessing accounts and placing orders;
- . Damages arising from system interruptions including those occurring on February 3, 4, and 5, 1999; and
- . Unfair business practices regarding the extent to which initial public offering shares are made available to the Company's customers.

These proceedings are at early stages, and the Company is unable to predict their ultimate outcome; however, the Company believes that all of these claims are without merit and intends to defend against them vigorously. An unfavorable outcome in any of these matters, if they are not covered by insurance, 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 favor of the Company, 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 operation.

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 the NASD or the SEC by dissatisfied customers are investigated by the NASD or the SEC, and, if pursued by such customers, may rise to the level of arbitration or disciplinary action. One or more of such claims or disciplinary actions decided adversely 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 is aware of several instances of its noncompliance with applicable regulations.

Note 9.--Acquisitions

During the quarter ended December 31, 1999, the Company acquired 100% ownership of three of its foreign affiliates, E*TRADE Nordic AB, a Swedish company, E*TRADE @ Net Bourse S.A., a French company, and the remaining portion of its E*TRADE UK joint venture, for an aggregate purchase price of \$362 million. The purchase price was composed of 11.7 million shares of the Company's common stock, cash of \$26.7 million and the assumption of options of the affiliates. The purchase price exceeded the fair value of the assets acquired by \$357 million, which was recorded as goodwill to be amortized over 20 years.

The pro forma information below assumes that the acquisitions occurred at the beginning of 1998 and includes the effect of amortization of goodwill from that date (in thousands):

	Three months ended December 31,	
	1999	1998
Net revenues.....	\$246,867	\$116,183
Net loss.....	\$ (6,215)	\$(11,972)
Basic and diluted loss per share.....	\$ (0.02)	\$ (0.05)

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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 1998.

Note 10.--Segment Information

Segment Information

The Company provides securities brokerage and related investment services. The Company has classified the operations of E*TRADE and TIR as separate reportable segments, which is the way that management currently evaluates their operating performance. 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 (in thousands):

	E*TRADE Group	TIR	Total
Quarter ended December 31, 1999			
Non-interest revenue.....	\$ 169,496	\$ 33,171	\$ 202,667
Interest--net of interest expense.....	43,187	154	43,341
Net revenues.....	212,683	33,325	246,008
Operating income (loss).....	(62,452)	2,224	(60,228)
Pre-tax income (loss).....	(9,431)	2,189	(7,242)
Segment assets.....	6,627,493	66,774	6,694,267
Quarter ended December 31, 1998			
Non-interest revenue.....	\$ 66,665	\$ 27,446	\$ 94,111
Interest--net of interest expense.....	21,576	233	21,809
Net revenues.....	88,241	27,679	115,920
Operating income (loss).....	(23,015)	2,250	(20,765)
Pre-tax income (loss).....	(23,118)	2,316	(20,802)
Segment assets.....	2,241,518	73,144	2,314,662

No one single customer accounted for greater than 10% of total revenues for the quarters ended December 31, 1999 and 1998.

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Note 11.--Subsequent Events

Telebanc Acquisition

On January 12, 2000, the Company completed the merger of Telebanc Financial Corporation ("Telebanc"). Telebanc is the holding company for Telebank, the

nation's largest pure-play internet bank. Under the terms of the agreement, Telebanc shareowners received 1.05 shares of E*TRADE common stock for each share of Telebanc common stock representing a total of 35.6 million E*TRADE shares. Summarized pro forma consolidated information of the combined companies for the quarter, as well as comparative prior year amounts, are as follows (in thousands, except per share data):

	Quarter Ended December 31,	
	1999	1998
Pro Forma Combined Summarized Statement of Operations:		
Gross revenues.....	\$364,280	\$163,125
Interest expense and provision for loan losses.....	94,849	38,299
Net revenues.....	269,431	124,826
Cost of services.....	113,505	51,416
Selling and marketing expenses.....	128,918	57,277
Merger-related expenses.....	5,787	--
Other operating expenses.....	79,247	34,945
Operating loss.....	(58,026)	(18,812)
Gain on sale of investments.....	31,316	--
Unrealized gain on venture funds.....	25,453	--
Loss on equity investments and minority interest.....	(4,384)	(557)
Other non-operating income (loss).....	153	(44)
Pre-tax loss.....	(5,488)	(19,413)
Income tax benefit.....	697	8,481
Net loss.....	(4,791)	(10,932)
Preferred stock dividends.....	--	60
Loss applicable to common stock.....	\$ (4,791)	\$ (10,992)
Loss per share, basic and diluted.....	\$ (0.02)	\$ (0.04)
Shares used in computation of loss per share.....	282,505	257,860

	December 31, 1999	September 30, 1999
(in thousands)		
Pro Forma Combined Summarized Balance Sheets:		
Cash and equivalents.....	\$ 299,498	\$ 125,801
Investment securities.....	288,258	367,767
Brokerage receivables--net.....	4,243,618	2,912,581
Mortgage-backed securities.....	2,025,192	1,426,053
Loans receivable--net.....	2,422,252	2,154,509
Total assets.....	11,738,637	7,908,224
Long-term obligations.....	62,298	30,584
Shareowners' equity.....	1,949,637	1,419,301

Debt Offering

On February 7, 2000, the Company completed a Rule 144A offering of \$500 million convertible subordinated notes due February 2007. The notes are convertible, at the option of the holder, into a total of 21,186,441 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 granted the

initial purchasers an option, exercisable until March 16, 2000, to purchase up to an additional \$150 million of notes. The Company expects to use \$150 million of the net proceeds to refinance outstanding senior secured indebtedness and the remaining net proceeds for general corporate purposes, including financing the future growth of the business. Debt issuance costs of \$14,375,000 will be included in other assets and amortized to interest expense over the term of the notes. Had these securities been issued as of the beginning of the quarter ended December 31, 1999, net loss per share on a diluted basis would have been increased to \$0.05 due to the additional net interest expense associated with the securities.

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Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Forward-Looking Statements

The following discussion of the financial condition and results of operations of the Company should be read in conjunction with the consolidated financial statements and notes thereto included elsewhere in this Form 10-Q. This discussion contains forward-looking statements, including statements regarding the Company's strategy, financial performance and revenue sources which involve risks and uncertainties. The Company's actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including, but not limited to, those set forth in the section entitled Risk Factors and elsewhere in this Form 10-Q.

Results of Operations

Revenue Detail (in millions, except percentage and transaction data)

	Three Months Ended		Percent Change
	December 31, 1999	December 31, 1998	
Revenues:			
Transaction revenues:			
Commissions.....	\$ 136.7	\$ 52.3	161%
Order flow.....	15.6	8.0	95%
	-----	-----	---
Total transaction revenue.....	152.3	60.3	153%
	-----	-----	---
Interest--net of interest expense:			
Brokerage interest income.....	75.1	26.0	189%
Brokerage interest expense.....	(33.6)	(9.4)	257%
Corporate--net.....	1.8	5.2	(66)%
	-----	-----	---
Interest--net.....	43.3	21.8	99%
	-----	-----	---
Global and institutional.....	33.7	28.1	20%
Other.....	16.7	5.7	193%
	-----	-----	---
Total revenues.....	\$ 246.0	\$115.9	112%
	=====	=====	===
Transactions per day.....	133,000	43,000	209%

The Company's net revenues increased to \$246.0 million in the first quarter of fiscal 2000, up 112% from \$115.9 million in the equivalent period of fiscal 1999.

Transaction revenues increased to \$152.3 million in the first quarter of fiscal 2000, up 153% from \$60.3 million in the equivalent period in fiscal 1999. Transaction revenues consist of commission revenues and payments for order flow. Growth in transaction revenues reflected the overall high level of trading volume in U.S. financial markets, as well as the increase in new customer accounts.

Commission revenues for the first quarter of fiscal 2000 increased to \$136.7 million, up 161% from \$52.3 million for the same period a year ago. Transactions for the first quarter of fiscal 2000 totaled 8.5 million or an average of 133,000 transactions per day. This is an increase of 209% over the average daily transaction volume of 43,000 in the prior year. The decline in commissions per trade was a result of promotional activities, changes in the mix of revenue generating transactions and the August 1999 implementation of the new Power E*TRADE program, which provides reduced commissions for active traders.

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Payments for order flow increased to \$15.6 million for the first quarter of fiscal 2000, up 95% from \$8.0 million for the same period a year ago. As a percentage of transaction revenue, payments for order flow have decreased to 10% for the first quarter of fiscal 2000, down from 13% for the same period a year ago. Payments for order flow did not increase at the same rate as transactions 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.

Net interest revenues primarily represent interest earned by the Company on credit extended to its customers to finance their purchases of securities on margin, fees on its customer assets invested in money market accounts and interest earned on investment securities, offset by interest paid to customers on certain credit balances, interest paid to banks and interest paid to other broker-dealers through the Company's stock loan program. Brokerage interest income increased to \$75.1 million in the first quarter of fiscal 2000, up 189% from \$26.0 million for the same period a year ago. This increase reflects the overall increases in average customer margin balances, which increased 193% to \$2.9 billion in the first quarter of fiscal 2000, from \$1.0 billion in the same period a year ago. Brokerage interest expense increased to \$33.6 million, up 257% from \$9.4 million in the comparable prior year quarter, due to average customer money market fund balances, which increased 145% to \$5.3 billion in the first quarter of fiscal 2000, from \$2.2 billion in the same period a year ago; average customer credit balances, which increased 277% to \$1.1 billion in the first quarter of fiscal 2000, from \$0.3 billion in the same period a year ago; and average stock loan balances, which increased 299% to \$2.1 billion in the first quarter of fiscal 2000, from \$0.5 billion in the same period a year ago. Net corporate interest income declined due primarily to capital lease obligations and bank borrowings incurred in the first quarter of fiscal 2000.

Global and institutional revenues increased to \$33.7 million for the first quarter of fiscal 2000, up 20% from \$28.1 million for the same period one year ago. Global and institutional revenues are comprised of revenues from TIR's operations, as well as licensing fees and royalties from E*TRADE International's affiliates. TIR's revenues increased to \$33.1 million in the first quarter of fiscal 2000, up 23% from \$27.0 million for the same period a year ago. These increases are primarily attributable to strong market conditions in Asia and Europe, as well as an increase in futures commissions. TIR revenues are largely comprised of commissions from institutional trade executions; for the first quarter of fiscal 2000 approximately 55% of TIR's transactions were from outside the U.S., and approximately 82% were cross-border transactions.

Other revenues increased to \$16.7 million in the first quarter of fiscal 2000, up 193% from \$5.7 million for the comparable period in fiscal 1999. Other revenues increased primarily due to growth in mutual funds revenue, revenues from fees charged for advertising on the Company's Web site, investment banking revenue, E*TRADE Business Solutions revenue, and broker-related fees for services.

Cost of Services

Total cost of services increased to \$107.1 million for the first quarter of fiscal 2000, up 117% from \$49.3 million in the comparable period in fiscal 1999. Cost of services includes expenses related to the Company's clearing operations, customer service activities, Web site content costs, system maintenance, communication expenses and depreciation. These increases reflect the overall increase in customer transactions processed by the Company, a related increase in customer service inquiries, and operations and maintenance costs associated with the Company's technology centers in Rancho Cordova, California, and Alpharetta, Georgia. Cost of services as a percentage of total revenues was 44% in the first quarter of fiscal 2000 compared to 43% in the

comparable period in fiscal 1999.

Operating Expenses

Selling and marketing expenses increased to \$119.5 million in the first quarter of fiscal 2000, up 117% from \$55.0 million in the comparable period in fiscal 1999. The increases reflect expenditures for advertising placements, creative development and collateral materials resulting from a variety of advertising campaigns

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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!. These increased expenditure levels are expected to continue throughout fiscal 2000.

Technology development expenses increased to \$36.3 million in the first quarter of fiscal 2000, up 149% from \$14.6 million in the comparable period in fiscal 1999. The increased level of expense was incurred to enhance the Company's existing product offerings, including maintenance of the Company's Web site, and reflects the Company's continuing commitment to invest in new products and technologies.

General and administrative expenses increased to \$38.4 million in the first quarter of fiscal 2000, up 117% from \$17.7 million in the comparable period in fiscal 1999. These increases were the result of personnel additions, the development of administrative functions resulting from the overall growth in the Company.

Amortization of goodwill of \$1.7 million in the first quarter of fiscal 2000 primarily consists of amortization of goodwill related to the acquisition of three of the Company's foreign affiliates. Goodwill resulting from these transactions will be amortized over 20 years.

Merger-related expenses of \$3.3 million were recognized in the first quarter of fiscal 2000 and primarily relate to the transaction costs associated with the Telebanc acquisition. Additional costs associated with the Company's mergers and acquisitions are expected to be incurred throughout fiscal 2000, including a charge of approximately \$30 million to be recorded in the second quarter of fiscal 2000 relating to the acquisition of Telebanc.

Non-operating Income (Expense)

In the first quarter of fiscal 2000, the Company continued to liquidate portions of its portfolio of strategic investments and recognized realized gains of \$31.3 million.

The Company also recorded unrealized gains of \$25.5 million on its participation in venture funds, primarily in connection with E*TRADE's eCommerce Fund L.P., which was formed in the first quarter of fiscal 2000.

Equity in losses of investments was \$3.8 million in the first quarter of fiscal 2000, which resulted from the Company's minority ownership in its investments that are accounted for under the equity method. These investments include E*TRADE Japan, E*OFFERING and Archipelago. The Company expects that these companies will continue to invest in the development of their products and services, and will incur operating losses throughout fiscal 2000, which will result in future charges being recorded by the Company to reflect its proportionate share of losses.

Income Tax Benefit

Income tax benefit represents the benefit for federal and state income taxes at an effective rate of 28% for the first quarter of fiscal 2000, and 44% for the comparable period in fiscal 1999. The rate for the first quarter of fiscal 2000 reflects the impact of non-deductible merger-related expenses and goodwill arising from the foreign acquisitions.

Year 2000 Compatibility

Many computer systems use only two digits to identify a specific year and therefore may not accurately recognize and handle dates beyond the year 1999. Additionally, the year 2000 is a leap year and computer systems may not accurately recognize and handle February 29, 2000. If not corrected, these computer applications could fail or create erroneous results in the year 2000. The Company utilizes, and is dependent

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upon, data processing systems and software to conduct its business. The data processing systems and software include those developed and maintained by the Company's third-party data processing vendors and software that is run on in-house computer networks. Due to the Company's dependence on computer technology to conduct its business, and the dependence of the financial services industry on computer technology, the nature and impact of year 2000 processing failures on the Company's business, financial position, results of operations or cash flows could be material.

In addition, the method of trading employed by the Company is heavily dependent on the integrity of electronic systems outside of the Company's control, such as Internet service providers, and third-party software, such as Internet browsers. A failure of any such system in the trading process, even for a short time, could cause interruption to the Company's business. The year 2000 issue could lower demand for the Company's services while increasing the Company's costs. The combination of these factors, while not quantifiable, could have a material adverse impact on the Company's financial results.

During the first quarter of fiscal 1998, the Company initiated a review and assessment of its hardware and software to evaluate whether they will function properly in the year 2000 without material errors or interruptions. The Company's year 2000 efforts addressed the Company's computer systems and equipment, as well as business partner relationships considered essential to the Company's ability to conduct its business. The objective of the Company's year 2000 project was to identify the core business processes and associated computer systems and equipment that may be at risk due to the use of two-digit year dates. Once identified, the systems and equipment were rated for risk and prioritized for conversion or replacement according to their impact on core business operations. The Company's year 2000 project followed a structured approach in analyzing and mitigating year 2000 issues. This approach consisted of six phases: awareness, assessment, remediation, validation, implementation and industry-wide testing. The work associated with each phase was performed simultaneously with other phases of the project, depending on the nature of the work performed and the technology and business requirements of the specific business unit. For example, awareness was an ongoing effort and occurred in each phase. As part of this project, the Company reviewed its vendor relationships (suppliers, alliances and third-party providers) in an attempt to assess their ability to meet the year 2000 challenge. This plan sought to ensure that all of the Company's business partners and service providers were also year 2000 ready. In addition, written contingency plans were developed for all mission critical systems to address any unexpected year 2000 failures.

Status of Year 2000 Efforts

The Company completed each of these phases planned for year 2000 readiness. The Company believes that all material year 2000 problems with internally-managed hardware and software revealed as a result of its evaluation were remedied; however, there can be no assurances that these efforts have solved all possible year 2000 issues, and there is a risk that other problems, not presently known to the Company, will be discovered that could present a material risk of disruption to the Company's operations and result in material adverse consequences to the Company. Furthermore, there can be no assurance that the Company will not experience unexpected delays in remediation of any year 2000 issues that have not yet surfaced. Any inability to remediate such issues in a timely manner could cause a material disruption of the Company's business.

All mission-critical vendors were contacted and each indicated that their hardware and software are year 2000 ready. The Company has relied upon representations by vendors as to their year 2000 readiness and generally has not attempted to perform independent verification of the accuracy of those representations. There can be no assurance that all third parties provided accurate and complete information or that all their systems are fully year 2000 capable. If these vendors fail to adequately address year 2000 issues for the products and services they provide to the Company, this failure could have a

material adverse impact on the Company's operations and financial results. The Company is dependent on systems, such as the Internet, telecommunications and electrical systems, which are not within its control. Any failure by such systems could also prevent the Company from delivering its services to its customers, which could have a material adverse effect on the Company's business, results of operations and financial condition.

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In addition, other third parties' year 2000 processing failures, not currently identified by the Company as mission-critical, could have an unexpectedly severe material adverse impact on the Company's systems and operations. In many cases, the Company is relying on assurances from suppliers that new and upgraded information systems and other products are year 2000 capable. The Company cannot be sure that its tests were adequate or that, if problems are identified, they will be addressed by the supplier in a timely and satisfactory way.

On June 1, 1999, the Company entered into a definitive agreement to acquire Telebank Financial Corporation ("Telebank"), a holding company for Telebank, the nation's largest branchless bank, providing banking products and services over the Internet. On July 13, 1999, the Company entered into a definitive agreement to acquire TIR (Holdings) Limited ("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 has been advised by both Telebank and TIR that they had ongoing programs to identify and remediate any year 2000 issues. The Company does not have any direct control over the year 2000 activities of Telebank. With respect to TIR, the Company has relied upon the representations of management or former management with respect to TIR's year 2000 readiness, including representations and warranties that TIR's products and services and its internal computer systems are year 2000 ready, that TIR has made appropriate inquiries of its key suppliers of services and products, and that TIR did not incur any material expenses associated with securing year 2000 readiness of its products or services, internal computer systems or the computer systems of TIR's key suppliers or customers. The TIR acquisition closed on August 31, 1999 and the Telebank acquisition closed on January 12, 2000; therefore, the Company's operating results were not impacted by the additional assessment, remediation, validation, implementation and testing costs that these entities incurred. While the managements of Telebank and TIR have made certain representations with respect to their year 2000 readiness, the Company can give no assurances as to the adequacy of the year 2000 efforts of Telebank or TIR or their impact to the Company.

The Company spent approximately \$8.2 million on year 2000 readiness efforts through December 31, 1999, and currently estimates that it will spend approximately an additional \$0.3 million. These expenditures will consist primarily of compensation for employees and contractors dedicated to this project and the operation of command centers through January 7, 2000. The Company funded all year 2000 related costs through operating cash flows. These costs did not result in increased information technology expenditures because they were funded through a reallocation of the Company's overall development spending. In accordance with generally accepted accounting principles, such expenditures were expensed as incurred. The costs of addressing year 2000 issues did not have a material adverse impact on the Company's financial position.

The foregoing year 2000 discussion and the information contained herein are provided as a Year 2000 Readiness Disclosure.

Liquidity and Capital Resources

The Company has financing facilities totaling \$425 million to meet the needs of E*TRADE Securities that would be collateralized by customer securities. There were no borrowings outstanding under these lines on December 31, 1999. The Company also has a short term loan for up to \$150 million, collateralized by publicly traded investment securities owned by the Company, of which \$70 million was outstanding as of December 31, 1999, and a short term line of credit for up to \$50.0 million, collateralized by marketable securities owned by the Company, of which \$34.8 was outstanding as of December 31, 1999. In addition, the Company has entered into numerous agreements with other broker-dealers to provide financing under the Company's stock loan program.

On February 7, 2000, the Company completed a Rule 144A offering of \$500

million convertible subordinated notes due February 2007. The notes are convertible, at the option of the holder, into a total of 21,186,441 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

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premium in the event of a change in control or other defined redemption event. The Company granted the initial purchasers an option, exercisable until March 16, 2000, to purchase up to an additional \$150 million of notes. The Company expects to use \$150 million of the net proceeds to refinance outstanding senior secured indebtedness and the remaining net proceeds for general corporate purposes, including financing the future growth of the business. Debt issuance costs of \$14,375,000 will be included in other assets and amortized to interest expense over the term of the notes. Had these securities been issued as of the beginning of the quarter ended December 31, 1999, net loss per share on a diluted basis would have been increased to \$0.05 due to the additional net interest expense associated with the securities.

The Company currently anticipates that its available cash resources and credit facilities, along with the convertible debt offering described above, will be sufficient to meet its presently anticipated working capital and capital expenditure requirements for at least the next 12 months. However, the Company 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. The Company's future liquidity and capital requirements will depend upon numerous factors, including costs and timing of expansion of research and development efforts and the success of such efforts, the success of the Company's existing and new service offerings and competing technological and market developments. The Company's forecast of the period of time through which its financial resources will be adequate to support its operations is a forward-looking statement that involves risks and uncertainties, and actual results could vary. The factors described earlier in this paragraph will impact the Company's future capital requirements and the adequacy of its available funds. If additional funds are raised through the issuance of equity securities, the percentage ownership of the shareowners of the 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 the Company's common stock. There can be no assurance that additional financing will be available when needed on terms favorable to the Company, if at all.

If adequate funds are not available on acceptable terms, the Company may be unable to develop or enhance its services and products, take advantage of future opportunities or respond to competitive pressures, any of which could have a material adverse effect on the Company's business, financial condition and operating results.

Cash used in operating activities was \$90.6 million in the first quarter of fiscal 2000, compared with the net loss in the first quarter of fiscal 2000 of \$5.2 million. The difference was attributable primarily to a \$31.3 million gain on sale of investments, \$25.5 million unrealized gain on venture funds, and an increase in brokerage-related assets in excess of related liabilities of \$102.3 million, offset in part by depreciation and amortization of \$19.3 million, equity in losses of investments of \$3.8 million, a \$2.6 million non-cash compensation charge for options. Cash provided by operating activities in the prior year period was \$2.4 million, which primarily reflects net loss of \$11.6 million, increases in brokerage-related liabilities of \$19.8 million in excess of related assets, the impact of depreciation and amortization of \$5.5 million and increases in accounts payable, accrued and other liabilities in excess of other assets.

Cash used in investing activities was \$6.2 million in the first quarter of fiscal 2000 and cash provided by investing activities was \$11.8 million in the comparable period in fiscal 1999. In the first quarter of fiscal 2000, the cash provided by investing activities was the result of the net sale/maturity of investments of \$85.2 million in investment securities and \$39.4 million in proceeds from the sale of investments, offset by the purchase of \$23.9 million of investments \$30.5 million of property and equipment and \$26.7 million for the acquisition of three foreign affiliates. This compares to cash provided by operating activities in the first quarter of fiscal 1999 where the Company had

proceeds from sale/maturity of investments in excess of purchases of investments of \$16.0 million and purchases of property and equipment of \$3.4 million.

Cash provided by financing activities was \$109.8 million in the first quarter of fiscal 2000, compared with \$1.6 million in fiscal 1999. Cash provided by financing activities in the first quarter of fiscal 2000 primarily resulted from cash proceeds of \$102.5 million from bank loans, net of issuance costs, and \$7.2 million from the exercise of stock options.

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RISK FACTORS

You should carefully consider the risks described below before making an investment decision in our company. The risks and uncertainties described below are not the only ones facing our company and there may be additional risks that we do not presently know of or that we currently deem immaterial. All of these risks may impair our business operations. This document also contains forward-looking statements that involve risks and uncertainties and actual results may differ materially as a result of certain factors, including those set forth below. If any of the following risks actually occur, our business, financial condition or results of operations could be materially adversely affected. In such case, the trading price of our common stock could decline, and you may lose all or part of your investment.

In accordance with "plain English" guidelines provided by the Securities and Exchange Commission, the risk factors have been written in the first person.

We could suffer substantial losses and be subject to customer litigation if our systems fail or our transaction processing is slow

We receive and process transactions mostly through the Internet, online service providers and touch-tone telephone. Thus, we depend heavily on the integrity of the electronic systems supporting these types of transactions, including our internal software programs and computer systems. 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 our internal software programs or computer systems;
- . our inability to effectively resolve any errors in our internal software programs or computer systems once they are detected; or
- . heavy stress placed on our system during certain peak trading times.

If our systems or any other systems in the transaction process slow down significantly or fail even for a short time, our customers could suffer delays in transaction processing, which could cause substantial losses and possibly subject us to claims for such losses or to litigation claiming fraud or negligence. We have experienced such systems failures and degradation in the past, including certain days in February 1999. We could experience future system failures and degradations, especially in 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. 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. We may not be able to increase our customer service personnel and capabilities in a timely and cost-effective manner. We could experience a number of adverse consequences as a result of these systems failures including the loss of existing customers and the inability to attract or retain new customers. There can be no assurance that our network structure will operate appropriately in any of the following events:

- . subsystem, component or software failure;
- . a power or telecommunications failure;
- . human error;
- . an earthquake, fire or other natural disaster; or

. an act of God or war.

There can be no assurance that, in any such event, we will be able to prevent an extended systems failure. Any such systems failure that interrupts our operations could have a material adverse effect on our business,

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financial condition and operating results. We have received in the past, including as a result of our systems failures in February 1999, adverse publicity in the financial press and in online discussion forums primarily relating to systems failures.

Our security could be breached, which could damage our reputation and deter customers from using our services

We must protect our computer systems and network from physical break-ins, security breaches and other disruptive problems caused by the Internet or other users. Computer break-ins 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. Although we intend to continue to implement security technology and establish operational procedures to prevent break-ins, damage and failures, these security measures may fail. Our insurance coverage in certain circumstances may be insufficient to cover issues 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 barrier to online commerce 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. There can be no assurance that advances in computer and cryptography capabilities or other developments will not result in a compromise of the RSA or other algorithms we use to protect customer transaction data. If any such compromise of our security were to occur, it could have a material adverse effect on our business, financial condition and operating results.

Our quarterly results fluctuate 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;
- . fluctuations in interest rates, which will impact our investment and loan portfolios;
- . increased levels of advertising, sales and marketing expenditures for customer acquisition, which may be affected by competitive conditions in the marketplace;
- . the timing of introductions or enhancements to online investing services and products by us or our competitors;
- . market acceptance of online financial services and products;
- . the pace of development of the market for online commerce;
- . changes in trading volume in securities markets;
- . trends in securities and banking markets;
- . domestic and international regulation of the brokerage, banking and

internet industries;

- . implementation of new accounting pronouncements, such as Statement of Financial Accounting Standards No. 133, Accounting for Derivative Instruments and Hedging Activities;

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- . changes in domestic or international tax 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;
- . fluctuation in foreign exchange rates;
- . changes in the level of operating expenses to support projected growth; and
- . general economic conditions.

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.

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:

- . America Online, Inc.;
- . Ameritrade, Inc.;
- . Bank of America;
- . Charles Schwab & Co., Inc.;
- . Citigroup, Inc.;
- . CyBerCorp.com;
- . Datek Online Holdings Corporation;
- . DLJdirect;
- . Fidelity Brokerage Services, Inc.;
- . Intuit Inc.;
- . Merrill Lynch, Pierce, Fenner & Smith Incorporated;
- . Microsoft Money;
- . National Discount Brokers;
- . Net.B@nk, Inc.;
- . PaineWebber Incorporated;

- . Quick & Reilly, Inc.;
- . Salomon Smith Barney, Inc.;

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- . SURETRADE, Inc.;
- . Waterhouse Securities, Inc.;
- . Wells Fargo & Company;
- . WingspanBank.com; and
- . 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. For example, Charles Schwab's One-Source mutual fund service and similar services may discourage potential customers from using our brokerage services. Accordingly, 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, or whether legislative barriers will be modified, we may be adversely affected by such competition or legislation. To the extent our competitors are able to attract and retain customers, our business or ability to grow could be adversely affected. In many instances, we are competing with such organizations for the same customers. In addition, competition among financial services firms exists for experienced technical and other personnel.

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 success depends on our ability to effectively adapt to changing business conditions

We have grown rapidly and our business and operations have changed substantially since we began offering electronic investing services in 1992, and Internet investing services in February 1996, and we expect this trend to continue. Such rapid change and expansion places significant demands on our administrative, operational, financial, and technical management and other resources.

We expect operating expenses and 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, specifically, persons with Series 7 or other broker-dealer licenses. Competition for such personnel is intense, and there can be no assurance that we will be able to find or keep additional suitable senior managers or technical persons in the future. In particular, we depend heavily on our chief executive officer, president and

chief operating officer and other members of senior management, the loss of any of whom could seriously harm our business. We also expect to expend resources

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for future expansion of our accounting and internal information management systems and for a number of other new systems and procedures. In addition, we expect that future expansion will continue to challenge our ability to successfully hire and retain associates. If our revenues do not keep up with operating expenses, our information management systems do not expand to meet increasing demands, we fail to attract, assimilate and retain qualified personnel, or we fail to manage our expansion effectively, there could be a material adverse effect on our business, financial condition and operating results.

The rapid growth in the use of our services has strained our ability to adequately expand technologically. As we acquire new equipment and applications quickly, we have less time to test and validate hardware and software, which could lead to performance problems. We also rely on a number of third parties to process our transactions, including online and Internet service providers, back office processing organizations, 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 transaction volume increases, we may have difficulty hiring and training qualified personnel at the necessary pace, and the shortage of licensed personnel could cause a backlog in the processing of brokerage orders that need review, which could lead to not only unsatisfied customers, but also to liability for brokerage orders that were not executed on a timely basis.

Through our Digital Financial Media initiative, we plan to deliver interactive multimedia content and commerce through a variety of broadband communications channels and electronic platforms. We believe that achieving success in this strategy is essential to our ability to compete in the rapidly evolving electronic marketplaces in which we operate. We have limited experience in these media and our failure to execute this strategy successfully may limit our future growth.

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

- . sales methods;
- . trade practices among broker-dealers;
- . 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 complex 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 so comply depends largely on the establishment and maintenance of a qualified compliance system.

Similarly, Telebanc, as a savings and loan holding company, and Telebank, as a federally chartered savings bank and subsidiary of Telebanc, are subject to extensive regulation, supervision and examination by

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the Office of Thrift Supervision ("OTS") and, in the case of Telebank, the Federal Deposit Insurance Corporation. Such regulation covers all aspects of the banking business, including lending practices, safeguarding deposits, capital structure, record keeping, and conduct and qualifications of personnel.

Additionally our mode of operation and profitability may be directly affected by:

- . additional legislation;
- . changes in rules promulgated by the SEC, the National Association of Securities Dealers, Inc., ("NASD"), the Board of Governors of the Federal Reserve System, the OTS, the various stock exchanges and other self-regulatory organizations; or
- . changes in the interpretation or enforcement of existing laws and rules.

The SEC, the NASD 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 have initiated an aggressive marketing campaign designed to bring brand name recognition to E*TRADE. All marketing activities by E*TRADE Securities are regulated by the NASD, and all marketing materials must be reviewed by an E*TRADE Securities Series 24 licensed principal prior to release. The NASD has in the past asked us to revise certain marketing materials. The NASD 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.

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.

We intend to continue expanding our business to other countries and to broaden our customers' abilities to trade securities of non-U.S. companies and execute other transactions through the Internet and other gateways. 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 national regulatory jurisdictions. We intend to rely primarily on local third parties and our subsidiaries for regulatory compliance in international jurisdictions. See "Risk Factors--We face numerous risks associated with doing business in international markets."

There can be no assurance that other federal, state or foreign agencies will not attempt to regulate our online and other activities. 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 would 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.

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. In addition, the New York Attorney General carried out an investigation of the online brokerage industry and issued a report, citing consumer complaints about delays and technical difficulties conducting online stock trading. Increased attention focused upon these liability issues could adversely affect the growth of the Internet, 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.

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

The SEC, NASD, OTS, FDIC and various other regulatory agencies have stringent rules with respect to the maintenance of specific levels of net capital by securities broker-dealers and 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 NASD, 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 would be limited. Such operations may include trading activities 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 December 31, 1999 (in thousands):

	December 31, 1999		
	Required net capital	Net capital	Excess net capital
E*TRADE Securities, Inc.....	\$79,218	\$239,353	\$160,135
TIR Securities, Inc.....	65	1,398	1,333
TIR Investor Select, Inc.....	5	39	34
Marquette Securities, Inc.....	250	445	195

Similarly, banks, such as Telebank, 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 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 components, risk weightings, 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 Telebank as of December 31, 1999 (dollars in thousands):

	Actual		To Be Well Capitalized Under Prompt Corrective Action Provisions	
	Amount	Ratio	Amount	Ratio
As of December 31, 1999:				
Core Capital (to adjusted tangible assets).....	\$441,987	8.83%	> \$250,392	>5.0%
Tier 1 Capital (to risk weighted assets).....	\$441,987	21.04%	> \$126,016	>6.0%
Total Capital (to risk weighted assets).....	\$449,174	21.39%	> \$210,027	>10.0%

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. In October 1987 and October 1989, the stock market suffered major declines, as a result of which many firms in the industry suffered financial losses, and the level of individual investor trading activity decreased after these events. Reduced trading volume and prices have historically resulted in reduced transaction revenues. When trading 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 "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, therefore we are 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 Telebank's profitability

The results of operations for Telebank 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. Many factors cause changes in interest rates, including governmental monetary policies and domestic and international economic and

political conditions. If Telebanc is unsuccessful in managing the effects of changes in interest rates, its financial condition and results of operations could suffer.

Changes in market interest rates could reduce the value of Telebanc's financial assets. Fixed-rate investments, mortgage-backed and related securities and mortgage loans generally decline in value as interest rates rise.

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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 success depends, in part, on our ability to develop and enhance our services and products. There are significant technical risks in the development of new services and products or enhanced versions of existing services and products. 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 emerging industry standards;
- . developing, introducing and marketing service and product enhancements;
or
- . developing, introducing and marketing new services and products.

We may also experience difficulties that could delay or prevent the development, introduction or marketing of these services and products. Additionally, these new services and products 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.

Our success depends upon the growth of the Internet as a commercial marketplace

The market for financial services, particularly over the Internet, is rapidly evolving. Consequently, demand and market acceptance for recently introduced services and products are subject to a high level of uncertainty. For us, this uncertainty is compounded by the risks that consumers will not continue to adopt online commerce and that commerce on the Internet will not adequately develop or flourish to permit us to continue to grow.

Sales of many of our services and products will depend on consumers continuing to adopt the Internet as a method of doing business. There can be no assurance that the Internet infrastructure will continue to be able to support the demands placed on it by this continued growth. In addition, the Internet could be adversely affected by slow development or adoption of standards and protocols to handle increased Internet activity, or due to increased governmental regulation. Moreover, critical issues including security, reliability, cost, ease of use, accessibility and quality of service remain unresolved and may negatively affect the growth of Internet use or commerce on the Internet.

Adoption of online commerce by individuals who have relied upon traditional means of commerce in the past will require such individuals to accept new and very different methods of conducting business. Moreover, our brokerage and banking services over the Internet involve a new approach to securities trading and banking which require extensive marketing and sales efforts to educate prospective customers regarding their uses and benefits. For example, 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.

The market price of our common stock, like other technology stocks, may be highly volatile and any significant decrease in our stock price may make it difficult for our shareowners to sell their stock

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;

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- . volatility in the general economy;
- . 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 price and volume fluctuations in the stock market which have affected the market prices of securities of many technology, Internet and financial services companies, often unrelated to the operating performance of such companies. These broad market fluctuations may adversely affect the market price of our common stock. 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 and a diversion of our attention and resources, which could have a material adverse effect on our business, financial condition and operating results.

Our success depends on our ability to protect our intellectual property and any failure to do so could substantially harm our business

Our success and ability to compete are dependent to a significant degree on our proprietary technology. We rely primarily on copyright, trade secret and trademark law to protect our technology. 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 diversions of 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 in the future, receive 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, and the assertion or prosecution of any such claims could have a material adverse effect on our business, financial condition and operating results.

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Our attempts to enter new markets may be unsuccessful, which could decrease our earnings and consequently decrease the market value of our common stock

One element of our strategy is to leverage the E*TRADE brand and technology to enter new markets. No assurance can be given that we will be able to successfully adapt our proprietary processing technology for use in other markets. Even if we do adapt our technology, no assurance can be given that we will be able to compete successfully in any such new markets. There can be no assurance that our pursuit of any of these opportunities will be successful. If these efforts are not successful, we could realize less than expected earnings, which in turn could result in a decrease in the market value of our common stock. Furthermore, such efforts may divert management attention or inefficiently utilize our resources.

As a result of our recent merger with Telebank, we face numerous new risks, including possible failure to successfully integrate and assimilate Telebank's operations with our own

In January 2000, E*TRADE acquired Telebank Financial Corporation. Telebank is an online provider of Internet banking services. This represents a new line of business for us. No assurance can be given that we will be successful in this market. We may experience difficulty in assimilating Telebank's products and services with our own and we may not be able to integrate successfully the employees of Telebank into our organization. These difficulties may be exacerbated by the geographical distance between our various locations and Telebank's Virginia location. If we fail to successfully integrate Telebank's operations with our own, our operating results and business could be adversely affected.

Telebank 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. This is a new industry for us and accordingly, we do not have any experience in this area. We are dependent upon Telebank management and employees to advise us in this area.

Due to our recent merger with Telebank, we may be restricted in expanding our activities, and our inexperience with being regulated as a savings and loan holding company could negatively affect both us and Telebank

Upon the completion of our merger with Telebank, we became subject to regulation as a savings and loan holding company. As a result, we are required to register with the OTS and file periodic reports, and are subject to examination by the OTS. We are also limited in our ability to invest in other savings and loan holding companies. Under financial modernization legislation recently enacted into law, our activities are also restricted to activities that are financial in nature and certain real estate-related activities. We believe that all of our existing activities and investments qualify as financial in nature, but the OTS and other banking agencies have 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 may be constrained in pursuing future new activities.

In addition to regulation of us and Telebank as savings and loan holding companies, federal savings banks, such as Telebank, are subject to extensive regulation of their activities and investments, their capitalization, their risk management policies and procedures, and their transactions with affiliated companies. In addition, as a condition to approving our merger with Telebank, the OTS imposed various notices and other requirements, primarily a requirement that Telebank obtain prior approval from the OTS of any future material changes to Telebank's business plan. We have limited experience and knowledge of the regulatory requirements of the OTS and the Federal Deposit Insurance Corporation, and there is a risk that we could incur significant additional

costs in complying with these regulations, or significant penalties if we fail to comply. These regulations and conditions, and our inexperience with them, could affect our ability to realize synergies from the merger, and could negatively affect both us and Telebank.

We face numerous risks associated with doing business in international markets

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. Furthermore, we have had no

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experience providing banking services 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 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;
- . 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. There can be no assurance that one or more of the factors described above will not have a material adverse effect on our future international operations, if any, and, consequently, on our business, financial condition and operating results.

Any failure to successfully integrate the companies that we acquire into our existing operations or failure to maintain our relationships with strategic partners could harm our business

We recently acquired Telebank, TIR and some of our European licensees. We may also acquire other companies or technologies in the future, and we regularly evaluate such opportunities. Acquisitions and mergers entail numerous risks, including:

- . difficulties in the assimilation of acquired operations and products;
- . diversion of management's attention from other business concerns;
- . amortization of acquired intangible assets; and
- . potential loss of key employees of acquired companies.

We have limited experience in assimilating acquired organizations into our operations. 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.

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 develop any new relationships of this type in the future. We also make investments, either directly or from 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 we invest in. In order for us to

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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.

Due to the foregoing factors, quarterly revenues and operating results are difficult to forecast. We believe that period-to-period comparisons of our operating results will not necessarily be meaningful and you should not rely on them as any indication of future performance. Our future quarterly operating results may not consistently meet the expectations of securities analysts or investors, which in turn may have an adverse effect on the market price of our common stock.

We have substantially increased our indebtedness, which may make it more difficult to make payments on our debts or to obtain financing

As a result of the sale of our 6% convertible subordinated notes, E*TRADE will incur \$500 million of additional indebtedness (assuming that the initial purchasers' option is not exercised), increasing our ratio of debt to equity (expressed as a percentage) from approximately 7% to approximately 29% as of December 31, 1999, on a pro forma basis giving effect to the sales of the notes and the application of proceeds therefrom. We may incur substantial additional indebtedness in the future. The level of our indebtedness, among other things, could

- . make it difficult for us to make payments on our debt;
- . make it difficult for us to obtain any necessary financing in the future for working capital, capital expenditures, debt service requirements or other purposes;
- . limit our flexibility in planning for, or reacting to, changes in our business; and
- . make us more vulnerable in the event of a downturn in our business.

There can be no assurance that we will be able to meet our debt service obligations, including obligations under the notes.

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

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 NASD 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 (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 offering, we will have substantial short-term investments until the net proceeds from the offering can be deployed. In addition, we and our subsidiaries have made minority equity investments in other business 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.

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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 such exemption is not available and 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 government securities. If we sell investment securities, we may sell them sooner than we otherwise would. 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 not 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.

Our business will suffer if our systems do not accurately process date information relating to dates after January 1, 2000

Because many computer systems were not designed to handle dates beyond the year 1999, computer hardware and software may need to be modified in order for it to remain functional. This may affect us in numerous ways:

- . We have assessed the impact of year 2000 issues, including other date-related anomalies, on our products, services and internal information systems. We do not expect our financial results to be materially affected by the need to address year 2000 issues, but if the costs associated with addressing these issues are greater than planned, our earnings and results of operations could be affected. Furthermore, if corrective actions are not adequate to avoid year 2000 problems, the impact of year 2000 processing failures on the Company's business, financial position, results of operations or cash flows could be material;
- . We must rely on outside vendors to address year 2000 issues for their hardware and software. If these vendors fail to adequately address year 2000 issues for the products and services they provide to the Company, this could have a material adverse impact on the Company's operations and financial results. We have developed contingency plans in the event that we, or our key vendors, are not year 2000 capable, but the failure of such contingency plans may have a negative effect on our financial results; and
- . The method of transaction processing we employ depends heavily on the integrity of electronic systems outside of our control, such as online

and Internet service providers, and third-party software such as Internet browsers. A failure of any of these systems due to year 2000 issues could interfere with the trading process and, in turn, may have a material adverse effect on our business, financial condition and operating results.

Due to our dependence on computer technology to conduct our business, the nature and impact of year 2000 processing failures on our business, financial condition and operating results could be material.

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Item 3. Quantitative and Qualitative Disclosures About Market Risk

Market Risk Disclosures

The following discussion about the Company's market risk disclosures involves forward-looking statements. Actual results could differ materially from those projected in the forward-looking statements. The Company is exposed to market risk related to changes in interest rates, foreign currency exchange rates and equity security price risk. The Company does not have derivative financial instruments for speculative or trading purposes.

Interest Rate Sensitivity

For interest rate sensitivity associated with the Company's investment securities, reference is made to Part II, Item 7A, Quantitative and Qualitative Disclosures About Market Risk, in our Annual Report on Form 10-K for the year ended September 30, 1999. During the quarter ended December 31, 1999, the Company obtained two variable rate bank lines of credit. As of December 31, 1999, the Company had \$104.8 million outstanding under these lines. These lines of credit and the monthly interest payment are subject to interest rate risk. If market interest rates were to increase immediately and uniformly by 10 percent at December 31, 1999, the interest payments would increase by an immaterial amount.

Equity Price Risk

The Company has investments in publicly-traded equity securities. The fair value of these securities at December 31, 1999 was \$646.6 million. If the market price of the securities held at December 31, 1999 were to decrease by 10%, the fair value of the portfolio would decline by \$64.7 million, which would not have a material effect on the financial position of the Company. The Company accounts for these securities as available-for-sale, and 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. At December 31, 1999, unrealized gains on these securities were \$610.2 million.

Financial Instruments

For its working capital and reserves, which are required to be segregated under Federal or other regulations, the Company invests 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.

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PART II. OTHER INFORMATION

Item 1. 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. While the court declined to certify a class as to any of plaintiffs' alleged claims, it did indicate that plaintiffs may be able to pursue one of their claims (relating to our commission structure) on a representative basis. On January 25, 2000, the court ordered plaintiffs to submit all claims (including representative claims) seeking monetary relief to arbitration; claims for injunctive relief were not ordered to arbitration, but were stayed pending arbitration. 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 damages based on causes of action for breach of contract and violation of New York consumer protection statutes. After we filed a motion to dismiss or stay the complaint on April 14, 1999, the plaintiff chose to file an amended complaint. In response to that amended complaint, we have now moved to compel arbitration or, alternatively, dismiss the amended complaint. It is uncertain how the court will rule on our motions, and thus 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 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, fiduciary duty and unjust enrichment, fraud, unfair and deceptive trade practices, negligence/intentional tort and injunctive relief. We have filed motions both to compel arbitration and to dismiss the complaint. All discovery regarding the merits of plaintiff's claims is stayed pending the determination of our motion to dismiss. On September 1, 1999, the court denied our motion to compel arbitration. We have appealed the order and a hearing on the appeal took place on February 2, 2000. This proceeding is still at an early stage and we are unable to predict its ultimate outcome.

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 damages and injunctive relief arising out of, among other things, the February 3, 4 and 5, 1999, system interruptions. Plaintiff brings causes of action for breach of fiduciary duty and violations of the Consumer Legal Remedies Act and California Unfair Business Practices Act. In response to the complaint, we filed a petition to compel arbitration. Among other things, we argued that, in light of the Cooper court's decision to deny class certification, all customers who were members of the alleged Cooper class--including Chadha--are obligated to submit their claims to arbitration in accordance with the customer agreement. The court granted the petition to compel arbitration on July 29, 1999, and stayed all further proceedings pending arbitration.

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 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. In response to the complaint, we filed a petition to compel arbitration.

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As in Chadha, we argued that, in light of the Cooper court's decision to deny class certification, Wurtman is obligated to submit his claims to arbitration in accordance with the customer agreement. The petition to compel arbitration was heard by the court on September 9, 1999 and was denied. On October 4, 1999, we appealed from the court's order denying the petition, and that appeal has the effect of staying all further proceedings in the trial court. Briefing has not yet begun on our appeal. This proceeding is still at an early stage and we are unable to predict the ultimate outcome.

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 are made available to our customers. We filed a demurrer and motion to strike on August 13, 1999, arguing (among other things) that the plaintiff has not alleged facts sufficient to state a claim against us. On October 6, 1999, the court dismissed the class action claims with prejudice. The claim for unfair business practices was dismissed with leave to amend, but for injunctive relief only and not money damages. Plaintiff filed an amended complaint on October 26, 1999. We filed a petition to compel arbitration in response. On December 29, 1999, the court granted the petition to compel arbitration and dismissed the court proceeding. We are unable to predict the ultimate outcome of this proceeding.

On December 23, 1999, plaintiff Kathleen Nyquist filed a complaint in federal court. Ms. Nyquist is a customer who brings claims for breach of fiduciary duty, negligence/recklessness, unfair trade practices, securities law violations and aiding and abetting. Her claims against us arise out of allegedly unauthorized transactions and unrestricted day-trading effected by her husband in her IRA account as well as another account. Plaintiff alleges losses totaling approximately \$700,000 and also seeks attorney's fees, punitive damages as well as treble damages under the South Carolina unfair trade practices laws. We must respond to plaintiff's complaint by February 25, 2000. This proceeding is still at an early stage and we are unable to predict the ultimate outcome.

We believe that these 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.

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 the NASD or the SEC by dissatisfied customers are investigated by the NASD or the SEC, and, if pursued by such customers, may rise to the level of arbitration or disciplinary action. One or more of such claims or disciplinary actions decided adversely 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 our management believes are reasonable and prudent. The principal risks that we insure against are comprehensive general liability, commercial property, hardware/software damage, directors and officers, and errors and omissions liability. We believe that such insurance coverages are adequate for the purpose of our business.

Item 2. Changes in Securities and Use of Proceeds--Not applicable.

Item 3. Defaults Upon Senior Securities--Not applicable.

Item 4. Submission of Matters to a Vote of Security Holders--

The annual meeting of shareowners was held on December 21, 1999. Lewis E. Randall, Lester C. Thurow, and Peter Chernin were elected as directors, as tabulated below.

Election of Directors	For	Against
-----	-----	-----

Lewis E. Randall.....	202,537,670	2,541,659
Lester C. Thurow.....	191,846,312	13,233,017
Peter Chernin.....	202,451,036	2,628,293

In addition, Christos M. Cotsakos, William A. Porter, Richard S. Braddock, Masayoshi Son, William E. Ford, and George Hayter will continue as directors.

The proposal to approve the amendment to the Company's 1996 Stock Incentive Plan (the "Plan"), including an 11,900,000 shares increase in the maximum number of shares of Common Stock reserved for issuance under the Plan was approved, as tabulated below.

	For	Against	Abstentions
	-----	-----	-----
Votes.....	180,132,435	22,384,013	1,014,910

The proposal to ratify the selection of Deloitte & Touche LLP as independent public accountants for the Company for the fiscal year ending September 30, 2000 was approved, as tabulated below.

	For	Against	Abstentions
	-----	-----	-----
Votes.....	202,564,183	727,679	239,467

Item 5. Other Information--None.

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits

- 4.1 Indenture, dated February 1, 2000, by and between the Company and The Bank of New York.
- 10.1 Employment agreement, dated June 1, 1999, by and between the Company and Christos M. Cotsakos.
- 10.2 Employment agreement, dated June 1, 1999, by and between the Company and Kathy Levinson.
- 10.3 Purchase Agreement, dated February 1, 2000, by and among the Company, FleetBoston Robertson Stephens Inc., Hambrecht & Quist LLC and Goldman, Sachs & Co.
- 10.4 Registration Rights Agreement, dated February 1, 2000, by and among the Company, FleetBoston Robertson Stephens Inc., Hambrecht & Quist LLC and Goldman, Sachs & Co.
- 27 Financial Data Schedule
- 99.1 Press release, dated January 25, 2000, relating to the 6% convertible subordinated notes due 2007.
- 99.2 Press release, dated February 2, 2000, relating to the 6% convertible subordinated notes due 2007.

(b) Reports on Form 8-K

None

SIGNATURES

Pursuant to the requirements 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.

E*TRADE Group, Inc.
(Registrant)

Dated: February 14, 2000

By: /s/ Christos M. Cotsakos

Christos M. Cotsakos
Chairman of the Board and
Chief Executive Officer
(Principal Executive Officer)

By: /s/ Leonard C. Purkis

Leonard C. Purkis
Chief Financial Officer
(Principal Financial and
Accounting Officer)

=====

E*TRADE Group, Inc., Issuer

The Bank of New York,

as Trustee

INDENTURE

Dated as of February 1, 2000

6% Convertible Subordinated Notes due 2007

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INDENTURE dated as of February 1, 2000 between E*TRADE Group, Inc., a Delaware corporation (hereinafter sometimes called the "Company", as more fully set forth in Section 1.1), and The Bank of New York, a New York banking corporation, as trustee (hereinafter sometimes called the "Trustee", as more fully set forth in Section 1.1).

W I T N E S S E T H:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issue of its 6% Convertible Subordinated Notes due 2007 (hereinafter sometimes called the "Notes"), in an aggregate principal amount not to exceed \$500,000,000 (\$650,000,000 if the option granted to the Initial Purchasers (as defined) is exercised in full) and to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Notes, the certificate of authentication to be borne by the Notes, a form of assignment, a form of option to elect repayment upon a Repurchase Event, and a form of conversion notice and transfer to be borne by the Notes are to be substantially in the forms hereinafter provided for; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Indenture provided, the valid, binding and legal obligations of the Company, and to constitute these presents a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issue hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. The terms defined in this Section 1.1 (except as ----- herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.1. All other terms used in this Indenture, which are defined in the Trust Indenture Act or which are by reference therein defined in the Securities Act (except as herein otherwise expressly provided or

unless the context otherwise requires) shall have the meanings assigned to such terms in said Trust Indenture Act and in said Securities Act as in force at the date of the execution of this Indenture. The words "herein," "hereof," "hereunder," and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other Subdivision. The terms defined in this Article include the plural as well as the singular.

Affiliate: The term "Affiliate" of any specified person shall mean any

other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, "control," when used with respect to any specified person means the power to direct or cause the direction of the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

Board of Directors: The term "Board of Directors" shall mean the Board of

Directors of the Company or a committee of such Board duly authorized to act for it hereunder.

Board Resolution: The term "Board Resolution" means a copy of a resolution

certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, or duly authorized committee thereof (to the extent permitted by applicable law), and to be in full force and effect on the date of such certification, and delivered to the Trustee.

Business Day: The term "Business Day" means each Monday, Tuesday,

Wednesday, Thursday and Friday which is not a day on which the banking institutions in The City of New York or the city in which the Corporate Trust Office is located are authorized or obligated by law or executive order to close or be closed.

Change in Control: The term "Change in Control" shall have the meaning

specified in Section 16.4.

close of business: The term "close of business" means 5 p.m. (New York

City time).

Commission: The term "Commission" shall mean the Securities and Exchange

Commission.

Common Stock: The term "Common Stock" shall mean any stock of any class of

the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company. Subject to the provisions of Section 15.6, however, shares issuable on conversion of Notes shall include only shares of the class designated as common stock of the Company at the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which are not subject to redemption by the Company; provided

that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from

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all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

Company: The term "Company" shall mean E*TRADE Group, Inc., a Delaware

corporation, and subject to the provisions of Article XII, shall include its

successors and assigns.

Conversion Price: The term "Conversion Price" shall have the meaning

specified in Section 15.4.

Corporate Trust Office: The term "Corporate Trust Office," or other

similar term, shall mean the office of the Trustee at which at any particular
time its corporate trust business shall be principally administered, which
office is, at the date as of which this Indenture is dated, located at 101
Barclay Street, 21W, New York, New York 10286, Attention: Corporate Trust:
Trustee Administration.

Custodian: The term "Custodian" means The Bank of New York, with respect

to the Notes in global form, or any successor entity thereto.

default: The term "default" shall mean any event that is, or after notice

or passage of time, or both, would be, an Event of Default.

Depository: The term "Depository" means, with respect to the Notes

issuable or issued in whole or in part in global form, the person specified in
Section 2.5(d) as the Depository with respect to such Notes, until a successor
shall have been appointed and become such pursuant to the applicable provisions
of this Indenture, and thereafter, "Depository" shall mean or include such
successor.

Designated Senior Indebtedness: The term "Designated Senior Indebtedness"

means the Company's obligations under any particular Senior Indebtedness in
which the instrument creating or evidencing the same or the assumption or
guarantee thereof (or related agreements or documents to which the Company is a
party) expressly provides that such Senior Indebtedness shall be "Designated
Senior Indebtedness" for purposes of this Indenture (provided that such
instrument, agreement or other document may place limitations and conditions on
the right of such Senior Indebtedness to exercise the rights of Designated
Senior Indebtedness).

Event of Default: The term "Event of Default" shall mean any event

specified in Section 7.1, continued for the period of time, if any, and after
the giving of notice, if any, therein designated.

Exchange Act: The term "Exchange Act" means the Securities Exchange Act of

1934, as amended, and the rules and regulations promulgated thereunder.

Expiration Time: The term "Expiration Time" shall have the meaning

specified in Section 15.5(f).

Global Note: The term "Global Note" shall have the meaning specified in

Section 2.5(b).

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Indebtedness: The term "Indebtedness" shall mean any obligations of, or

guaranteed or assumed by, the Company or any Significant Subsidiary for borrowed
money.

Indenture: The term "Indenture" shall mean this instrument as originally

executed or, if amended or supplemented as herein provided, as so amended or
supplemented.

Initial Purchasers: The term "Initial Purchasers" means FleetBoston

Robertson Stephens, Inc., Hambrecht & Quist LLC and Goldman, Sachs & Co.

Liquidated Damages: The term "Liquidated Damages" means all liquidated

damages then owing pursuant to Section 3 of the Registration Rights Agreement.

Note or Notes: The terms "Note" or "Notes" shall mean any Note or Notes,

as the case may be, authenticated and delivered under this Indenture.

Noteholder or holder: The terms "Noteholder" or "holder" as applied to any

Note, or other similar terms (but excluding the term "beneficial holder"), shall mean any person in whose name at the time a particular Note is registered on the Note register.

Note register: The term "Note register" shall have the meaning specified

in Section 2.5.

Officers' Certificate: The term "Officers' Certificate", when used with

respect to the Company, shall mean a certificate signed by one of the President, the Chief Executive Officer, Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word added before or after the title "Vice President"), which is delivered to the Trustee. Each such certificate shall include the statements provided for in Section 17.5 if and to the extent required by the provisions of such Section.

Opinion of Counsel: The term "Opinion of Counsel" shall mean an opinion in

writing signed by legal counsel, who may be an employee of or counsel to the Company, or other counsel acceptable to the Trustee, which is delivered to the Trustee. Each such opinion shall include the statements provided for in Section 17.5 if and to the extent required by the provisions of such Section.

outstanding: The term "outstanding," when used with reference to Notes,

shall, subject to the provisions of Section 9.4, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except

(a) Notes theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(b) Notes, or portions thereof, for the payment, or redemption of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own paying agent); provided that if such Notes are

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to be redeemed, as the case may be, prior to the maturity thereof, notice of such redemption shall have been given as provided in Section 3.2, or provision satisfactory to the Trustee shall have been made for giving such notice;

(c) Notes paid pursuant to Section 2.6 and Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.6 unless proof satisfactory to the Trustee is presented that any such Notes are held by bona fide holders in due course; and

(d) Notes converted into Common Stock pursuant to Article XV and Notes deemed not outstanding pursuant to Section 3.2.

person: The term "person" shall mean an individual, a corporation, a

limited liability company, an association, a partnership, an individual, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

Portal Market: The term "Portal Market" shall mean The Portal Market

operated by the National Association of Securities Dealers, Inc. or any successor thereto.

Predecessor Note: The term "Predecessor Note" of any particular Note shall

mean every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.6 in lieu of a lost, destroyed or stolen Note shall be deemed to evidence the same debt as the lost, destroyed or stolen Note that it replaces.

QIB: The term "QIB" shall mean a "qualified institutional buyer" as

defined in Rule 144A.

Registration Rights Agreement: The term "Registration Rights Agreement"

means that certain Registration Rights Agreement, dated as of February 1, 2000, between the Company and the Initial Purchasers.

Repurchase Event: The term "Repurchase Event" shall have the meaning

specified in Section 16.4.

Repurchase Price: The term "Repurchase Price" has the meaning specified in

Section 16.1.

Responsible Officer: The term "Responsible Officer", when used with

respect to the Trustee, shall mean an officer of the Trustee in the Corporate Trust Office assigned and duly authorized by the Trustee to administer its obligations under this Indenture.

Restricted Securities: The term "Restricted Securities" has the meaning

specified in Section 2.5(d).

Rule 144A: The term "Rule 144A" shall mean Rule 144A as promulgated under

the Securities Act.

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Securities Act: The term "Securities Act" means the Securities Act of

1933, as amended, and the rules and regulations promulgated thereunder.

Senior Indebtedness: The term "Senior Indebtedness" means the principal

of, premium, if any, interest on (including any interest accruing after the filing of a petition by or against the Company under any bankruptcy law, whether or not allowed as a claim after such filing in any proceeding under such bankruptcy law) and any other payment due pursuant to, any of the following, whether outstanding on the date of this Indenture or thereafter incurred or created:

(a) All indebtedness of the Company for money borrowed that is evidenced by notes, debentures, bonds or other securities (including, but not limited to, those which are convertible or exchangeable for securities of the Company);

(b) All indebtedness of the Company due and owing with respect to letters of credit (including, but not limited to, reimbursement obligations with respect thereto);

(c) All indebtedness or other obligations of the Company due and owing with respect to interest rate and currency swap agreements, cap, floor and collar agreements, currency spot and forward contracts and other similar agreements and arrangements;

(d) All indebtedness consisting of commitment or standby fees due and payable to lending institutions with respect to credit facilities or letters of credit available to the Company;

(e) All obligations of the Company under leases required or permitted to be capitalized under generally accepted accounting principles;

(f) All indebtedness or obligations of others of the kinds described in any of the preceding clauses (a), (b), (c), (d) or (e) assumed by or guaranteed in any manner by the Company or in effect guaranteed (directly or indirectly) by the Company through an agreement to purchase, contingent or otherwise, and all obligations of the Company under any such guarantee or other arrangements; and

(g) All renewals, extensions, refundings, deferrals, amendments or modifications of indebtedness or obligations of the kinds described in any of the preceding clauses (a), (b), (c), (d), (e) or (f);

unless in the case of any particular indebtedness, obligation, renewal, extension, refunding, amendment, modification or supplement, the instrument or other document creating or evidencing the same or the assumption or guarantee of the same expressly provides that such indebtedness, obligation, renewal, extension, refunding, amendment, modification or supplement is subordinate to, or is not superior to, or is pari passu with, the Notes; provided that Senior

Indebtedness shall not include (i) any indebtedness of any kind of the Company to any subsidiary of the Company, a majority of the voting stock of which is owned, directly or indirectly, by the Company, (ii) indebtedness for trade

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payables or constituting the deferred purchase price of assets or services incurred in the ordinary course of business, or (iii) the Notes.

Significant Subsidiary: The term "Significant Subsidiary" means, with respect to any person, a Subsidiary of such person that would constitute a "significant subsidiary" as such term is defined under Rule 1-02 of Regulation S-X of the Securities and Exchange Commission.

Subsidiary: The term "Subsidiary" means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, "voting stock" means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

Trading Day: The term "Trading Day" has the meaning specified in Section 15.5 (h) (5) .

Trust Indenture Act: The term "Trust Indenture Act" shall mean the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture, except as provided in Sections 11.3 and 15.6; provided, however, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term "Trust Indenture Act" shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939 as so amended.

Trustee: The term "Trustee" shall mean The Bank of New York and its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at the time serving as successor trustee hereunder.

The definitions of certain other terms are as specified in Article XV and Article XVI.

ARTICLE II

ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.1 Designation, Amount and Issue of Notes. The Notes shall be

designated as "6% Convertible Subordinated Notes due 2007." Notes not to exceed the aggregate principal amount of \$500,000,000 (or \$650,000,000 if the option granted to the Initial Purchasers pursuant to Section 2(b) of the Purchase Agreement dated February 1, 2000 (as amended from time to time by the parties thereto) by and between the Company and the Initial Purchasers is exercised in full) upon the execution of this Indenture, or (except pursuant to Sections 2.5, 2.6, 3.3, 15.2 and 16.2) from time to time thereafter, may be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver said Notes upon the written order of the Company, signed by the Company's (a) President, Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President") and (b) Treasurer or Assistant Treasurer or its Secretary or any Assistant Secretary, without any further action by the Company hereunder.

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Section 2.2 Form of Notes. The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the form set forth in Exhibit A, which is incorporated in and made a part of this Indenture.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends and endorsements as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage.

The Global Note shall represent such of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect transfers or exchanges permitted hereby. Any endorsement of the Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the holder of such Notes in accordance with this Indenture. Payment of principal of and interest and premium, if any (including any redemption price), on the Global Note shall be made to the holder of such Note.

The terms and provisions contained in the form of Note attached as Exhibit A hereto shall constitute, and is hereby expressly made, a part of this Indenture and to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Section 2.3 Date and Denomination of Notes; Payments of Interest. The Notes shall be issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. Every Note shall be dated the date of its authentication, and shall bear interest from the applicable date and accrued interest shall be payable February 1 and August 1, commencing August 1, 2000, as specified on the face of the form of Note attached as Exhibit A hereto.

The person in whose name any Note (or its Predecessor Note) is registered at the close of business on any record date with respect to any interest payment date (including any Note that is converted after the record date and on or before the interest payment date) shall be entitled to receive the interest payable on such interest payment date notwithstanding the cancellation of such Note upon any transfer, exchange or conversion subsequent to the record date and on or prior to such interest payment date; provided that, in the case of any

Note, or portion thereof, called for redemption pursuant to Article III on a redemption date, or repurchased by the Company pursuant to Article XVI on a repurchase date, during the period from the close of business on the record date to the close of business on the Business Day next preceding the following interest payment date, interest shall not be paid to the person in whose name

the Note, or portion thereof, is registered on the close of business on such record date, and the Company shall have no obligation to pay interest

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on such Note or portion thereof except to the extent required to be paid upon such redemption or repurchase in accordance with Article III or Article XVI. Interest may, at the option of the Company, be paid by check mailed to the address of such person on the Note registry; provided that, with respect to any

holder of Notes with an aggregate principal amount equal to or in excess of \$2,000,000, at the request of such holder in writing to the Company, interest on such holder's Notes shall be paid by wire transfer in immediately available funds to any bank located in the United States in accordance with the wire transfer instruction supplied by such holder from time to time to the Trustee and paying agent (if different from Trustee) at least two days prior to the applicable record date; provided that any payment to the Depository or its

nominee shall be paid by wire transfer in immediately available funds in accordance with the wire transfer instruction supplied by the Depository or its nominee from time to time to the Trustee and paying agent (if different from Trustee) at least two days prior to the applicable record date. The term "record date" with respect to any interest payment date shall mean the January 15 or July 15 preceding said February 1 or August 1, respectively.

Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

Any interest on any Note which is payable, but is not punctually paid or duly provided for, on any said February 1 or August 1 (herein called "Defaulted Interest") shall forthwith cease to be payable to the Noteholder on the relevant record date by virtue of his having been such Noteholder; and such Defaulted Interest shall be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest to be paid on each Note and the date of the payment (which shall be not less than twenty-five (25) days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall be not more than fifteen (15) days and not less than ten (10) days prior to the date of the proposed payment and not less than ten (10) days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such special record date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first-class postage prepaid, to each Noteholder as of such special record date at his address as it appears in the Note register, not less than ten (10) days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the

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special record date therefor having been so mailed, such Defaulted Interest shall be paid to the persons in whose names the Notes (or their respective Predecessor Notes) were registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (2).

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be

listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.4 Execution of Notes. The Notes shall be signed in the name and

on behalf of the Company by the facsimile signature of its President, its Chief Executive Officer, any of its Executive or Senior Vice Presidents, or any of its Vice Presidents (whether or not designated by a number or numbers or word or words added before or after the title "Vice President") and attested by the facsimile signature of its Secretary or any of its Assistant Secretaries (which may be printed, engraved or otherwise reproduced thereon, by facsimile or otherwise). Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto, manually executed by the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 17.11), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture.

In case any officer of the Company who shall have signed any of the Notes shall cease to be such officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such officer of the Company; and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such an officer.

Section 2.5 Exchange and Registration of Transfer of Notes; Restrictions on

Transfer; Depository.

(a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office and in any other office or agency of the Company designated pursuant to Section 5.2 being herein sometimes collectively referred to as the "Note register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby appointed "Note registrar" for the purpose

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of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-registrars in accordance with Section 5.2.

Upon surrender for registration of transfer of any Note to the Note registrar or any co-registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.5, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes which the Noteholder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange shall (if so required by the Company, the Trustee, the Note registrar or any co-registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and duly executed, by the Noteholder thereof or his attorney-in-fact duly authorized in writing.

No service charge shall be charged to the Noteholder for any exchange or registration of transfer of Notes, but the Company may require payment of a sum sufficient to cover any tax, assessments or other governmental charges that may be imposed in connection therewith.

None of the Company, the Trustee, the Note registrar or any co-registrar shall be required to exchange or register a transfer of (a) any Notes for a period of fifteen (15) days next preceding the mailing of the notice of redemption or (b) any Notes called for redemption or, if a portion of any Note is selected or called for redemption, such portion thereof selected or called for redemption or (c) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion or (d) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in connection with a Repurchase Event.

All Notes issued upon any transfer or exchange of Notes in accordance with this Indenture shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

(b) So long as the Notes are eligible for book-entry settlement with the Depository, unless otherwise required by law, all Notes issued to QIBs pursuant to Rule 144A of the Securities Act to be traded on The Portal Market shall be represented by a Note in global form (the "Global Note") registered in the name of the Depository or the nominee of the

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Depository. The transfer and exchange of beneficial interests in the Global Note, which does not involve the issuance of a definitive Note, shall be effected through the Depository (but not the Trustee or the Custodian) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depository therefor.

Notes resold to persons who are not QIBs will be issued in definitive registered form and may not be represented by the Global Note. In addition, at any time at the request of a QIB that is a beneficial holder of an interest in the Global Note, such beneficial holder shall be entitled to obtain a definitive Note upon written request to the Trustee and the Custodian in accordance with the standing instructions and procedures existing between the Depository and the Custodian for the issuance thereof. Upon receipt of any such request, the Trustee or the Custodian, at the direction of the Trustee, will cause, in accordance with the standing instructions and procedures existing between the Depository and the Custodian, the aggregate principal amount of the Global Note to be reduced by the principal amount of the definitive Note issued upon such request to such beneficial holder and, following such reduction, the Company will execute and the Trustee will authenticate and deliver to such beneficial holder (or its nominee) a definitive Note or Notes in the appropriate aggregate principal amount in the name of such beneficial holder (or its nominee) and bearing such restrictive legends as may be required by this Indenture.

Any transfer of a beneficial interest in the Global Note which cannot be effected through book-entry settlement must be effected by the delivery to the transferee (or its nominee) of a definitive Note or Notes registered in the name of the transferee (or its nominee) on the books maintained by the Trustee in accordance with the transfer restrictions set forth herein. With respect to any such transfer, the Trustee or the Custodian, at the direction of the Trustee, will cause, in accordance with the standing instructions and procedures existing between the Depository and the Custodian, the aggregate principal amount of the Global Note to be reduced by the principal amount of the beneficial interest in the Global Note being transferred and, following such reduction, the Company will execute and the Trustee will authenticate and deliver to the transferee (or such transferee's nominee, as the case may be), a Note or Notes in the appropriate aggregate principal amount in the name of such transferee (or its nominee) and bearing such restrictive legends as may be required by this Indenture.

(c) So long as the Notes are eligible for book-entry settlement, unless otherwise required by law, upon any transfer of a definitive Note to a QIB in accordance with Rule 144A, unless otherwise requested by the transferor, and upon receipt of the definitive Note or Notes being so transferred, together with a certification from the transferor that the transferee is a QIB (or other evidence satisfactory to the Trustee), the Trustee shall make or direct the

Custodian to make, an endorsement on the Global Note to reflect an increase in the aggregate principal amount of the Notes represented by the Global Note by the principal amount of the Note being transferred to the QIB, the Trustee shall cancel such definitive Note or Notes and cause, or direct the Custodian to cause, in accordance with the standing instructions and procedures existing between the Depository and the Custodian, the aggregate principal

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amount of Notes represented by the Global Note to be increased accordingly; provided that no definitive Note, or portion thereof, in respect of which the

Company or an Affiliate of the Company held any beneficial interest shall be included in the Global Note until such definitive Note is freely tradable in accordance with Rule 144(k); provided further that the Trustee shall

authenticate and deliver Notes in definitive form upon any transfer of a beneficial interest in the Global Note to the Company or any Affiliate of the Company.

Upon any subsequent sale or transfer of a Note or the Common Stock issued upon conversion thereof that bears the restrictive legend set forth in Section 2.5(d) or Section 2.5(e), respectively, to an Institutional Accredited Investor (other than pursuant to a registration statement that has been declared effective under the Securities Act), such Institutional Accredited Investor shall, prior to such sale or transfer, furnish to the Company and/or the Trustee a signed letter containing representations and agreements relating to restrictions on transfer substantially in the form set forth in Exhibit B to

this Indenture.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian, the Depository or by the National Association of Securities Dealers, Inc. in order for the Notes to be tradeable on The Portal Market or as may be required for the Notes to be tradeable on any other market developed for trading of securities pursuant to Rule 144A or required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

(d) Every Note that bears or is required under this Section 2.5(d) to bear either of the legends set forth in this Section 2.5(d) (together with any Common Stock issued upon conversion of the Notes and required to bear either of the legends set forth in Section 2.5(e), collectively, the "Restricted Securities") shall be subject to the restrictions on transfer set forth in this Section 2.5(d) (including one of the legends set forth below), unless such restrictions on transfer shall be waived by written consent of the Company, and the holder of each such Restricted Security, by such holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in Sections 2.5(d) and 2.5(e), the term "transfer" encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

Until two (2) years after the original issuance date of any Note, any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof which shall bear the legend set forth in Section 2.5(e), if applicable) shall bear a legend in substantially the following form (unless such Notes have been transferred pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer), pursuant to the exemption from registration provided by Rule 144

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under the Securities Act, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THE NOTE EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR ANY STATE

SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) ("INSTITUTIONAL ACCREDITED INVESTOR"); (2) AGREES THAT IT WILL NOT WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THE NOTE EVIDENCED HEREBY RESELL OR OTHERWISE TRANSFER THE NOTE EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH NOTE EXCEPT (A) TO E*TRADE GROUP, INC. OR ANY SUBSIDIARY THEREOF, (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) TO AN INSTITUTIONAL ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES TO THE BANK OF NEW YORK, AS TRUSTEE, A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE NOTE EVIDENCED HEREBY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE), (D) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT, (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (F) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); AND (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE NOTE EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(F) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THE NOTE EVIDENCED HEREBY WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF SUCH NOTE (OTHER THAN A

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TRANSFER PURSUANT TO CLAUSE 2(F) ABOVE), THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE BANK OF NEW YORK, AS TRUSTEE. IF THE PROPOSED TRANSFER IS PURSUANT TO CLAUSE 2(E) OR 2(F) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE BANK OF NEW YORK, AS TRUSTEE, SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS E*TRADE GROUP, INC. MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THIS NOTE EVIDENCED HEREBY PURSUANT TO CLAUSE 2(E) OR 2(F) ABOVE OR THE EXPIRATION OF TWO YEARS FROM THE ORIGINAL ISSUANCE OF THE NOTE EVIDENCED HEREBY.

Any Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of such Note for exchange to the Note registrar in accordance with the provisions of this Section 2.5, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.5(d).

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.5(d)), the Global Note may not be transferred as a whole or in part except by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

The Depositary shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depositary Trust Company to act as Depositary with respect to the Global Note. Initially, the Global Note shall be issued to the Depositary, registered in the name of Cede & Co., as the nominee of the Depositary, and deposited with the Trustee as custodian for Cede & Co.

If at any time the Depositary for the Global Note notifies the Company that it is unwilling or unable to continue as Depositary for such Note, the Company may appoint a successor Depositary with respect to such Note. If a successor Depositary for the Global Note is not appointed by the Company within ninety (90) days after the Company receives such notice, the Company will execute, and the Trustee, upon receipt of an Officers' Certificate for the authentication and delivery of Notes, will authenticate and deliver, Notes

in definitive form, in an aggregate principal amount equal to the principal amount of the Global Note, in exchange for the Global Note, and upon delivery of the Global Note to the Trustee the Global Note shall be canceled.

If a Note in certificated form is issued in exchange for any portion of a Global Note after the close of business on any record date at the office or agency where such exchange occurs and before the opening of business at such office or agency on the next succeeding interest payment date, interest will not be payable on such interest payment date in respect of such certificated Note, but will be payable on such interest payment date only with respect to the exchanged portion of the Global Note in accordance with the provisions of this Indenture.

Definitive Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.5(d) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such definitive Notes to the persons in whose names such definitive Notes are so registered.

At such time as all interests in the Global Note have been redeemed, converted, canceled, repurchased or transferred, the Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and instructions existing between the Depository and the Custodian. At any time prior to such cancellation, if any interest in the Global Note is exchanged for definitive Notes, redeemed, converted, canceled, repurchased or transferred to a transferee who receives definitive Notes therefor or any definitive Note is exchanged or transferred for part of the Global Note, the principal amount of the Global Note shall, in accordance with the standing procedures and instructions existing between the Depository and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on the Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

(e) Until two (2) years after the original issuance date of any Note, any stock certificate representing Common Stock issued upon conversion of such Note shall bear a legend in substantially the following form (unless such Common Stock has been sold pursuant to the exemption from registration provided by Rule 144 under the Securities Act or pursuant to a registration statement that has been declared effective under the Securities Act, and which continues to be effective at the time of such transfer, or such Common Stock has been issued upon conversion of Notes that have been transferred pursuant to a registration statement that has been declared effective under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Trustee and any transfer agent for the Common Stock):

THE COMMON STOCK EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD

EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. THE HOLDER HEREOF AGREES THAT UNTIL THE EXPIRATION OF TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THE NOTE UPON THE CONVERSION OF WHICH THE COMMON STOCK EVIDENCED HEREBY WAS ISSUED, (1) IT WILL NOT RESELL OR OTHERWISE TRANSFER THE COMMON STOCK EVIDENCED HEREBY EXCEPT (A) TO E*TRADE GROUP, INC. OR ANY SUBSIDIARY THEREOF, (B) TO A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN COMPLIANCE WITH RULE 144A, (C) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) THAT PRIOR TO SUCH TRANSFER, FURNISHES TO AMERICAN STOCK TRANSFER AND TRUST COMPANY, AS TRANSFER AGENT, A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM SUCH TRANSFER AGENT), (D) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT, (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), OR (F) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE

TIME OF SUCH TRANSFER); (2) PRIOR TO ANY SUCH TRANSFER (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(f) ABOVE), IT WILL FURNISH TO AMERICAN STOCK TRANSFER AND TRUST COMPANY, AS TRANSFER AGENT, SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT; AND (3) IT WILL DELIVER TO EACH PERSON TO WHOM THE COMMON STOCK EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(f) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY PURSUANT TO CLAUSE 1(E) OR 1(F) ABOVE OR THE EXPIRATION OF

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TWO YEARS FROM THE ORIGINAL ISSUANCE OF THE NOTE UPON THE CONVERSION OF WHICH THE COMMON STOCK EVIDENCED HEREBY WAS ISSUED.

Any such Common Stock as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the restrictive legend required by this Section 2.5(e).

(f) Any Note or Common Stock issued upon the conversion or exchange of a Note that, prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), is purchased or owned by the Company or any Affiliate thereof may not be resold by the Company or such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Notes or Common Stock, as the case may be, no longer being "restricted securities" (as defined under Rule 144).

(g) Notwithstanding any provision of Section 2.5 to the contrary, in the event Rule 144(k) as promulgated under the Securities Act (or any successor rule) is amended to change the two-year period under Rule 144(k) (or the corresponding period under any successor rule), from and after receipt by the Trustee of the Officers' Certificate and Opinion of Counsel provided for in this Section 2.5(g), (i) each reference in Section 2.5(d) to "two (2) years" and in the restrictive legend set forth in such paragraph to "TWO YEARS" shall be deemed for all purposes hereof to be references to such changed period, (ii) each reference in Section 2.5(e) to "two (2) years" and in the restrictive legend set forth in such paragraph to "TWO YEARS" shall be deemed for all purposes hereof to be references to such changed period and (iii) all corresponding references in the Notes and the restrictive legends thereon shall be deemed for all purposes hereof to be references to such changed period, provided that such changes shall not become effective if they are otherwise prohibited by, or would otherwise cause a violation of, the then-applicable federal securities laws. As soon as practicable after the Company has knowledge of the effectiveness of any such amendment to change the two-year period under Rule 144(k) (or the corresponding period under any successor rule), unless such changes would otherwise be prohibited by, or would otherwise cause a violation of, the then-applicable securities law, the Company shall provide to the Trustee an Officers' Certificate and Opinion of Counsel informing the Trustee of the effectiveness of such amendment and the effectiveness of the foregoing changes to Sections 2.5(d) and 2.5(e) and the Notes. The provisions of this Section 2.5(g) will not be effective until such time as the Opinion of Counsel and Officers' Certificate have been received by the Trustee hereunder. This Section 2.5(g) shall apply to successive amendments to Rule 144(k) (or any successor rule) changing the holding period thereunder.

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(h) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among depository participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and

when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.6 Mutilated, Destroyed, Lost or Stolen Notes. In case any Note

shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon its request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. Upon the issuance of any substituted Note, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. In case any Note which has matured or is about to mature or has been called for redemption or is about to be converted into Common Stock shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity will be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in case of destruction, loss or theft, evidence satisfactory to the Company, the Trustee and, if applicable, any paying agent or conversion agent of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.6 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment or conversion of mutilated,

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destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment or conversion of negotiable instruments or other securities without their surrender.

Section 2.7 Temporary Notes. Pending the preparation of definitive Notes,

the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon written request of the Company, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the definitive Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the definitive Notes. Without unreasonable delay the Company will execute and deliver to the Trustee or such authenticating agent definitive Notes (other than in the case of Notes in global form) and thereupon any or all temporary Notes (other than any the Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 5.2 and the Trustee or such authenticating agent shall authenticate and deliver in exchange for such temporary Notes an equal

aggregate principal amount of definitive Notes. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as definitive Notes authenticated and delivered hereunder.

Section 2.8 Cancellation of Notes Paid, Etc. All Notes surrendered for the

purpose of payment, redemption, repurchase, conversion, exchange or registration of transfer, shall, if surrendered to the Company or any paying agent or any Note registrar or any conversion agent, be surrendered to the Trustee and promptly canceled by it, or, if surrendered to the Trustee, shall be promptly canceled by it, and no Notes shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. Upon written instructions of the Company, the Trustee shall dispose of canceled Notes in accordance with its customary procedures. If the Company shall acquire any of the Notes, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation.

Section 2.9 CUSIP Numbers. The Company in issuing the Securities may use

"CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided

that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP" numbers.

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ARTICLE III

REDEMPTION OF NOTES

Section 3.1 Redemption Prices. The Company may, at its option, redeem all

or from time to time any part of the Notes on any date prior to maturity, upon notice as set forth in Section 3.2, and at the optional redemption prices set forth in the form of Note attached as Exhibit A hereto, together with accrued interest, if any, to, but excluding, the date fixed for redemption, provided,

however, that no such redemption shall be effected before February 4, 2003.

Section 3.2 Notice of Redemption; Selection of Notes. In case the Company

shall desire to exercise the right to redeem all or, as the case may be, any part of the Notes pursuant to Section 3.1, it shall fix a date for redemption, and it, or at its request (which must be received by the Trustee at least ten (10) Business Days prior to the date the Trustee is requested to give notice as described below unless a shorter period is agreed to by the Trustee), the Trustee in the name of and at the expense of the Company, shall mail or cause to be mailed a notice of such redemption at least twenty (20) and not more than sixty (60) days prior to the date fixed for redemption to the holders of Notes so to be redeemed as a whole or in part at their last addresses as the same appear on the Note register (provided that if the Company shall give such

notice, it shall also give such notice, and notice of the Notes to be redeemed, to the Trustee). Such mailing shall be by first class mail. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

Each such notice of redemption shall specify the aggregate principal amount of Notes to be redeemed, the CUSIP number or numbers of such Notes, the date fixed for redemption, the redemption price at which Notes are to be redeemed, the place or places of payment, that payment will be made upon presentation and

surrender of such Notes, that interest accrued to, but excluding, the date fixed for redemption will be paid as specified in said notice, and that on and after said date interest thereon or on the portion thereof to be redeemed will cease to accrue. Such notice shall also state the current Conversion Price and the date on which the right to convert such Notes or portions thereof into Common Stock will expire. If fewer than all the Notes are to be redeemed, the notice of redemption shall identify the Notes to be redeemed. In case any Note is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion thereof will be issued.

On or prior to the redemption date specified in the notice of redemption given as provided in this Section, the Company will deposit with the Trustee or with one or more paying agents (or, if the Company is acting as its own paying agent, set aside, segregate and hold in trust as provided in Section 5.4) an amount of money sufficient to redeem on the redemption date all the Notes (or portions thereof) so called for redemption (other than those theretofore surrendered for conversion into Common Stock) at the appropriate redemption price, together with accrued interest to, but

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excluding, the date fixed for redemption; provided that if such payment is made -----
on the redemption date it must be received by the Trustee or paying agent, as the case may be, by 10:00 a.m. New York City time, on such date. If any Note called for redemption is converted pursuant hereto, any money deposited with the Trustee or any paying agent or so segregated and held in trust for the redemption of such Note shall be paid to the Company upon its request, or, if then held by the Company shall be discharged from such trust.

If fewer than all the Notes are to be redeemed, the Company will give the Trustee written notice in the form of an Officers' Certificate not fewer than thirty-five (35) days (or such shorter period of time as may be acceptable to the Trustee) prior to the redemption date as to the aggregate principal amount of Notes to be redeemed. If fewer than all the Notes are to be redeemed, the Trustee shall select the Notes or portions thereof to be redeemed (in principal amounts of \$1,000 or integral multiples thereof), on a pro rata basis, or by a method the Trustee considers fair and appropriate (as long as such method is not prohibited by the rules of any United States national securities exchange or of an established automated over-the-counter trading market in the United States on which the Notes are then listed). If any Note selected for partial redemption is converted in part after such selection, the converted portion of such Note shall be deemed (so far as is possible) to be the portion to be selected for redemption. The Notes (or portions thereof) so selected shall be deemed duly selected for redemption for all purposes hereof, notwithstanding that any such Note is converted as a whole or in part before the mailing of the notice of redemption.

Upon any redemption of less than all Notes, the Company and the Trustee may (but need not) treat as outstanding any Notes surrendered for conversion during the period of fifteen (15) days next preceding the mailing of a notice of redemption and may (but need not) treat as not outstanding any Note authenticated and delivered during such period in exchange for the unconverted portion of any Note converted in part during such period.

Section 3.3 Payment of Notes Called for Redemption. If notice of -----

redemption has been given as above provided, the Notes or portion of Notes with respect to which such notice has been given shall, unless converted into Common Stock pursuant to the terms hereof, become due and payable on the date and at the place or places stated in such notice at the applicable redemption price, together with interest accrued to, but excluding, the date fixed for redemption, and on and after said date (unless the Company shall default in the payment of such Notes at the redemption price, together with interest accrued to, but excluding, said date) interest on the Notes or portion of Notes so called for redemption shall cease to accrue and such Notes shall cease after the close of business on the Business Day next preceding the date fixed for redemption to be convertible into Common Stock and, except as provided in Sections 8.5 and 13.4, to be entitled to any benefit or security under this Indenture, and the holders thereof shall have no right in respect of such Notes except the right to receive the redemption price thereof and unpaid interest to, but excluding, the date fixed for redemption. On presentation and surrender of such Notes at a place of

payment in said notice specified, the said Notes or the specified portions thereof to be redeemed shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to, but excluding, the date fixed for redemption; provided that, if the applicable

redemption date is an interest payment date, the semi-annual payment of interest becoming due on such date shall be

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payable to the holders of such Notes registered as such on the relevant record date subject to the terms and provisions of Section 2.3 hereof.

Upon presentation of any Note redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to the holder thereof, at the expense of the Company, a new Note or Notes, of authorized denominations, in principal amount equal to the unredeemed portion of the Notes so presented.

Notwithstanding the foregoing, the Trustee shall not redeem any Notes or mail any notice of optional redemption during the continuance of a default in payment of interest or premium on the Notes or of any Event of Default of which, in the case of any Event of Default other than under Section 7.1(a), (b) or (e), a Responsible Officer of the Trustee has actual knowledge. If any Note called for redemption shall not be so paid upon surrender thereof for redemption, the principal and premium, if any, shall, until paid or duly provided for, bear interest from the date fixed for redemption at the rate borne by the Note and such Note shall remain convertible into Common Stock until the principal and premium, if any, shall have been paid or duly provided for.

Section 3.4 Conversion Arrangement on Call for Redemption. In connection

with any redemption of Notes, the Company may arrange for the purchase and conversion of any Notes not converted prior to the expiration of such conversion right by an agreement with one or more investment bankers or other purchasers to purchase such Notes by paying to the Trustee in trust for the Noteholders, on or before the date fixed for redemption, an amount not less than the applicable redemption price, together with interest accrued to the date fixed for redemption, of such Notes. Notwithstanding anything to the contrary contained in this Article III, the obligation of the Company to pay the redemption price of such Notes, together with interest accrued to, but excluding, the date fixed for redemption, shall be deemed to be satisfied and discharged to the extent such amount is so paid by such purchasers. If such an agreement is entered into, a copy of which, certified as true and correct by the Secretary or Assistant Secretary of the Company will be filed with the Trustee prior to the date fixed for redemption, any Notes not duly surrendered for conversion by the holders thereof may, at the option of the Company, be deemed, to the fullest extent permitted by law, acquired by such purchasers from such holders and (notwithstanding anything to the contrary contained in Article XV) surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the date fixed for redemption (and the right to convert any such Notes shall be deemed to have been extended through such time), subject to payment of the above amount as aforesaid. At the direction of the Company, the Trustee shall hold and dispose of any such amount paid to it in the same manner as it would monies deposited with it by the Company for the redemption of Notes. Without the Trustee's prior written consent, no arrangement between the Company and such purchasers for the purchase and conversion of any Notes shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture, and the Company agrees to indemnify the Trustee from, and hold it harmless against, any loss, liability or expense arising out of or in connection with any such arrangement for the purchase and conversion of any Notes between the Company and such purchasers, including the costs and expenses incurred by the Trustee in the defense of any claim or liability arising out of or in

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connection with the exercise or performance of any of its powers, duties, responsibilities or obligations under this Indenture.

ARTICLE IV

SUBORDINATION OF NOTES

Section 4.1 Agreement of Subordination. The Company covenants and agrees,

and each holder of Notes issued hereunder by his acceptance thereof likewise covenants and agrees, that all Notes shall be issued subject to the provisions of this Article IV; and each person holding any Note, whether upon original issue or upon transfer, assignment or exchange thereof, accepts and agrees to be bound by such provisions.

The payment of the principal of, premium, if any, and interest on all Notes (including, but not limited to, the redemption price or repurchase price with respect to the Notes to be redeemed or repurchased, as provided in this Indenture) issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated to the prior payment in full, in cash or in such other form of payment as may be acceptable to the holders of Senior Indebtedness, of all Senior Indebtedness, whether outstanding at the date of this Indenture or thereafter incurred or created.

No provision of this Article IV shall prevent the occurrence of any default or Event of Default hereunder.

Section 4.2 Payments to Noteholders. No payment (including pursuant to

any redemption or repurchase of Notes) shall be made with respect to the principal of, or premium, if any, or interest (including Liquidated Damages, if any) on the Notes, except payments and distributions made by the Trustee as permitted by Section 4.6, if:

(1) a default in the payment of principal, premium, if any, or interest or other payment due on Designated Senior Indebtedness occurs and is continuing beyond any applicable period of grace; or

(2) any other default occurs and is continuing with respect to Designated Senior Indebtedness that then permits holders of the Designated Senior Indebtedness as to which such default related to accelerate its maturity and the Trustee and the Company receive a written notice of such default (a "Payment Blockage Notice") from a representative of Designated Senior Indebtedness or a holder of Designated Senior Indebtedness or the Company.

The Company may and shall resume payments on the Notes (1) in the case of a payment default, on the date upon which such default is cured or waived or ceases to exist, and (2) in the case of a nonpayment default with respect to Designated Senior Indebtedness, on the earlier of the date on which the nonpayment default is cured or waived or ceases to exist or 179 days have passed after the date on which the applicable Payment Blockage Notice is received.

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No new period of payment blockage may be commenced pursuant to a Payment Blockage Notice unless (A) at least 365 days shall have elapsed since the Company's receipt of the immediately prior Payment Blockage Notice and (B) all scheduled payments of principal, premium, if any, and interest on the Notes that have come due have been paid in full in cash, or in such other form of payment as may be acceptable to the holders of the Notes, and the Trustee or the requisite holders of Notes shall not have begun proceedings to enforce the right of the holders to receive payments. No default (whether or not such event of default is on the same issue of Designated Senior Indebtedness) that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Trustee shall be, or be made, the basis for a subsequent Payment Blockage Notice.

In addition, in the event of any acceleration of the Notes because of an Event of Default, no payment or distribution (including with respect to any redemption or repurchase of the Notes) shall be made to the Trustee or any holder of Notes with respect to the principal of, premium, if any, or interest (including Liquidated Damages, if any) on the Notes, except payments and distributions made by the Trustee as permitted by Section 4.6, until all Senior Indebtedness has been paid in full in cash or other payment satisfactory to the holders of Senior Indebtedness or such acceleration is rescinded in accordance with the terms of this Indenture. If payment of the Notes is accelerated because of an Event of Default, the Company shall promptly notify holders of Senior Indebtedness of the acceleration.

Notwithstanding the foregoing, in the event that the Trustee or any holder of Notes receives any payment or distribution of assets of the Company of any kind in contravention of any term of this Indenture, whether in cash, property or securities, including, without limitation, by way of setoff or otherwise, before all Senior Indebtedness is paid in full, in cash or such other form of payment as may be acceptable to the holders of Senior Indebtedness, then such payment or distribution shall be held by the recipient or recipients in trust for the benefit of, and shall immediately be paid over or delivered to, the holders of Senior Indebtedness or their respective representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any Senior Indebtedness may have been issued, as their respective interests may appear, as calculated by the Company, for application to the payment of all Senior Indebtedness remaining unpaid to the extent necessary to make payment in full, in cash or such other form of payment as may be acceptable to the holders of Senior Indebtedness, of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution, or provision therefor, to or for the holders of such Senior Indebtedness.

Nothing in this Section 4.2 shall apply to claims of, or payments to, the Trustee pursuant to Section 8.6. This Section 4.2 shall be subject to the further provisions of Section 4.6.

Section 4.3 Bankruptcy and Dissolution, Etc. Upon any payment by the

Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution, winding-up, liquidation or reorganization of the Company, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all amounts due or to become due upon all Senior Indebtedness shall first be paid in full, in cash or in such other form of payment as may be acceptable to the holders of Senior

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Indebtedness, before any payment is made on account of the principal or premium, if any, and interest on the Notes (except payments made pursuant to Article XIII from monies deposited with the Trustee pursuant thereto prior to the happening of such dissolution, winding-up, liquidation or reorganization or bankruptcy, insolvency, receivership or other such proceedings); and upon any such dissolution, winding-up, liquidation or reorganization or bankruptcy, insolvency, receivership or other such proceedings, any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the holders of the Notes or the Trustee under this Indenture would be entitled, except for the provision of this Article IV, shall (except as aforesaid) be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, or by the holders of the Notes or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Indebtedness (pro rata to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders, or as otherwise required by law or a court order) or their respective representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay all Senior Indebtedness in full in cash or in such other form of payment as may be acceptable to the holders of Senior Indebtedness after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness, before any payment or distribution is made to the holders of the Notes or to the Trustee under this Indenture.

Notwithstanding the foregoing, in the event that the Trustee or any holder of Notes receives any payment or distribution of assets of the Company of any kind in contravention of any term of this Indenture, whether in cash, property or securities, including, without limitation, by way of setoff or otherwise, before all Senior Indebtedness is paid in full, in cash or such other form of payment as may be acceptable to the holders of Senior Indebtedness, then such payment or distribution shall be held by the recipient or recipients in trust for the benefit of, and shall immediately be paid over or delivered to, the holders of Senior Indebtedness or their respective representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any Senior Indebtedness may have been issued, as their respective interests may appear, as calculated by the Company, for application to the payment of all Senior Indebtedness remaining unpaid to the

extent necessary to make payment in full, in cash or such other form of payment as may be acceptable to the holders of Senior Indebtedness, of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution, or provision therefor, to or for the holders of such Senior Indebtedness.

For purposes of Section 4.2 hereof and this Section 4.3, the words "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated (at least to the extent provided in this Article IV with respect to the Notes) to the payment of all Senior Indebtedness which may at the time be outstanding; provided that (i) the Senior Indebtedness

is assumed by the new corporation, if any, resulting from such reorganization or adjustment, and (ii) the rights of the holders of Senior Indebtedness (other than leases which are not assumed by the Company or by the new corporation, as the case may be) are not, without the consent of such holders, altered by such

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reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided for in Article XII shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 4.3 if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article XII.

Nothing in this Section 4.3 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 8.6. This Section 4.3 shall be subject to the further provisions of Section 4.6.

Section 4.4 Subrogation of Notes. Subject to the payment in full in cash

or in such other form of payment as may be acceptable to the holders of Senior Indebtedness of all Senior Indebtedness, the rights of the holders of the Notes shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Indebtedness pursuant to the provisions of this Article IV (equally and ratably with the holders of all indebtedness of the Company which by its express terms is subordinated to other indebtedness of the Company to substantially the same extent as the Notes are subordinated and is entitled to like rights of subrogation) to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Indebtedness until the principal of, and premium, if any, and interest on the Notes shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of the Senior Indebtedness of any cash, property or securities to which the holders of the Notes or the Trustee would be entitled except for the provisions of this Article IV, and no payment over pursuant to the provisions of this Article IV, to or for the benefit of the holders of Senior Indebtedness by holders of the Notes or the Trustee, shall, as between the Company, its creditors other than holders of Senior Indebtedness, and the holders of the Notes, be deemed to be a payment by the Company to or on account of the Senior Indebtedness; and no payments or distributions of cash, property or securities to or for the benefit of the holders of the Notes pursuant to the subrogation provisions of this Article IV, which would otherwise have been paid to the holders of Senior Indebtedness shall be deemed to be a payment by the Company to or for the account of the Notes. It is understood that the provisions of this Article IV are and are intended solely for the purposes of defining the relative rights of the holders of the Notes, on the one hand, and the holders of the Senior Indebtedness, on the other hand.

Nothing contained in this Article IV or elsewhere in this Indenture or in the Notes is intended to or shall impair, as among the Company, its creditors other than the holders of Senior Indebtedness, and the holders of the Notes, the obligation of the Company, which is absolute and unconditional, to pay to the holders of the Notes the principal of, and premium, if any, and interest on the Notes as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the holders of the Notes and creditors of the Company other than the holders of the Senior Indebtedness, nor shall anything herein or therein prevent the Trustee or the

holder of any Note from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article IV of

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the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article IV, the Trustee, subject to the provisions of Section 8.1, and the holders of the Notes shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such bankruptcy, dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, delivered to the Trustee or to the holders of the Notes, for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article IV.

Section 4.5 Authorization by Noteholders. Each holder of a Note by his

acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article IV and appoints the Trustee his attorney-in-fact for any and all such purposes.

Section 4.6 Notice to Trustee. The Company shall give written notice to

the Trustee of the issuance of any Designated Senior Indebtedness. In addition, the Company shall give prompt written notice in the form of an Officers' Certificate to a Responsible Officer of the Trustee and to any paying agent of any fact known to the Company which would prohibit the making of any payment of monies to or by the Trustee or any paying agent in respect of the Notes pursuant to the provisions of this Article IV. Notwithstanding the provisions of this Article IV or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any Senior Indebtedness or of any default or event of default with respect to any Senior Indebtedness or of any other facts which would prohibit the making of any payment of monies to or by the Trustee in respect of the Notes pursuant to the provisions of this Article IV, unless and until a Responsible Officer of the Trustee shall have received written notice thereof at the Corporate Trust Office from the Company (in the form of an Officers' Certificate) or a holder or holders of Senior Indebtedness or from any trustee thereof who shall have been certified by the Company or otherwise established to the reasonable satisfaction of the Trustee to be such holder or trustee; and before the receipt of any such written notice, the Trustee, subject to the provisions of Section 8.1, shall be entitled in all respects to assume that no such facts exist; provided that if on a date at least

two (2) Business Days prior to the date upon which by the terms hereof any such monies may become payable for any purpose (including, without limitation, the payment of the principal of, or premium, if any, or interest on any Note), the Trustee shall not have received with respect to such monies the notice provided for in this Section 4.6, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such prior date.

Notwithstanding anything to the contrary hereinbefore set forth, nothing shall prevent (a) any payment by the Company or the Trustee to the Noteholders of amounts in connection with a

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redemption of Notes if (i) notice of such redemption has been given to the Noteholders pursuant to Article III prior to the receipt by the Trustee of written notice as aforesaid, and (ii) such notice of redemption is given not earlier than sixty (60) days before the redemption date, (b) any payment by the Company or the Trustee to the Noteholders of amounts in connection with a repurchase of Notes if (i) notice of such repurchase has been given pursuant to

Article XVI prior to the receipt by the Trustee of written notice as aforesaid, and (ii) such notice of repurchase is given not earlier than forty (40) days before the repurchase date, or (c) any payment by the Trustee to the Noteholders of monies deposited with it pursuant to Section 13.1.

The Trustee, subject to the provisions of Section 8.1, shall be entitled to rely on the delivery to it of a written notice by a person representing himself to be a holder of Senior Indebtedness (or a trustee on behalf of such holder) to establish that such notice has been given by a holder of Senior Indebtedness or a trustee on behalf of any such holder or holders. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article IV, the Trustee may request such person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such person, the extent to which such person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such person under this Article IV, and if such evidence is not furnished the Trustee may defer any payment to such person pending judicial determination as to the right of such person to receive such payment.

Section 4.7 Trustee's Relation to Senior Indebtedness. The Trustee and

any agent of the Company or the Trustee in its individual capacity shall be entitled to all the rights set forth in this Article IV in respect of any Senior Indebtedness at any time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in Section 8.13 or elsewhere in this Indenture shall deprive the Trustee or any such agent of any of its rights as such holder. Nothing in this Article IV shall apply to claims of, or payments to, the Trustee under or pursuant to Section 8.6.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article IV, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and, subject to the provisions of Section 4.2 and Section 8.1, the Trustee shall not be liable to any holder of Senior Indebtedness if it shall pay over or deliver to holders of Notes, the Company or any other person money or assets to which any holder of Senior Indebtedness shall be entitled by virtue of this Article IV or otherwise.

Section 4.8 No Impairment of Subordination. No right of any present or

future holder of any Senior Indebtedness to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or otherwise be charged with.

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Section 4.9 Certain Conversions Deemed Payment. For the purposes of

this Article IV only, (1) the issuance and delivery of junior securities upon conversion of Notes in accordance with Article XV or upon repurchase of the Notes by the Company in the event of a Repurchase Event in accordance with Article XVI shall not be deemed to constitute a payment or distribution on account of the principal of (or premium, if any) or interest on Notes or on account of the purchase or other acquisition of Notes, and (2) the payment, issuance or delivery of cash (including cash paid for fractional shares upon conversion of a Note or upon repurchase of a Note upon a Repurchase Event), property or securities (other than junior securities) upon conversion of a Note or upon repurchase of a Note on a Repurchase Event shall be deemed to constitute payment on account of the principal of such Note. For the purposes of this Section, the term "junior securities" means (a) shares of any stock of any class of the Company and (b) securities of the Company which are subordinated in right of payment to all Senior Indebtedness which may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Notes are so subordinated as provided in this Article. Nothing contained in this Article or elsewhere in this Indenture or in the Notes is intended to or shall impair, as among the Company, its creditors other than holders of Senior Indebtedness and the holders of the Notes, the

right, which is absolute and unconditional, of the holder of any Note to convert such Note in accordance with Article XV.

Section 4.10 Article Applicable to Paying Agents. If at any time any

paying agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term Trustee as used in this Article IV shall (unless the context shall otherwise require) be construed as extending to and including such paying agent within its meaning as fully for all intents and purposes as if such paying agent were named in this Article in addition to or in place of the Trustee; provided, however, that the first sentence of Section 4.5 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as paying agent.

ARTICLE V

PARTICULAR COVENANTS OF THE COMPANY

Section 5.1 Payment of Principal, Premium and Interest. The Company

covenants and agrees that it will duly and punctually pay or cause to be paid the principal of and premium, if any, and interest on each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes. Each installment of interest on the Notes due on any semi-annual interest payment date may be paid by mailing checks for the interest payable to or upon the written order of the holders of Notes entitled thereto as they shall appear on the registry books of the Company, provided that, with respect to any holder of Notes with an aggregate principal amount equal to or in excess of \$2,000,000, at the request of such holder in writing to the Company, interest on such holder's Notes shall be paid by wire transfer in immediately available funds in accordance with the wire transfer instructions supplied by such holder from time to time to the Trustee and paying agent (if different from Trustee) at least two days prior to the applicable record date; provided that any payment to the

Depository or its nominee shall be paid by wire transfer in immediately available funds in accordance with the wire transfer instruction supplied by the Depository or its nominee from

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time to time to the Trustee and paying agent (if different from Trustee) at least two days prior to the applicable record date.

Section 5.2 Maintenance of Office or Agency. The Company will maintain

in the Borough of Manhattan, The City of New York, an office or agency where the Notes may be presented for registration of transfer or exchange or for presentation for payment or for conversion, redemption or repurchase and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office or the office or agency of the Trustee in the Borough of Manhattan, The City of New York.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided that no

such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby initially designates the Trustee as paying agent, Note registrar, Custodian and conversion agent and the Corporate Trust Office and the office or agency of the Trustee in the Borough of Manhattan, The City of New York (which initially shall be The Bank of New York, located at 101 Barclay Street, Floor 21 West, New York, New York 10286, Attention: Corporate Trust

Trustee Administration, as one such office or agency of the Company for each of the aforesaid purposes.

So long as the Trustee is the Note registrar, the Trustee agrees to mail, or cause to be mailed, the notices set forth in Section 8.10(a) and the third paragraph of Section 8.11.

Section 5.3 Appointments to Fill Vacancies in Trustee's Office. The

Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 8.10, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 5.4 Provisions as to Paying Agent.

(a) If the Company shall appoint a paying agent other than the Trustee or if the Trustee shall appoint such a paying agent, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 5.4:

(1) that it will hold all sums held by it as such agent for the payment of the principal of and premium, if any, or interest on the Notes (whether such sums have

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been paid to it by the Company or by any other obligor on the Notes) in trust for the benefit of the holders of the Notes;

(2) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Notes) to make any payment of the principal of and premium, if any, or interest on the Notes when the same shall be due and payable; and

(3) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal of, premium, if any, or interest on the Notes, deposit with the paying agent a sum sufficient to pay such principal, premium, if any, or interest, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action, provided that if such deposit is made on the due date, such deposit must be received by the paying agent by 10:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own paying agent, it will, on or before each due date of the principal of, premium, if any, or interest on the Notes, set aside, segregate and hold in trust for the benefit of the holders of the Notes a sum sufficient to pay such principal, premium, if any, or interest so becoming due and will notify the Trustee of any failure to take such action and of any failure by the Company (or any other obligor under the Notes) to make any payment of the principal of, premium, if any, or interest on the Notes when the same shall become due and payable.

(c) Anything in this Section 5.4 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Company or any paying agent hereunder as required by this Section 5.4, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Company or any paying agent to the Trustee, the Company or such paying agent shall be released from all further liability with respect to such sums.

(d) Anything in this Section 5.4 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 5.4 is subject to Sections 13.3 and 13.4.

Section 5.5 Existence. Subject to Article XII, the Company will do or

cause to be done all things necessary to preserve and keep in full force and

effect its corporate existence.

Section 5.6 Rule 144A Information Requirement. Within the period prior

to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the Exchange Act, make available to any holder or beneficial holder of Notes or any Common Stock issued upon conversion thereof, in each case which continue to be Restricted Securities, in connection with any sale thereof and any prospective

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purchaser of Notes or such Common Stock from such holder or beneficial holder, the information required pursuant to Rule 144A(d)(4) under the Securities Act upon the request of any holder or beneficial holder of the Notes or such Common Stock and it will take such further action as any holder or beneficial holder of such Notes or such Common Stock may reasonably request, all to the extent required from time to time to enable such holder or beneficial holder to sell its Notes or Common Stock without registration under the Securities Act within the limitation of the exemption provided by Rule 144A, as such rule may be amended from time to time. Upon the request of any holder or any beneficial holder of the Notes or such Common Stock, the Company will deliver to such holder a written statement as to whether it has complied with such requirements.

Section 5.7 Stay, Extension and Usury Laws. The Company covenants (to

the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 5.8 Compliance Certificate. The Company shall deliver to the

Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on September 30, 2000) an Officers' Certificate stating whether or not to the best of their knowledge the signers know of any default or Event of Default that occurred during such period. If they do, such Officers' Certificate shall describe the default or Event of Default and its status.

The Company shall deliver to the Trustee, as soon as possible and in any event within five days after the Company becomes aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default, an Officers' Certificate setting forth the details of such Event of Default or default and the action which the Company proposes to take with respect thereto.

Section 5.9 Further Instruments and Acts. Upon request of the Trustee,

the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE VI

NOTEHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 6.1 Noteholders' Lists. The Company covenants and agrees that

it will furnish or cause to be furnished to the Trustee, semi-annually, not more than fifteen (15) days after each January 15 and July 15 in each year beginning with July 15, 2000 and at such other times as the

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Trustee may request in writing, within thirty (30) days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the holders of Notes as of a date not more than fifteen (15) days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Note registrar.

Section 6.2 Preservation and Disclosure of Lists.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of Notes contained in the most recent list furnished to it as provided in Section 6.1 or maintained by the Trustee in its capacity as Note registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 6.1 upon receipt of a new list so furnished.

(b) The rights of Noteholders to communicate with other holders of Notes with respect to their rights under this Indenture or under the Notes and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Every Noteholder, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of holders of Notes made pursuant to the Trust Indenture Act.

Section 6.3 Reports by Trustee.

(a) After this Indenture has been qualified under the Trust Indenture Act, the Trustee shall transmit to holders of Notes such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313 (a) of the Trust Indenture Act, the Trustee shall, within sixty days after each January 15 following the date of this Indenture deliver to holders a brief report, dated as of such January 15 which complies with the provisions of such Section 313(a).

(b) A copy of such report shall, at the time of such transmission to holders of Notes, be filed by the Trustee with each stock exchange and automated quotation system upon which the Notes are listed and with the Company. The Company will promptly notify the Trustee when the Notes are listed on any stock exchange or automated quotation system and when any such listing is discontinued.

Section 6.4 Reports by Company.

(a) After this Indenture has been qualified under the Trust Indenture Act, the Company shall file with the Trustee and the Commission, and transmit to holders of Notes, such information, documents and other reports and such summaries thereof, as may be required pursuant

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to the Trust Indenture Act at the times and in the manner provided pursuant to such Act; provided that any such information, documents or reports required to

be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission.

(b) The Company will deliver to the Trustee (a) as soon as available and in any event within ninety (90) days after the end of each fiscal year of the Company (i) a consolidated balance sheet of the Company and its subsidiaries as of the end of such fiscal year and the related consolidated statements of operations, stockholders' equity and cash flows for such fiscal year, all reported on by an independent public accountant of nationally recognized

standing and (ii) a report containing a management's discussion and analysis of the financial condition and results of operations and a description of the business and properties of the Company and (b) as soon as available and in any event within forty-five (45) days after the end of each of the first three quarters of each fiscal year of the Company (i) an unaudited consolidated management's discussion and analysis of the financial condition and results of operations of the Company for such quarter; provided that the foregoing statements and reports shall not be required for any fiscal year or quarter, as the case may be, with respect to which the Company files or expects to file with the Trustee an annual report or quarterly report, as the case may be, pursuant to the preceding paragraph of this Section 6.4. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.1 Events of Default. In case one or more of the following

Events of Default (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall have occurred and be continuing:

(a) default in the payment of the principal of and premium, if any, on any of the Notes as and when the same shall become due and payable either at maturity or in connection with any redemption, by declaration or otherwise, whether or not such payment is prohibited by the provisions of Article IV; or

(b) default for thirty (30) days in the payment of any installment of interest or Liquidated Damages, if any, upon any of the Notes as and when the same shall become due and payable, whether or not such payment is prohibited by the provisions of Article IV; or

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(c) failure by the Company to deliver shares of Common Stock required to be delivered upon conversion of a Note in accordance with Article XV of this Indenture and continuance of such default for five (5) Business Days; or

(d) failure on the part of the Company duly to observe or perform any other of the covenants on the part of the Company in the Notes or in this Indenture (other than a covenant a default in whose performance or whose breach is elsewhere in this Section specifically dealt with) and the continuance of such failure for a period of sixty (60) days after the date on which written notice of such failure, requiring the Company to remedy the same, shall have been given to the Company by the Trustee, or to the Company and a Responsible Officer of the Trustee by the holders of at least 25% in aggregate principal amount of the outstanding Notes at the time outstanding determined in accordance with Section 9.4; or

(e) a default in the payment of the Repurchase Price in respect of any Note on the repurchase date therefor in accordance with the provisions of Article XVI, whether or not such payment in cash of the Repurchase Price is prohibited by the provisions of Article IV; or

(f) failure on the part of the Company to provide a written notice of a Repurchase Event in accordance with Section 16.2; or

(g) failure on the part of the Company or any Significant Subsidiary to make any payment at maturity, including any applicable grace period, in respect of Indebtedness of, or guaranteed or assumed by, the Company or any Significant Subsidiary, in a principal amount then outstanding in excess of U.S. \$20,000,000, and the continuance of such failure for a period of thirty (30) days after there shall have been given, by registered or certified mail, to the Company by the Trustee or to the Company and the

Trustee by the holders of not less than 25% in aggregate principal amount of the Notes then outstanding, a written notice specifying such default and requiring the Company to cause such default to be cured or waived and stating that such notice is a "Notice of Default" hereunder; or

(h) default on the part of the Company or any Significant Subsidiary with respect to any Indebtedness of, or guaranteed or assumed by, the Company or any Significant Subsidiary, which default results in the acceleration of Indebtedness in a principal amount then outstanding in excess of U.S. \$20,000,000, and such Indebtedness shall not have been discharged or such acceleration shall not have been rescinded or annulled for a period of thirty (30) days after there shall have been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the holders of not less than 25% in aggregate principal amount of the Notes then outstanding, a written notice specifying such default and requiring the Company to cause such Indebtedness to be discharged or cause such default to be cured or waived or such acceleration to be rescinded or annulled and stating that such notice is a "Notice of Default" hereunder; or

(i) the Company or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or

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seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or

(j) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of ninety (90) consecutive days;

then, and in each and every such case (other than an Event of Default specified in Section 7.1(i) or (j) with respect to the Company), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Notes then outstanding hereunder determined in accordance with Section 9.4, by notice in writing to the Company (and to the Trustee if given by Noteholders), may declare the principal of and premium, if any, on all the Notes and the interest accrued thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Notes contained to the contrary notwithstanding. If an Event of Default specified in Section 7.1(i) or (j) occurs and is continuing with respect to the Company, the principal of all the Notes and the interest accrued thereon shall be immediately due and payable. This provision, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all Notes and the principal of and premium, if any, on any and all Notes which shall have become due otherwise than by acceleration (with interest on overdue installments of interest (to the extent that payment of such interest is enforceable under applicable law) and on such principal and premium, if any, at the rate borne by the Notes, to the date of such payment or deposit) and amounts due to the Trustee pursuant to Section 8.6, and if any and all defaults under this Indenture, other than the nonpayment of principal of and premium, if any, and accrued interest on Notes which shall have become due by acceleration, shall have been cured or waived pursuant to Section 7.7, then and in every such case the holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all defaults or Events of Default and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or

shall affect any subsequent default or Event of Default, or shall impair any right consequent thereon. The Company shall notify the Responsible Officer of the Trustee, promptly upon becoming aware thereof, of any default or Event of Default and shall deliver to the Trustee a statement specifying such default or Event of Default and the action the Company has taken, is taking or proposes to take with respect thereto.

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In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such waiver or rescission and annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the holders of Notes, and the Trustee shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the holders of Notes, and the Trustee shall continue as though no such proceeding had been instituted.

Section 7.2 Payments of Notes on Default; Suit Therefor. The Company

covenants that (a) in case default shall be made in the payment by the Company of any installment of interest upon any of the Notes as and when the same shall become due and payable, and such default shall have continued for a period of thirty (30) days, or (b) in case default shall be made in the payment of the principal of or premium, if any, on any of the Notes as and when the same shall have become due and payable, whether at maturity of the Notes or in connection with any redemption or repurchase, by declaration under this Indenture or otherwise, then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Notes, the whole amount that then shall have become due and payable on all such Notes for principal and premium, if any, or interest, or both, as the case may be, with interest upon the overdue principal and premium, if any, and (to the extent that payment of such interest is enforceable under applicable law) upon the overdue installments of interest at the rate borne by the Notes; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Trustee hereunder other than through its negligence or bad faith. Until such demand by the Trustee, the Company may pay the principal of and premium, if any, and interest on the Notes to the registered holders, whether or not the Notes are overdue.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or any other obligor on the Notes and collect in the manner provided by law out of the property of the Company or any other obligor on the Notes wherever situated the monies adjudged or decreed to be payable.

In the case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the case of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 7.2, shall be entitled and empowered, by intervention in such proceedings

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or otherwise, to file and prove a claim or claims for the whole amount of principal, premium, if any, and interest owing and unpaid in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee and of the Noteholders allowed in such judicial proceedings relative to the Company or any

other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due the Trustee under Section 8.6; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Noteholders to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the Noteholders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property which the holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof on any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Notes, and it shall not be necessary to make any holders of the Notes parties to any such proceedings.

Section 7.3 Application of Monies Collected by Trustee. Any monies

collected by the Trustee pursuant to this Article VII shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid :

First: To the payment of all amounts due the Trustee under Section 8.6;

Second: Subject to the provisions of Article IV, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on the Notes in default in the order of the maturity of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) upon the overdue installments of interest at the rate borne by the Notes, such payments to be made ratably to the persons entitled thereto;

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Third: Subject to the provisions of Article IV, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid, to the payment of the whole amount then owing and unpaid upon the Notes for principal and premium, if any, and interest, with interest on the overdue principal and premium, if any, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest at the rate borne by the Notes; and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal and premium, if any, and interest without preference or priority of principal and premium, if any, over interest, or of interest over principal and premium, if any, or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal and premium, if any, and accrued and unpaid interest; and

Fourth: Subject to the provisions of Article IV, to the payment of the remainder, if any, to the Company or any other person lawfully entitled thereto.

Section 7.4 Proceedings by Noteholder. No holder of any Note shall have

any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as hereinbefore provided, and unless also the holders of not less than 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such indemnity as may be reasonably satisfactory to the Trustee against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for sixty (60) days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 7.7; it being understood and intended, and being expressly covenanted by the taker and holder of every Note with every other taker and holder and the Trustee, that no one or more holders of Notes shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other holder of Notes, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Notes (except as otherwise provided herein). For the protection and enforcement of this Section 7.4, each and every Noteholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any holder of any Note to receive payment of the principal of and premium, if any, and interest on such Note, on or after the respective due dates expressed in such Note, or to institute suit for the enforcement of any such payment on or after such respective dates against the Company shall not be impaired or affected without the consent of such holder.

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Anything in this Indenture or the Notes to the contrary notwithstanding, the holder of any Note, without the consent of either the Trustee or the holder of any other Note, in his own behalf and for his own benefit, may enforce, and may institute and maintain any proceeding suitable to enforce, his rights of conversion as provided herein.

Section 7.5 Proceedings by Trustee. In case of an Event of Default the

Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 7.6 Remedies Cumulative and Continuing. Except as provided in the

last paragraph of Section 2.6, all powers and remedies given by this Article VII to the Trustee or to the Noteholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any holder of any of the Notes to exercise any right or power accruing upon any default or Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or any acquiescence therein; and, subject to the provisions of Section 7.4, every power and remedy given by this Article VII or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Noteholders.

Section 7.7 Direction of Proceedings and Waiver of Defaults by Majority of

Noteholders. The holders of a majority in aggregate principal amount of the

Notes at the time outstanding determined in accordance with Section 9.4 shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; provided, however, that (a) such direction shall

not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction. The holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 9.4 may on behalf of the holders of all of the Notes waive any past default or Event of Default hereunder and its consequences except (i) a default in the payment of interest or premium, if any, on, or the principal of, the Notes when due, (ii) a failure by the Company to convert any Notes into Common Stock or (iii) a default in respect of a covenant or provisions hereof which under Article XI cannot be modified or amended without the consent of the holders of all Notes then outstanding. Upon any such waiver the Company, the Trustee and the holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon. Whenever any default or Event of Default hereunder shall have been waived as permitted by this Section 7.7, said default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to

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have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 7.8 Notice of Defaults. The Trustee shall, within ninety (90)

days after the occurrence of a default, mail to all Noteholders, as the names and addresses of such holders appear upon the Note register, notice of all defaults actually known to a Responsible Officer, unless such defaults shall have been cured or waived before the giving of such notice; and provided that, except in the case of default in the payment of the principal of, or premium, if any, or interest on any of the Notes, including without limiting the generality of the foregoing any default in the payment of any Repurchase Price or in the payment of any amount due in connection with any redemption of Notes, then in any such event the Trustee shall be protected in withholding such notice if and so long as a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Noteholders.

Section 7.9 Undertaking to Pay Costs. All parties to this Indenture

agree, and each holder of any Note by his acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided that the provisions of this Section 7.9

shall not apply to any suit instituted by the Trustee, to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 9.4, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or premium, if any, or interest on any Note (including, but not limited to, the redemption price or repurchase price with respect to the Notes being redeemed or repurchased as provided in this Indenture) on or after the due date expressed in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article XV.

Section 7.10 Delay or Omission Not Waiver. No delay or omission of the

Trustee or of any holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or any acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the holders of Notes may be exercised from time to time, and as often as may be deemed expedient, by

the Trustee or by the holders of Notes, as the case may be.

ARTICLE VIII

CONCERNING THE TRUSTEE

Section 8.1 Duties and Responsibilities of Trustee. The Trustee, prior to

the occurrence of an Event of Default and after the curing or waiver of all Events of Default which may have occurred,

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undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and, after it has been qualified thereunder, the Trust Indenture Act, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture and the Trust Indenture Act against the Trustee; and

(2) in the absence of bad faith and willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture;

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be provided that the Trustee was negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable to any Noteholder with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in principal amount of the Notes at the time outstanding determined as provided in Section 9.4 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its

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duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity

against such risk or liability is not reasonably assured to it.

Section 8.2 Reliance on Documents, Opinions, Etc. Except as otherwise

provided in Section 8.1:

(a) the Trustee may conclusively rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, note, coupon or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee may consult with counsel of its selection and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Noteholders pursuant to the provisions of this Indenture, unless such Noteholders shall have offered to the Trustee reasonable security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby;

(e) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney; provided, however, that if the payment within a reasonable time

to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require indemnity reasonably satisfactory to the Trustee from the Noteholders against such expenses or liability as a condition to so proceeding; the reasonable expenses of every such examination shall be paid by the Company or, if paid by the Trustee or any predecessor Trustee, shall be repaid by the Company upon demand;

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(f) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it with due care hereunder;

(g) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(h) the Trustee shall not be deemed to have notice of any default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture; and

(i) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in

each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

In no event shall the Trustee be liable for any consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action other than through the Trustee's willful misconduct or gross negligence.

Section 8.3 No Responsibility for Recitals, Etc. The recitals contained

herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

Section 8.4 Trustee, Paying Agents, Conversion Agents or Registrar May Own

Notes. The Trustee, any paying agent, any conversion agent or Note registrar, in

in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee, paying agent, conversion agent or Note registrar.

Section 8.5 Monies to Be Held in Trust. Subject to the provisions of

Section 13.4, all monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed in writing from time to time by the Company and the Trustee.

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Section 8.6 Compensation and Expenses of Trustee. The Company covenants

and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as the Company and the Trustee shall from time to time agree in writing for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, willful misconduct or bad faith. The Company also covenants to indemnify the Trustee or any predecessor Trustee in any capacity under this Indenture and its agents and any authenticating agent for, and to hold them harmless against, any and all loss, damages, claims, liability or expense incurred without negligence, willful misconduct or bad faith on the part of the Trustee or such agent or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this trust or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim (whether asserted by the Company, a Holder or any other Person) of liability in the premises. The obligations of the Company under this Section 8.6 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a lien prior to that of the Notes upon all property and funds held or collected by the Trustee as such, except, subject to the effect of Sections 4.3 and 7.6, funds held in trust herewith for the benefit of the holders of particular Notes prior to the date of the accrual of such unpaid compensation or indemnifiable claim. The obligation of the Company under this Section shall survive the satisfaction and discharge of this Indenture. The indemnification provided in this Section 8.6 shall extend to the officers, directors, agents and employees of the Trustee.

When the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 7.1(i) or (j)

occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 8.7 Officers' Certificate as Evidence. Except as otherwise

provided in Section 8.1, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence, willful misconduct, recklessness and bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such Officers' Certificate, in the absence of negligence, willful misconduct, recklessness and bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 8.8 Conflicting Interests of Trustee. After qualification under

the Trust Indenture Act, if the Trustee has or shall acquire a conflicting interest within the meaning of the Trust

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Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 8.9 Eligibility of Trustee. There shall at all times be a

Trustee hereunder which shall be a person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus (together with its corporate parent) of at least \$50,000,000. If such person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 8.10 Resignation or Removal of Trustee.

(a) The Trustee may at any time resign by giving written notice of such resignation to the Company and by mailing notice thereof to the holders of Notes at their addresses as they shall appear on the Note register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment sixty (60) days after the mailing of such notice of resignation to the Noteholders, the resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor trustee, or any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, subject to the provisions of Section 7.9, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(1) the Trustee shall fail to comply with Section 8.8 within a reasonable time after written request therefor by the Company or by any Noteholder who has been a bona fide holder of a Note or Notes for at least six months, or

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 8.9 and shall fail to resign after written request therefor by the Company or by any such Noteholder, or

(3) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

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then, in any such case, the Company may by a Board resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 7.9, any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Notes at the time outstanding may at any time remove the Trustee and nominate a successor trustee which shall be deemed appointed as successor trustee unless within ten (10) days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Noteholder, upon the terms and conditions and otherwise as in Section 8.10(a) provided, may, at the expense of the Company, petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 8.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 8.11.

Section 8.11 Acceptance by Successor Trustee. Any successor trustee

appointed as provided in Section 8.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 8.6, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property and funds held or collected by such trustee as such, except for funds held in trust for the benefit of holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 8.6.

No successor trustee shall accept appointment as provided in this Section 8.11 unless at the time of such acceptance such successor trustee shall be qualified under the provisions of Section 8.8 and be eligible under the provisions of Section 8.9.

Upon acceptance of appointment by a successor trustee as provided in this Section 8.11, each of the Company and the former trustee shall mail or cause to be mailed notice of the succession of

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such trustee hereunder to the holders of Notes at their addresses as they shall appear on the Note register. If the Company fails to mail such notice within ten (10) days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 8.12 Succession by Merger, Etc. Any corporation or other entity

into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the trust created by this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that in the case of any corporation succeeding to all or substantially all of the corporate trust business of the Trustee such corporation shall be qualified under the provisions of Section 8.8 and eligible under the provisions of Section 8.9.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or an authenticating agent appointed by such successor trustee may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have; provided, however, that the right to adopt the certificate of authentication of

any predecessor Trustee or to authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 8.13 Limitation on Rights of Trustee as Creditor. If and when the

Trustee shall be or become a creditor of the Company (or any other obligor upon the Notes), after qualification under the Trust Indenture Act, the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of the claims against the Company (or any such other obligor).

ARTICLE IX

CONCERNING THE NOTEHOLDERS

Section 9.1 Action by Noteholders. Whenever in this Indenture it is provided

that the holders of a specified percentage in aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Noteholders in person or by agent or proxy appointed in writing, or (b) by the record of the holders of Notes voting in favor thereof at any meeting of

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Noteholders duly called and held in accordance with the provisions of Article X, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Noteholders. Whenever the Company or the Trustee solicits the taking of any action by the holders of the Notes, the Company or the Trustee may fix in advance of such solicitation, a date as the record date for determining holders entitled to take such action. The record date shall be not more than fifteen (15) days prior to the date of commencement of solicitation of such action.

Section 9.2 Proof of Execution by Noteholders. Subject to the provisions

of Sections 8.1, 8.2 and 10.5, proof of the execution of any instrument by a Noteholder or his agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note register or by a certificate of the Note registrar. The record of any Noteholders' meeting shall be proved in the manner provided in Section 10.6.

Section 9.3 Who Are Deemed Absolute Owners. The Company, the Trustee, any

authenticating agent, any paying agent, any conversion agent and any Note registrar may deem the person in whose name such Note shall be registered upon the Note register to be, and may treat him as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of, premium, if any, and interest on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any paying agent nor any conversion agent nor any Note registrar shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon his order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable upon any such Note.

Section 9.4 Company-Owned Notes Disregarded. In determining whether the

holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes which are owned by the Company or any other obligor on the Notes or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Notes shall be disregarded and deemed not to be outstanding for determination; provided that

for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes which a Responsible Officer actually knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section 9.4 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Notes and that the pledgee is not the Company, any other obligor on the Notes or a person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described persons; and, subject to Section 8.1, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts

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therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 9.5 Revocation of Consents; Future Holders Bound. At any time

prior to (but not after) the evidencing to the Trustee, as provided in Section 9.1, of the taking of any action by the holders of the percentage in aggregate principal amount of the Notes specified in this Indenture in connection with such action, any holder of a Note which is shown by the evidence to be included in the Notes the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 9.2, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the holder of any Note shall be conclusive and binding upon such holder and upon all future holders and owners of such Note and of any Notes issued in exchange or substitution therefor, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor.

ARTICLE X

NOTEHOLDERS' MEETINGS

Section 10.1 Purpose of Meetings. A meeting of Noteholders may be called

at any time and from time to time pursuant to the provisions of this Article X for any of the following purposes :

(1) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any default or Event of Default hereunder and its consequences, or to take any other action authorized to be taken by

Noteholders pursuant to any of the provisions of Article VII;

(2) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article VIII;

(3) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 11.2;

(4) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law; or

(5) to take any other action authorized by this Indenture or under applicable law.

Section 10.2 Call of Meetings by Trustee. The Trustee may at any time call

a meeting of Noteholders to take any action specified in Section 10.1, to be held at such time and at such place in the Borough of Manhattan, The City of New York, as the Trustee shall determine. Notice of every meeting of the Noteholders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to

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Section 9.1, shall be mailed to holders of Notes at their addresses as they shall appear on the Note register. Such notice shall also be mailed to the Company. Such notices shall be mailed not less than twenty (20) nor more than ninety (90) days prior to the date fixed for the meeting.

Any meeting of Noteholders shall be valid without notice if the holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the holders of all Notes outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 10.3 Call of Meetings by Company or Noteholders. In case at any

time the Company, pursuant to a resolution of its Board of Directors, or the holders of at least 10% in aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Noteholders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within twenty (20) days after receipt of such request, then the Company or such Noteholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 10.1, by mailing notice thereof as provided in Section 10.2.

Section 10.4 Qualifications for Voting. To be entitled to vote at any

meeting of Noteholders a person shall (a) be a holder of one or more Notes on the record date pertaining to such meeting or (b) be a person appointed by an instrument in writing as proxy by a holder of one or more Notes. The only persons who shall be entitled to be present or to speak at any meeting of Noteholders shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 10.5 Regulations. Notwithstanding any other provisions of this

Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Noteholders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Noteholders as provided in Section 10.3, in which case the Company or the Noteholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal

amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 9.4, at any meeting each Noteholder or proxyholder shall be entitled to one vote for each \$1,000 principal amount of Notes held or represented by him; provided, however, that no vote shall be cast

or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by him or instruments in writing as aforesaid duly designating him as the proxy to vote on behalf of other

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Noteholders. Any meeting of Noteholders duly called pursuant to the provisions of Section 10.2 or 10.3 may be adjourned from time to time by the holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 10.6 Voting. The vote upon any resolution submitted to any

meeting of Noteholders shall be by written ballot on which shall be subscribed the signatures of the holders of Notes or of their representatives by proxy and the principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Noteholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 10.2. The record shall show the principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 10.7 No Delay of Rights by Meeting. Nothing in this Article X

contained shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Noteholders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Noteholders under any of the provisions of this Indenture or of the Notes.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 11.1 Supplemental Indentures Without Consent of Noteholders. The

Company, when authorized by the resolutions of the Board of Directors, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto for one or more of the following purposes:

- (a) to make provision with respect to the conversion rights of the holders of Notes pursuant to the requirements of Section 15.6;
- (b) subject to Article IV, to convey, transfer, assign, mortgage or pledge to the Trustee as security for the Notes, any property or assets;

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- (c) to evidence the succession of another corporation to the Company, or successive successions, and the assumption by the successor corporation

of the covenants, agreements and obligations of the Company pursuant to Article XII;

(d) to add to the covenants of the Company such further covenants, restrictions or conditions for the benefit of the holders of Notes, and to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, restrictions or conditions a default or an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; provided, however, that in

respect of any such additional covenant, restriction or condition such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default ;

(e) to provide for the issuance under this Indenture of Notes in coupon form (including Notes registrable as to principal only) and to provide for exchangeability of such Notes with the Notes issued hereunder in fully registered form and to make all appropriate changes for such purpose;

(f) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture which shall not materially adversely affect the interests of the holders of the Notes;

(g) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Notes; or

(h) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualifications of this Indenture under the Trust Indenture Act, or under any similar federal statute hereafter enacted.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer and assignment of any property thereunder, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 11.1 may be executed by the Company and the Trustee without the consent of the holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 11.2.

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Section 11.2 Supplemental Indentures With Consent of Noteholders. With the

consent (evidenced as provided in Article IX) of the holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding (determined in accordance with Section 9.4), the Company, when authorized by the resolutions of the Board of Directors, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or of modifying in any manner the rights of the holders of the Notes; provided,

however, that no such supplemental indenture shall (i) extend the fixed maturity

of any Note, or reduce the rate or extend the time of payment of interest thereon, or reduce the principal amount thereof or premium, if any, thereon, or reduce any amount payable on redemption or repurchase thereof, impair, or change in any respect adverse to the holder of Notes, the obligation of the Company to repurchase any Note at the option of the holder upon the happening of a Repurchase Event, or impair or adversely affect the right of any Noteholder to institute suit for the payment thereof, or change the currency in which the Notes are payable, or impair or change in any respect adverse to the Noteholders

the right to convert the Notes into Common Stock subject to the terms set forth herein, including Section 15.6, or modify the provisions of this Indenture with respect to the subordination of the Notes in a manner adverse to the Noteholders, without the consent of the holder of each Note so affected, or (ii) reduce the aforesaid percentage of Notes, the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of all Notes then outstanding.

Upon the request of the Company, accompanied by a copy of the resolutions of the Board of Directors certified by its Secretary or Assistant Secretary authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Noteholders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Noteholders under this Section 11.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Section 11.3 Effect of Supplemental Indentures. Any supplemental

indenture executed pursuant to the provisions of this Article XI shall comply with the Trust Indenture Act, as then in effect. Upon the execution of any supplemental indenture pursuant to the provisions of this Article XI, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Notes shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

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Section 11.4 Notation on Notes. Notes authenticated and delivered after

the execution of any supplemental indenture pursuant to the provisions of this Article XI may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 17.11) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 11.5 Evidence of Compliance of Supplemental Indenture to Be

Furnished Trustee. The Trustee, subject to the provisions of Sections 8.1 and

8.2, shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article XI.

ARTICLE XII

CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 12.1 Company May Consolidate, Etc. on Certain Terms. The Company

shall not, directly or indirectly, consolidate with or merge with or into any other Person or sell, lease, convey or transfer all its properties and assets substantially as an entirety, whether in a single transaction or a series of related transactions, to any Person or group of affiliated Persons unless:

(a) either (i) in the case of a merger or consolidation that does not involve a transfer of all or substantially all of the Company's properties and assets, the Company is the surviving entity or (ii) in case the Company shall consolidate with or merge into another Person or sell, lease, convey or transfer

all its properties and assets substantially as an entirety, whether in a single transaction or a series of related transactions, to any Person, the Person formed by such consolidation or into which the Company is merged, or the Person which acquires by sale, conveyance or transfer, or which leases the properties and assets of the Company substantially as an entirety, shall be a corporation, limited liability company, partnership or trust, shall be organized and validly existing under the laws of the United States of America, any state thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of, premium, if any, and interest (including Liquidated Damages, if any) on all of the Notes as applicable, and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and shall have provided for the applicable conversion rights set forth in Section 15.6 and the repurchase rights set forth in Article XVI;

(b) immediately after giving effect to such transaction, no Event of Default, and no event that after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

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(c) the Company has delivered to the Trustee an Officers* Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with, together with any documents required under Article IX.

Section 12.2 Successor Corporation to Be Substituted. In case of any such

such consolidation, merger, sale, conveyance or lease in accordance with Section 12.1, and, where required in accordance with Section 12.1(a) upon the assumption by the successor corporation, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and premium, if any, and interest on all of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such successor corporation shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of E*TRADE Group, Inc. any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor corporation instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes which previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Notes which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or lease, the person named as the "Company" in the first paragraph of this Indenture or any successor which shall thereafter have become such in the manner prescribed in this Article XII may be dissolved, wound up and liquidated at any time thereafter and such person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture.

In case of any such consolidation, merger, sale, conveyance or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 12.3 Opinion of Counsel to Be Given Trustee. The Trustee, subject

to Sections 8.1 and 8.2, shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance or lease and any such assumption complies with the provisions of this Article XII.

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ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 13.1 Discharge of Indenture. When (a) the Company shall deliver to the

Trustee for cancellation all Notes theretofore authenticated (other than any Notes which have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or (b) all the Notes not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Company shall deposit with the Trustee, in trust, funds sufficient to pay at maturity or upon redemption of all of the Notes (other than any Notes which shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not theretofore canceled or delivered to the Trustee for cancellation, including principal and premium, if any, and interest due or to become due to such date of maturity or redemption date, as the case may be, and if in either case the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect (except as to (i) remaining rights of registration of transfer, substitution and exchange and conversion of Notes, (ii) rights hereunder of Noteholders to receive payments of principal of and premium, if any, and interest on, the Notes and the other rights, duties and obligations of Noteholders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (iii) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as required by Section 17.5 and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture; the Company, however, hereby agreeing to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Notes.

Section 13.2 Deposited Monies to Be Held in Trust by Trustee. Subject to

Section 13.4, all monies deposited with the Trustee pursuant to Section 13.1 shall be held in trust and applied by it to the payment, notwithstanding the provisions of Article IV, either directly or through any paying agent (including the Company if acting as its own paying agent), to the holders of the particular Notes for the payment or redemption of which such monies have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest and premium, if any.

Section 13.3 Paying Agent to Repay Monies Held. Upon the satisfaction and

discharge of this Indenture, all monies then held by any paying agent of the Notes (other than the Trustee) shall, upon demand of the Company, be repaid to it or paid to the Trustee, and thereupon such paying agent shall be released from all further liability with respect to such monies.

Section 13.4 Return of Unclaimed Monies. Subject to the requirements of

applicable law, any monies deposited with or paid to the Trustee for payment of the principal of, premium, if any, or

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interest on Notes and not applied but remaining unclaimed by the holders of Notes for two years after the date upon which the principal of, premium, if any, or interest on such Notes, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee on written demand and all liability of the Trustee shall thereupon cease with respect to such monies; and the holder of any of the Notes shall thereafter look only to the Company for any payment which such holder may be entitled to collect unless an applicable abandoned property law designates another person.

Section 13.5 Reinstatement. If (i) the Trustee or the paying agent is

unable to apply any money in accordance with Section 13.2 by reason of any order

or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application and (ii) the holders of at least a majority in principal amount of the then outstanding Notes so request by written notice to the Trustee, the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 13.1 until such time as the Trustee or the paying agent is permitted to apply all such money in accordance with Section 13.2; provided, however, that

if the Company makes any payment of interest on or principal of any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the holders of such Notes to receive such payment from the money held by the Trustee or paying agent.

ARTICLE XIV

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 14.1 Indenture and Notes Solely Corporate Obligations. No

recourse for the payment of the principal of or premium, if any, or interest on any Note, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer or director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE XV

CONVERSION OF NOTES

Section 15.1 Right to Convert. Subject to and upon compliance with the

provisions of this Indenture, the holder of any Note shall have the right, at his option, at any time following the date of original issuance of the Notes and prior to the close of business on February 1, 2007 (except that, with respect to any Note or portion of a Note which shall be called for redemption, such right shall

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terminate, except as provided in the fifth paragraph of Section 15.2 and Section 3.4, at the close of business on the Business Day next preceding the date fixed for redemption of such Note or portion of a Note unless the Company shall default in payment due upon redemption thereof) to convert the principal amount of any such Note, or any portion of such principal amount which is \$1,000 or an integral multiple thereof, into that number of fully paid and non-assessable shares of Common Stock (as such shares shall then be constituted) obtained by dividing the principal amount of the Note or portion thereof surrendered for conversion by the Conversion Price in effect at such time, by surrender of the Note so to be converted in whole or in part in the manner provided in Section 15.2; provided, however, that in the event, at any time a Note is surrendered

for conversion in whole or in part pursuant to this Section 15.1, the Company does not have available for issuance upon such conversion as authorized and unissued shares or in its treasury at least the number of shares of Common Stock required to be issued pursuant thereto, then such Note (or portion thereof as to which conversion has been requested), to the extent that sufficient shares of Common Stock are not then available for issuance upon conversion, shall be converted into the right to receive from the Company, in lieu of the shares of Common Stock into which the Note would otherwise be converted and which the Company is unable to issue, a payment equal to the number of shares of Common Stock which the Company is unable to issue multiplied by the average of the Closing Price (as defined in Section 15.5(h)(1)) for the Company's Common Stock during the five (5) Trading Days (as defined in Section 15.5(h)(5)) immediately prior to the date on which such Note (or specified portion thereof) is deemed to have been converted pursuant to this Article, such calculations to be made by the Company. Any such payment shall, for all purposes of this Indenture and the Note, be deemed to be a payment of principal plus a premium equal to the total

amount payable less the principal portion of any such Note surrendered for conversion as to which such payment is required to be made because shares of Common Stock are not then available for issuance upon such conversion. For purposes of Sections 15.5 and 15.6, whenever a provision references the shares of Common Stock into which a Note (or a portion thereof) is convertible or the shares of Common Stock issuable upon conversion of a Note (or a portion thereof) or words of similar import, any determination required by such provision shall be made as if a sufficient number of shares of Common Stock were then available for issuance upon conversion of all outstanding Notes. A holder of Notes is not entitled to any rights of a holder of Common Stock until such holder has converted his Notes to Common Stock, and only to the extent such Notes are deemed to have been converted to Common Stock under this Article XV. A Note with respect to which a holder has delivered a notice in accordance with Section 16.2 regarding such holder's election to require the Company to repurchase such holder's Notes following the occurrence of a Repurchase Event may be converted in accordance with this Article XV only if such holder withdraws such notice by delivering a written notice of withdrawal to the Company prior to the close of business on last Business Day prior to the day fixed for repurchase.

Section 15.2 Exercise of Conversion Privilege; Issuance of Common Stock on

Conversion; No Adjustment for Interest or Dividends. In order to exercise the

conversion privilege with respect to any Note in definitive form, the holder of any such Note to be converted in whole or in part shall surrender such Note, duly endorsed, at an office or agency maintained by the Company pursuant to Section 5.2, accompanied by the funds, if any, required by the penultimate paragraph of this Section 15.2, and shall give written notice of conversion in the form provided on the Notes (or such

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other notice which is acceptable to the Company) to the office or agency that the holder elects to convert such Note or such portion thereof specified in said notice. Such notice shall also state the name or names (with address) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued, and shall be accompanied by transfer taxes, if required pursuant to Section 15.7. Each such Note surrendered for conversion shall, unless the shares issuable on conversion are to be issued in the same name as the registration of such Note, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the holder or his duly authorized attorney.

In order to exercise the conversion privilege with respect to any interest in the Global Note, the beneficial holder must complete the appropriate instruction form for conversion pursuant to the Depositary's book-entry conversion program, deliver by book-entry delivery an interest in the Global Note, furnish appropriate endorsements and transfer documents if required by the Company or the Trustee or conversion agent, and pay the funds, if any, required by the penultimate paragraph of this Section 15.2 and any transfer taxes, if required pursuant to Section 15.7.

As promptly as practicable after satisfaction of the requirements for conversion set forth above (but in no event later than three (3) Business Days after satisfaction of such requirements for conversion), subject to compliance with any restrictions on transfer if shares issuable on conversion are to be issued in a name other than that of the Noteholder (as if such transfer were a transfer of the Note or Notes (or portion thereof) so converted), the Company shall issue and shall deliver to such holder at the office or agency maintained by the Company for such purpose pursuant to Section 5.2, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion of such Note or portion thereof in accordance with the provisions of this Article and a check or cash in respect of any fractional interest in respect of a share of Common Stock arising upon such conversion, as provided in Section 15.3 (which payment, if any, shall be paid no later than five Business Days after satisfaction of the requirements for conversion set forth above). In case any Note of a denomination greater than \$1,000 shall be surrendered for partial conversion, and subject to Section 2.3, the Company shall execute and the Trustee shall authenticate and deliver to the holder of the Note so surrendered, without charge to him, a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note.

Each conversion shall be deemed to have been effected as to any such Note

(or portion thereof) on the date on which the requirements set forth above in this Section 15.2 have been satisfied as to such Note (or portion thereof), and the person in whose name any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become on said date the holder of record of the shares represented thereby; provided,

however, that any such surrender on any date when the stock transfer books of

the Company shall be closed shall constitute the person in whose name the certificates are to be issued as the record holder thereof for all purposes on the next succeeding day on which such stock transfer books are open, but such conversion shall be at the Conversion Price in effect on the date upon which such Note shall be surrendered.

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Any Note or portion thereof surrendered for conversion during the period from the close of business on the record date for any interest payment date through the close of business on the Business Day next preceding such interest payment date shall (unless such Note or portion thereof being converted shall have been called for redemption pursuant to a redemption notice mailed to the Noteholders in accordance with Section 3.2) be accompanied by payment, in New York Clearing House funds or other funds acceptable to the Company, of an amount equal to the interest otherwise payable on such interest payment date on the principal amount being converted; provided, however, that no such payment need

be made if there shall exist at the time of conversion a default in the payment of interest on the Notes. Except as provided above in this Section 15.2, no adjustment shall be made for interest accrued on any Note converted or for dividends on any shares issued upon the conversion of such Note as provided in this Article.

Upon the conversion of an interest in the Global Note, the Trustee, or the Custodian at the direction of the Trustee, shall make a notation on the Global Note as to the reduction in the principal amount represented thereby.

Section 15.3 Cash Payments in Lieu of Fractional Shares. No fractional shares

of Common Stock or scrip representing fractional shares shall be issued upon conversion of Notes. If more than one Note shall be surrendered for conversion at one time by the same holder, the number of full shares which shall be issuable upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted hereby) so surrendered for conversion. If any fractional share of stock otherwise would be issuable upon the conversion of any Note or Notes, the Company shall calculate and pay a cash adjustment in lieu of such fractional share at the current market value thereof to the holder of Notes. The current market value of a share of Common Stock shall be the Closing Price on the first Trading Day immediately preceding the day on which the Notes (or specified portions thereof) are deemed to have been converted and such Closing Price shall be determined as provided in Section 15.5(h).

Section 15.4 Conversion Price. The conversion price shall be as specified in

the form of Note (herein called the "Conversion Price") attached as Exhibit A

hereto, subject to adjustment as provided in this Article XV.

Section 15.5 Adjustment of Conversion Price. The Conversion Price shall be

adjusted from time to time by the Company as follows:

(a) In case the Company shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Price in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the Record Date (as defined in Section 15.5(h)) fixed for such determination and the denominator shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such reduction to become effective immediately after the opening of

business on the day following the Record Date. If any dividend or distribution of the type described in this Section 15.5(a) is declared but not so paid or made, the Conversion Price shall again be adjusted to the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(b) In case the Company shall issue rights or warrants to all holders of its outstanding shares of Common Stock entitling them (for a period expiring within forty-five (45) days after the date fixed for the determination of stockholders entitled to receive such rights or warrants) to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price (as defined in Section 15.5(h)) on the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect at the opening of business on the date after such Record Date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the Record Date plus the number of shares which the aggregate offering price of the total number of shares so offered for subscription or purchase would purchase at such Current Market Price, and of which the denominator shall be the number of shares of Common Stock outstanding on the close of business on the Record Date plus the total number of additional shares of Common Stock so offered for subscription or purchase. Such adjustment shall become effective immediately after the opening of business on the day following the Record Date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants the Conversion Price shall be readjusted to the Conversion Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. In the event that such rights or warrants are not so issued, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) In case the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(d) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of capital stock of the Company (other than any dividends or distributions to which Section 15.5(a) applies) or evidences of its indebtedness or other assets (including securities, but excluding (1) any rights or warrants referred to in Section 15.5(b) and, (2) dividends and distributions (A) in connection with the liquidation, dissolution or winding up of the Company or paid (B) exclusively in cash and (3) any capital stock, evidences of indebtedness, cash or assets distributed upon a merger or consolidation to which Section 15.6 applies) (the foregoing hereinafter in this Section 15.5(d) called the "Securities")), unless the Company elects to reserve such Securities for distribution to the Noteholders upon conversion of the Notes so that any such holder converting Notes will receive upon such conversion, in addition

to the shares of Common Stock to which such holder is entitled, the amount and kind of such Securities which such holder would have received if such holder had converted its Notes into Common Stock immediately prior to the Record Date (as defined in Section 15.5(h) for such distribution of the Securities) then, in each such case, the Conversion Price shall be reduced so that the same shall be equal to the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on the Record Date (as defined in Section 15.5(h)) with respect to such distribution by a fraction of which the numerator shall be the Current Market Price (determined as provided in Section 15.5(h)) on such date less the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) on such date of the portion of the Securities so distributed applicable to one share of Common Stock and the denominator shall be such Current Market Price, such reduction to become effective immediately prior to the opening of business on the day following the Record Date; provided, however, that

in the event the then fair market value (as so determined) of the portion of the Securities so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Noteholder shall have the right to receive upon conversion of a Note (or any portion thereof) the amount of Securities such holder would have received had such holder converted such Note (or portion thereof) immediately prior to such Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 15.5(d) by reference to the actual or when issued trading market for any securities comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period (the "Reference Period") used in computing the Current Market Price pursuant to Section 15.5(h) to the extent possible, unless the Board of Directors in a board resolution determines in good faith that determining the fair market value during the Reference Period would not be in the best interest of the Noteholder.

In the event that the Company implements a stockholder rights plan, such rights plan shall provide that upon conversion of the Notes the holders will receive, in addition to the Common Stock issuable upon such conversion, the rights issued under such rights plan (notwithstanding the occurrence of an event causing such rights to separate from the

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Common Stock at or prior to the time of conversion). Any distribution of rights or warrants pursuant to a stockholder rights plan complying with the requirements set forth in the immediately preceding sentence of this paragraph shall not constitute a distribution of rights or warrants for the purposes of this Section 15.5(d).

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 15.5(d) (and no adjustment to the Conversion Price under this Section 15.5(d) will be required) until the occurrence of the earliest Trigger Event. If such right or warrant is subject to subsequent events, upon the occurrence of which such right or warrant shall become exercisable to purchase different securities, evidences of indebtedness or other assets or entitle the holder to purchase a different number or amount of the foregoing or to purchase any of the foregoing at a different purchase price, then the occurrence of each such event shall be deemed to be the date of issuance and record date with respect to a new right or warrant (and a termination or expiration of the existing right or warrant without exercise by the holder thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto, that resulted in an adjustment to the Conversion Price under this Section 15.5(d), (1) in

the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants all of which shall have expired or been terminated without exercise, the Conversion Price shall be readjusted as if such rights and warrants had never been issued.

For purposes of this Section 15.5(d) and Sections 15.5(a) and (b), any dividend or distribution to which this Section 15.5(d) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock to which Section 15.5(b) applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets, shares of capital stock, rights or warrants other than such shares of Common Stock or rights or warrants to which Section 15.5(b) applies (and any Conversion Price reduction required by this Section 15.5(d) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Conversion Price reduction required by Sections 15.5(a) and (b) with respect to such dividend or distribution shall then be made, except (A) the Record Date of such dividend or distribution shall be

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substituted as "the date fixed for the determination of stockholders entitled to receive such dividend or other distribution", "Record Date fixed for such determination" and "Record Date" within the meaning of Section 15.5(a) and as "the date fixed for the determination of stockholders entitled to receive such rights or warrants", "the Record Date fixed for the determination of the stockholders entitled to receive such rights or warrants" and "such Record Date" within the meaning of Section 15.5(b) and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of Section 15.5(a).

(e) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding any cash that is distributed upon a merger or consolidation to which Section 15.6 applies or as part of a distribution referred to in Section 15.5(d)), in an aggregate amount that, combined together with (1) the aggregate amount of any other such distributions to all holders of its Common Stock made exclusively in cash within the twelve (12) months preceding the date of payment of such distribution, and in respect of which no adjustment pursuant to this Section 15.5(e) has been made, and (2) the aggregate of any cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) of consideration payable in respect of any tender offer by the Company or any of its subsidiaries for all or any portion of the Common Stock concluded within the twelve (12) months preceding the date of payment of such distribution, and in respect of which no adjustment pursuant to Section 15.5(f) has been made, exceeds 10% of the product of the Current Market Price (determined as provided in Section 15.5(h)) on the Record Date with respect to such distribution times the number of shares of Common Stock outstanding on such date, then, and in each such case, immediately after the close of business on such date, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on such Record Date by a fraction (i) the numerator of which shall be equal to the Current Market Price on the Record Date less an amount equal to the quotient of (x) the excess of such combined amount over such 10% and (y) the number of shares of Common Stock outstanding on the Record Date and (ii) the denominator of which shall be equal to the Current Market Price on such date; provided, however, that in the event the portion of the cash so

distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price of the Common Stock on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that

each Noteholder shall have the right to receive upon conversion of a Note (or any portion thereof) the amount of cash such holder would have received had such holder converted such Note (or portion thereof) immediately prior to such Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared. Any cash distribution to all holders of Common Stock as to which the Company makes the election permitted by Section 15.5(n) and as to which the Company has complied with the requirements of such Section shall be treated as not having been made for all purposes of this Section 15.5(e).

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(f) In case a tender offer made by the Company or any Subsidiary for all or any portion of the Common Stock shall expire and such tender offer (as amended upon the expiration thereof) shall require the payment to stockholders (based on the acceptance (up to any maximum specified in the terms of the tender offer) of Purchased Shares (as defined below)) of an aggregate consideration having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) that combined together with (1) the aggregate of the cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution), as of the expiration of such tender offer, of consideration payable in respect of any other tender offers, by the Company or any of its subsidiaries for all or any portion of the Common Stock expiring within the twelve (12) months preceding the expiration of such tender offer and in respect of which no adjustment pursuant to this Section 15.5(f) has been made and (2) the aggregate amount of any distributions to all holders of the Company's Common Stock made exclusively in cash within twelve (12) months preceding the expiration of such tender offer and in respect of which no adjustment pursuant to Section 15.5(e) has been made, exceeds 10% of the product of the Current Market Price (determined as provided in Section 15.5(h)) as of the last time (the "Expiration Time") tenders could have been made pursuant to such tender offer (as it may be amended) times the number of shares of Common Stock outstanding (including any tendered shares) on the Expiration Time, then, and in each such case, immediately prior to the opening of business on the day after the date of the Expiration Time, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to close of business on the date of the Expiration Time by a fraction of which the numerator shall be the number of shares of Common Stock outstanding (including any tendered shares) on the Expiration Time multiplied by the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time and the denominator shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender offer) of all shares validly tendered and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) on the Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, such reduction (if any) to become effective immediately prior to the opening of business on the day following the Expiration Time. In the event that the Company is obligated to purchase shares pursuant to any such tender offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such tender offer had not been made. If the application of this Section 15.5(f) to any tender offer would result in an increase in the Conversion Price, no adjustment shall be made for such tender offer under this Section 15.5(f). Any cash distribution to all holders of Common Stock as to which the Company has made the election permitted by Section 15.5(n) and as to which the Company has complied with the requirements of such Section shall be treated as not having been made for all purposes of this Section 15.5(f).

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(g) In case of a tender or exchange offer made by a person other than the Company or any Subsidiary for an amount which increases the offeror's

ownership of Common Stock to more than 25% of the Common Stock outstanding and shall involve the payment by such person of consideration per share of Common Stock having a fair market value (as determined by the Board of Directors), whose determination shall be conclusive, and described in a resolution of the Board of Directors at the last time (the "Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it shall have been amended) that exceeds the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, and in which, as of the Expiration Time the Board of Directors is not recommending rejection of the offer, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the Expiration Time by a fraction of which the numerator shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) on the Expiration Time multiplied by the current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time and the denominator shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) on the Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, such reduction to become effective immediately prior to the opening of business on the day following the Expiration Time. In the event that such person is obligated to purchase shares pursuant to any such tender or exchange offer, but such person is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such tender or exchange offer had not been made. Notwithstanding the foregoing, the adjustment described in this Section 15.5(g) shall not be made if, as of the Expiration Time, the offering documents with respect to such offer disclose a plan or intention to cause the Company to engage in any transaction described in Article XII.

(h) For purposes of this Section 15.5, the following terms shall have the meaning indicated:

(1) "Closing Price" with respect to any securities on any day shall mean the closing sale price regular way on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, regular way, in each case on the Nasdaq National Market or New York Stock Exchange, as applicable, or, if such security is not listed or admitted to trading on such National Market or Exchange, on the principal national security exchange or quotation system on which such security is quoted or listed or admitted to trading, or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the

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average of the closing bid and asked prices of such security on the over-the-counter market on the day in question as reported by the National Quotation Bureau Incorporated, or a similar generally accepted reporting service, or if not so available, in such manner as furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors for that purpose, or a price determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution.

(2) "Current Market Price" shall mean the average of the daily Closing Prices per share of Common Stock for the ten (10) consecutive Trading Days immediately prior to the date in question; provided,

however, that (1) if the "ex" date (as hereinafter defined) for any

event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 15.5(a), (b), (c), (d), (e), (f) or (g) occurs during such ten (10) consecutive Trading Days, the Closing Price for each Trading Day prior to the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the same fraction by

which the Conversion Price is so required to be adjusted as a result of such other event, (2) if the "ex" date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 15.5(a), (b), (c), (d), (e), (f) or (g) occurs on or after the "ex" date for the issuance or distribution requiring such computation and prior to the day in question, the Closing Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event, and (3) if the "ex" date for the issuance or distribution requiring such computation is prior to the day in question, after taking into account any adjustment required pursuant to clause (1) or (2) of this proviso, the Closing Price for each Trading Day on or after such "ex" date shall be adjusted by adding thereto the amount of any cash and the fair market value (as determined by the Board of Directors in a manner consistent with any determination of such value for purposes of Section 15.5(d), (f) or (g), whose determination shall be conclusive and described in a Board Resolution) of the evidences of indebtedness, shares of capital stock or assets being distributed applicable to one share of Common Stock as of the close of business on the day before such "ex" date. For purposes of any computation under Sections 15.5(f) or (g), the Current Market Price of the Common Stock on any date shall be deemed to be the average of the daily Closing Prices per share of Common Stock for such day and the next two succeeding Trading Days; provided, however, that

if the "ex" date for any event (other than the tender offer requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 15.5(a), (b), (c), (d), (e), (f) and (g) occurs on or after the Expiration Time for the tender or exchange offer requiring such computation and prior to the day in question, the Closing Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event. For

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purposes of this paragraph, the term "ex" date, (1) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market from which the Closing Price was obtained without the right to receive such issuance or distribution, (2) when used with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective, and (3) when used with respect to any tender or exchange offer means the first date on which the Common Stock trades regular way on such exchange or in such market after the Expiration Time of such offer. Notwithstanding the foregoing, whenever successive adjustments to the Conversion Price are called for pursuant to this Section 15.5, such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this Section 15.5 and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

(3) "fair market value" shall mean the amount which a willing buyer would pay a willing seller in an arm's length transaction.

(4) "Record Date" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(5) "Trading Day" shall mean (x) if the applicable security is listed or admitted for trading on the New York Stock Exchange or another national security exchange, a day on which the New York Stock

Exchange or another national security exchange is open for business or (y) if the applicable security is quoted on the Nasdaq National Market, a day on which trades may be made thereon or (z) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

(i) The Company may make such reductions in the Conversion Price, in addition to those required by Sections 15.5(a), (b), (c), (d), (e), (f) and (g), as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may reduce the Conversion Price by any amount for any period of time if the period is at least

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twenty (20) days, the reduction is irrevocable during the period and the Board of Directors shall have made a determination that such reduction would be in the best interests of the Company, which determination shall be conclusive and described in a Board Resolution. Whenever the Conversion Price is reduced pursuant to the preceding sentence, the Company shall mail to the holder of each Note at his last address appearing on the Note register provided for in Section 2.5 a notice of the reduction at least fifteen (15) days prior to the date the reduced Conversion Price takes effect, and such notice shall state the reduced Conversion Price and the period during which it will be in effect.

(j) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in such price; provided, however, that any adjustments which by reason of this

Section 15.5(j) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article XV shall be made by the Company and shall be made to the nearest cent or to the nearest one hundredth of a share, as the case may be. No adjustment need be made for a change in the par value or no par value of the Common Stock.

(k) Whenever the Conversion Price is adjusted as herein provided, the Company shall promptly file with the Trustee and any conversion agent other than the Trustee an Officers' Certificate setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to the holder of each Note at his last address appearing on the Note register provided for in Section 2.5, within twenty (20) days of the effective date of such adjustment. Failure to deliver such notice shall not effect the legality or validity of any such adjustment.

(l) In any case in which this Section 15.5 provides that an adjustment shall become effective immediately after a Record Date for an event, the Company may defer until the occurrence of such event (i) issuing to the holder of any Note converted after such Record Date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such holder any amount in cash in lieu of any fraction pursuant to Section 15.3.

(m) For purposes of this Section 15.5, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(n) In lieu of making any adjustment to the Conversion Price pursuant to Section 15.5(e), the Company may elect to reserve an amount of cash for distribution to the holders of the Notes upon the conversion of the Notes so that any such holder converting Notes will receive upon such conversion, in addition to the shares of Common Stock and other items to which such holder is entitled, the full amount of cash which such holder would have received if such holder had, immediately prior to the Record Date for such distribution of cash, converted its Notes into Common Stock, together with any interest accrued with respect to such amount, in accordance with this Section 15.5(n). The Company may make such election by providing an Officers' Certificate to the Trustee to such effect on or prior to the payment date for any such distribution and depositing with the Trustee on or prior to such date an amount of cash equal to the aggregate amount the holders of the Notes would have received if such holders had, immediately prior to the Record Date for such distribution, converted all of the Notes into Common Stock. Any such funds so deposited by the Company with the Trustee shall be invested by the Trustee in marketable obligations issued or fully guaranteed by the United States government with a maturity not more than three (3) months from the date of issuance. Upon conversion of Notes by a holder, the holder will be entitled to receive, in addition to the Common Stock issuable upon conversion, an amount of cash equal to the amount such holder would have received if such holder had, immediately prior to the Record Date for such distribution, converted its Note into Common Stock, along with such holder's pro rata share of any accrued interest earned as a consequence of the investment of such funds. Promptly after making an election pursuant to this Section 15.5(n), the Company shall give or shall cause to be given notice to all Noteholders of such election, which notice shall state the amount of cash per \$1,000 principal amount of Notes such holders shall be entitled to receive (excluding interest) upon conversion of the Notes as a consequence of the Company having made such election.

Section 15.6 Effect of Reclassification, Consolidation, Merger or Sale.

If any of the following events occur, namely (i) any reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any consolidation, merger or combination of the Company with another corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, or (iii) any sale or conveyance of the properties and assets of the Company as, or substantially as, an entirety to any other corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, then the Company or the successor or purchasing corporation, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) providing that such Note shall be convertible into the kind and amount of shares of stock and other securities or property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance by a holder of a number of shares of Common Stock issuable upon conversion of such Notes (assuming, for such purposes, a sufficient number of authorized shares of Common Stock available to convert all such Notes) immediately

prior to such reclassification, change, consolidation, merger, combination, sale or conveyance assuming such holder of Common Stock did not exercise his rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon such consolidation, merger, statutory exchange, sale or conveyance (provided that, if the kind or amount of securities, cash or other property receivable upon such consolidation, merger, statutory exchange, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised ("non-electing share"), then for the purposes of this Section 15.6 the kind and amount of securities, cash or other property receivable upon such consolidation, merger, statutory exchange, sale or conveyance for each non-electing share shall be deemed to be

the kind and amount so receivable per share by a plurality of the non-electing shares). Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article. If, in the case of any such reclassification, change, consolidation, merger, combination, sale or conveyance, the stock or other securities and assets receivable thereupon by a holder of shares of Common Stock include shares of stock or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such reclassification, change, consolidation, merger, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the holders of the Notes as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent practicable the provisions providing for the repurchase rights set forth in Article XVI herein.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each holder of Notes, at his address appearing on the Note register provided for in Section 2.5 of this Indenture, within twenty (20) days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section shall similarly apply to successive reclassifications, changes, consolidations, mergers, combinations, sales and conveyances.

If this Section 15.6 applies to any event or occurrence, Section 15.5 shall not apply.

Section 15.7 Taxes on Shares Issued. The issue of stock certificates on

conversions of Notes shall be made without charge to the converting Noteholder for any tax in respect of the issue thereof. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of stock in any name other than that of the holder of any Note converted, and the Company shall not be required to issue or deliver any such stock certificate unless and until the person or persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 15.8 Reservation of Shares; Shares to Be Fully Paid; Listing of

Common Stock. The Company shall provide, free from preemptive rights, out of its

authorized but unissued shares or shares held in treasury, sufficient shares to provide for the conversion of the Notes from time to time as such Notes are presented for conversion.

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Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Notes, the Company will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such Common Stock at such adjusted Conversion Price.

The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

The Company further covenants that if at any time the Common Stock shall be listed on the American Stock Exchange or any other national securities exchange or automated quotation system the Company will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all Common Stock issuable upon conversion of the Notes.

Section 15.9 Responsibility of Trustee. The Trustee and any other

conversion agent shall not at any time be under any duty or responsibility to any holder of Notes to determine whether any facts exist which may require any adjustment of the Conversion Price, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method

employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other conversion agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, which may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other conversion agent make no representations with respect thereto. Subject to the provisions of Section 8.1, neither the Trustee nor any conversion agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any conversion agent shall be under any responsibility to determine whether a supplemental indenture need be entered into under Section 15.6 or the correctness of any provisions contained in any supplemental indenture entered into pursuant to such section relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Noteholders upon the conversion of their Notes after any event referred to in such Section 15.6 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 8.1, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Section 15.10 Notice to Holders Prior to Certain Actions. In case:

(a) the Company shall declare a dividend (or any other distribution) on its Common Stock (that would require an adjustment in the Conversion Price pursuant to Section 15.5); or

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(b) the Company shall authorize the granting to the holders of its Common Stock of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or

(c) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any shareholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or

(d) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company;

the Company shall cause to be filed with the Trustee and to be mailed to each holder of Notes at his address appearing on the Note register, provided for in Section 2.5 of this Indenture, as promptly as possible but in any event at least fifteen days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up.

ARTICLE XVI

REPURCHASE UPON A REPURCHASE EVENT

Section 16.1 Repurchase Right.

(a) If, at any time prior to February 1, 2007 there shall occur a Repurchase Event, then each Noteholder shall have the right, at such holder's option, to require the Company to repurchase all of such holder's Notes, or any portion thereof (in principal amounts of \$1,000 or integral multiples thereof), on the date (the "repurchase date") that is forty (40) calendar days after the date of the Company Notice (as defined in Section 16.2 below) of such Repurchase Event (or, if such 40th day is not a Business Day, the next succeeding Business Day). Such repurchase shall be made in cash at a price equal to 105% of the principal amount of Notes such holder elects to require the Company to repurchase, together with accrued interest, if any, to the repurchase date (the "Repurchase Price") (or, at the option of the Company, by delivery of Common Stock in accordance with the provisions of

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Section 16.3); provided, however, that if such repurchase date is February 1 or August 1 then the interest payable on such date shall be paid to the holder of record of the Note on the next preceding January 15 or July 15, respectively. No Notes may be redeemed at the option of holders upon a Repurchase Event if there has occurred and is continuing an Event of Default, other than a default in the payment of the Repurchase Price with respect to such Notes on the repurchase date.

Section 16.2 Notices; Method of Exercising Repurchase Right, Etc.

(a) Unless the Company shall have theretofore called for redemption all of the outstanding Notes, on or before the fifteenth (15th) calendar day after the occurrence of a Repurchase Event, the Company or, at the written request of the Company, the Trustee, shall mail to all holders of record of the Notes a notice (the "Company Notice") in the form as prepared by the Company of the occurrence of the Repurchase Event and of the repurchase right set forth herein arising as a result thereof. The Company shall also deliver a copy of such notice of a repurchase right to the Trustee and cause a copy of such notice of a repurchase right, or a summary of the information contained therein, to be published once in a newspaper of general circulation in The City of New York. The Company Notice shall contain the following information:

- (1) the repurchase date,
- (2) the date by which the repurchase right must be exercised,
- (3) the last date by which the election to require repurchase, if submitted, must be revoked;
- (4) the Repurchase Price and whether the Repurchase Price shall be payable in cash or Common Stock and, if payable in Common Stock, the method of calculating the amount of the Common Stock to be delivered upon the repurchase as provided in Section 16.3(a);
- (5) a description of the procedure which a holder must follow to exercise a repurchase right, and
- (6) the Conversion Price then in effect, the date on which the right to convert the principal amount of the Notes to be repurchased will terminate and the place or places where Notes may be surrendered for conversion.

No failure of the Company to give the foregoing notices or defect therein shall limit any holder's right to exercise a repurchase right or affect the validity of the proceedings for the repurchase of Notes.

If any of the foregoing provisions are inconsistent with applicable law, such law shall govern.

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(b) To exercise a repurchase right, a holder shall deliver to the

Trustee on or before the thirty-fifth (35th) day after the Company Notice was delivered (i) written notice to the Company (or agent designated by the Company for such purpose) of the holder's exercise of such right, which notice shall set forth the name of the holder, the principal amount of the Notes to be repurchased, a statement that an election to exercise the repurchase right is being made thereby, and, in the event that the Repurchase Price shall be paid in shares of Common Stock, the name or names (with addresses) in which the certificate or certificates for shares of Common Stock shall be issued, and (ii) the Notes with respect to which the repurchase right is being exercised, duly endorsed for transfer to the Company. Election of repurchase by a holder shall be revocable at any time prior to, but excluding, the repurchase date, by delivering written notice to that effect to the Trustee prior to the close of business on the Business Day prior to the repurchase date.

(c) If the Company fails to repurchase on the repurchase date any Notes (or portions thereof) as to which the repurchase right has been properly exercised, then the principal of such Notes shall, until paid, bear interest to the extent permitted by applicable law from the repurchase date at the rate borne by the Note and each such Note shall be convertible into Common Stock in accordance with this Indenture (without giving effect to Section 16.2(b)) until the principal of such Note shall have been paid or duly provided for.

(d) Any Note which is to be repurchased only in part shall be surrendered to the Trustee duly endorsed for transfer to the Company and accompanied by appropriate evidence of genuineness and authority satisfactory to the Company and the Trustee duly executed by, the holder thereof (or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the holder of such Note without service charge, a new Note or Notes, containing identical terms and conditions, of any authorized denomination as requested by such holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Note so surrendered.

(e) On or prior to the repurchase date, the Company shall deposit with the Trustee or with a paying agent (or, if the Company is acting as its own paying agent, segregate and hold in trust as provided in Section 5.4) the Repurchase Price in cash for payment to the holder on the repurchase date; provided that if payment is to be made in cash, such cash

payment is made on the repurchase date it must be received by the Trustee or paying agent, as the case may be, by 10:00 a.m., New York City time, on such date; provided further that if the Repurchase Price is to be paid in

shares of Common Stock, such shares of Common Stock are to be paid as promptly after the repurchase date as practicable.

(f) Any issuance of shares of Common Stock in respect of the Repurchase Price shall be deemed to have been effected immediately prior to the close of business on the repurchase date and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such repurchase shall be deemed to have become on the repurchase date the holder or holders of record of the shares represented thereby; provided, however, that any surrender for repurchase on a date when the stock

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transfer books of the Company shall be closed shall constitute the person or persons in whose name or names the certificate or certificates for such shares are to be issued as the record holder or holders thereof for all purposes at the opening of business on the next succeeding day on which such stock transfer books are open. No payment or adjustment shall be made for dividends or distributions on any Common Stock issued upon repurchase of any Security declared prior to the repurchase date.

(g) No fractions of shares shall be issued upon repurchase of Notes. If more than one Note shall be repurchased from the same holder and the Repurchase Price shall be payable in shares of Common Stock, the number of full shares which shall be issuable upon such repurchase shall be computed on the basis of the aggregate principal amount of the Notes so repurchased. Instead of any fractional share of Common Stock which would otherwise be issuable on the repurchase of any Note or Notes, the Company will deliver

to the applicable holder its check for the current market value of such fractional share. The current market value of a fraction of a share is determined by multiplying the current market price of a full share by the fraction, and rounding the result to the nearest cent. For purposes of this Section, the current market price of a share of Common Stock is the Closing Price of the Common Stock on the Trading Day immediately preceding the repurchase date.

(h) Any issuance and delivery of certificates for shares of Common Stock on repurchase of Notes shall be made without charge to the holder of Notes being repurchased for such certificates or for any tax or duty in respect of the issuance or delivery of such certificates or the securities represented thereby; provided, however, that the Company shall not be required to pay any tax or duty which may be payable in respect of (i) income of the holder or (ii) any transfer involved in the issuance or delivery of certificates for shares of Common Stock in a name other than that of the holder of the Notes being repurchased, and no such issuance or delivery shall be made unless and until the person requesting such issuance or delivery has paid to the Company the amount of any such tax or duty or has established, to the satisfaction of the Company, that such tax or duty has been paid.

(i) All Notes delivered for repurchase shall be delivered to the Trustee to be canceled in accordance with the provisions of Section 2.8.

Section 16.3 Conditions to the Company's Election to Pay the Repurchase

Price in Common Stock.

The Company may elect to pay the Repurchase Price by delivery of shares of Common Stock pursuant to Section 16.1 if and only if the following conditions shall have been satisfied:

(a) The shares of Common Stock deliverable in payment of the Repurchase Price shall have a fair market value as of the repurchase date of not less than the Repurchase Price. For purposes of Section 16.1 and this Section 16.3, the fair market value of shares of Common Stock shall be determined by the Company and shall be equal to 95% of the average of the Closing Prices of the Common Stock for the five consecutive Trading Days immediately preceding and including the third Trading Day prior to the repurchase date;

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(b) The Repurchase Price shall be paid only in cash in the event any shares of Common Stock to be issued upon repurchase of Notes hereunder (i) require registration under any federal securities law before such shares may be freely transferable without being subject to any transfer restrictions under the Securities Act upon repurchase and if such registration is not completed or does not become effective prior to the repurchase date, and/or (ii) require registration with or approval of any governmental authority under any state law or any other federal law before such shares may be validly issued or delivered upon repurchase and if such registration is not completed or does not become effective or such approval is not obtained prior to the repurchase date;

(c) Payment of the Repurchase Price may not be made in Common Stock unless such stock is, or shall have been, or approved for quotation on the Nasdaq National Market or listed on a national securities exchange, in either case, prior to the repurchase date; and

(d) All shares of Common Stock which may be issued upon repurchase of the Notes will be issued out of the Company's authorized but unissued Common Stock and, will upon issue, be duly and validly issued and fully paid and non-assessable and free of any preemptive rights.

If all of the conditions set forth in this Section 16.3 are not satisfied in accordance with the terms thereof, the Repurchase Price shall be paid by the Company only in cash.

Section 16.4 Certain Definitions. For purposes of this Article XVI:

(a) the term "beneficial owner" shall be determined in accordance with Rule 13d-3 and 13d-5, as in effect on the date of the original execution of this Indenture, promulgated by the Securities and Exchange Commission pursuant to the Exchange Act;

(b) the term "person" or "group" shall include any syndicate or group which would be deemed to be a "person" under Section 13(d) and 14(d) of the Exchange Act as in effect on the date of the original execution of this Indenture; and

(c) the term "Continuing Director" means at any date a member of the Company's Board of Directors (i) who was a member of such board on December 31, 1999 or (ii) who was nominated or elected by at least a majority of the directors who were Continuing Directors at the time of such nomination or election or whose election to the Company's Board of Directors was recommended or endorsed by at least a majority of the directors who were Continuing Directors at the time of such nomination or election or such lesser number comprising a majority of a nominating committee if authority for such nominations or elections has been delegated to a nominating committee whose authority and composition have been approved by at least a majority of the directors who were continuing directors at the time such committee was formed. (Under this definition, if the Board of Directors of the Company as of the date of this Indenture were to approve a new director or directors and then resign, no Change in Control would occur even though the current Board of Directors would thereafter cease to be in office).

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(d) the term "Repurchase Event" means a Change in Control or a Termination of Trading.

(e) a "Change in Control" shall be deemed to have occurred when (i) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the "beneficial owner" (as defined in Rules 13-d3 and 13-d5 under the Exchange Act) of shares representing more than 50% of the combined voting power of the then outstanding securities entitled to vote generally in elections of directors of the Company (the "Voting Stock"); (ii) approval by stockholders of the Company of any plan or proposal for the liquidation, dissolution or winding up of the Company; (iii) the Company (A) consolidates with or merges into any other corporation or any other corporation merges into the Company, and in the case of any such transaction, the outstanding Common Stock of the Company is changed or exchanged into other assets or securities as a result, unless the stockholders of the Company immediately before such transaction own, directly or indirectly immediately following such transaction, at least 51% of the combined voting power of the outstanding voting securities of the corporation resulting from such transaction in substantially the same proportion as their ownership of the Voting Stock immediately before such transaction, or (B) conveys, transfers or leases all or substantially all of its assets to any person; or (iv) any time Continuing Directors do not constitute a majority of the Board of Directors of the Company (or, if applicable, a successor corporation to the Company); provided that a Change

in Control shall not be deemed to have occurred if either (x) the Closing Price (as defined in Section 15.5(h)(1) hereof) of the Common Stock for any five (5) Trading Days during the ten (10) Trading Days immediately preceding the Change in Control is at least equal to 105% of the Conversion Price in effect on the date on which the Change in Control occurs or (y) in the case of a merger or consolidation otherwise constituting a Change in Control, all of the consideration (excluding cash payments for fractional shares) in such merger or consolidation constituting the Change in Control consists of common stock traded on a United States national securities exchange or quoted on the Nasdaq National Market (or which will be so traded or quoted when issued or exchanged in connection with such Change in Control) and as a result of such transaction or transactions such Notes become convertible solely into such common stock.

(f) a "Termination of Trading" shall have occurred if the Common Stock (or other common stock into which the Notes are then convertible) is neither listed for trading on a United States national securities exchange nor approved for trading on the Nasdaq Stock Market or another established automated over-the-counter trading market in the United States.

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ARTICLE XVII

MISCELLANEOUS PROVISIONS

Section 17.1 Provisions Binding on Company's Successors. All the

covenants, stipulations, promises and agreements of the Company in this
Indenture contained shall bind its successors and assigns whether so expressed
or not.

Section 17.2 Official Acts by Successor Corporation. Any act or

proceeding by any provision of this Indenture authorized or required to be done
or performed by any board, committee or officer of the Company shall and may be
done and performed with like force and effect by the like board, committee or
officer of any corporation that shall at the time be the lawful sole successor
of the Company.

Section 17.3 Addresses for Notices, Etc. Any notice or demand which by

any provision of this Indenture is required or permitted to be given or served
by the Trustee or by the holders of Notes on the Company shall be deemed to have
been sufficiently given or made, for all purposes if given or served by being
deposited postage prepaid by registered or certified mail in a post office
letter box addressed (until another address is filed by the Company with the
Trustee) to E*TRADE Group, Inc., 4500 Bohannon Drive, Menlo Park, CA 94025,
Attention: Chief Financial Officer. Any notice, direction, request or demand
hereunder to or upon the Trustee shall be deemed to have been sufficiently given
or made, for all purposes, if given or served by being deposited postage prepaid
by registered or certified mail in a post office letter box addressed to the
Corporate Trust Office.

The Trustee, by notice to the Company, may designate additional or
different addresses for subsequent notices or communications.

Any notice or communication mailed to a Noteholder shall be mailed to him
by first class mail, postage prepaid, at his address as it appears on the Note
register and shall be sufficiently given to him if so mailed within the time
prescribed.

Failure to mail a notice or communication to a Noteholder or any defect in
it shall not affect its sufficiency with respect to other Noteholders. If a
notice or communication is mailed in the manner provided above, it is duly
given, whether or not the addressee receives it.

Section 17.4 Governing Law. This Indenture and each Note shall be deemed

to be a contract made under the laws of New York, and for all purposes shall be
construed in accordance with the laws of New York (without regard to the
conflict of laws provisions thereof).

Section 17.5 Evidence of Compliance with Conditions Precedent;

Certificates to Trustee. Upon any application or demand by the Company to the

Trustee to take any action under any of the provisions of this Indenture, the
Company shall furnish to the Trustee an Officers' Certificate stating that all
conditions precedent, if any, provided for in this Indenture relating to the
proposed action have been complied with, and an Opinion of Counsel stating that,
in the opinion of such counsel, all such conditions precedent have been complied
with.

Each certificate or opinion provided for by or on behalf of the Company in
this Indenture and delivered to the Trustee with respect to compliance with a
condition or covenant provided for in this Indenture shall include (1) a
statement that the person making such certificate or opinion has read such
covenant or condition; (2) a brief statement as to the nature and scope of the
examination or investigation upon which the statement or opinion contained in
such certificate or opinion is based; (3) a statement that, in the opinion of

such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 17.6 Legal Holidays. In any case where the date of maturity of

interest on or principal of the Notes or the date fixed for redemption of any Note will not be a Business Day, then payment of such interest on or principal of the Notes need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period from and after such date.

Section 17.7 No Security Interest Created. Nothing in this Indenture or

in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 17.8 Trust Indenture Act. This Indenture is hereby made subject

to, and shall be governed by, the provisions of the Trust Indenture Act required to be part of and to govern indentures qualified under the Trust Indenture Act; provided, however, that, unless otherwise required by law, notwithstanding the

foregoing, this Indenture and the Notes issued hereunder shall not be subject to the provisions of subsections (a)(1), (a)(2), and (a)(3) of Section 314 of the Trust Indenture Act as now in effect as hereafter amended or modified; provided

further that this Section 17.8 shall not require that this Indenture or the

Trustee be qualified under the Trust Indenture Act prior to the time such qualification is in fact required under the terms of the Trust Indenture Act, nor shall it constitute any admission or acknowledgment by any party hereto that any such qualification is required prior to the time such qualification is in fact required under the terms of the Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in an indenture qualified under the Trust Indenture Act, such required provision shall control.

Section 17.9 Benefits of Indenture. Nothing in this Indenture or in the

Notes, expressed or implied, shall give to any person, other than the parties hereto, any paying agent, any authenticating agent, any Note registrar and their successors hereunder, the holders of Notes and the holders of Senior Indebtedness, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 17.10 Table of Contents, Headings, Etc. The table of contents and

the titles and headings of the articles and sections of this Indenture have been inserted for convenience of

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reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 17.11 Authenticating Agent. The Trustee may appoint an

authenticating agent which shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Sections 2.4, 2.5, 2.6, 2.7 and 3.3, as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes "by the Trustee" and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee's certificate of authentication. Such authenticating agent shall at all times be a person eligible to serve as trustee hereunder pursuant to Section 8.9.

Any corporation into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation is otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee shall promptly appoint a successor authenticating agent (which may be the Trustee), shall give written notice of such appointment to the Company and shall mail notice of such appointment to all holders of Notes as the names and addresses of such holders appear on the Note register.

The Company agrees to pay to the authenticating agent from time to time reasonable compensation for its services.

The provisions of Sections 8.2, 8.3, 8.4, 9.3 and this Section 17.11 shall be applicable to any authenticating agent.

Section 17.12 Execution in Counterparts. This Indenture may be executed in -----
any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

The Bank of New York, hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions hereinabove set forth.

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IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly signed all as of the date first written above.

E*TRADE GROUP, INC.

By: _____
Name:
Title:

Attest:

Name:
Title:
[seal]

THE BANK OF NEW YORK
as Trustee

By: _____
Name:
Title:

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EXHIBIT A

[FORM OF FACE OF NOTE]

[THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH GLOBAL SECURITY FOR WHICH THE DEPOSITORY TRUST COMPANY IS TO BE THE DEPOSITORY.]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

[THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH RESTRICTED NOTE.]

THE NOTE EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) ("INSTITUTIONAL ACCREDITED INVESTOR"); (2) AGREES THAT IT WILL NOT WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THE NOTE EVIDENCED HEREBY RESELL OR OTHERWISE TRANSFER THE NOTE EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH NOTE EXCEPT (A) TO E*TRADE GROUP, INC. OR ANY SUBSIDIARY THEREOF, (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) TO AN INSTITUTIONAL ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES TO THE BANK OF NEW YORK, AS TRUSTEE, A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE NOTE EVIDENCED HEREBY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE), (D) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT, (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144

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UNDER THE SECURITIES ACT (IF AVAILABLE) OR (F) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); AND (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE NOTE EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(F) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THE NOTE EVIDENCED HEREBY WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF SUCH NOTE (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(F) ABOVE), THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE BANK OF NEW YORK, AS TRUSTEE. IF THE PROPOSED TRANSFER IS PURSUANT TO CLAUSE 2(E) OR 2(F) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE BANK OF NEW YORK, AS TRUSTEE, SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS E*TRADE GROUP, INC. MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE NOTE EVIDENCED HEREBY PURSUANT TO CLAUSE 2(E) OR 2(F) ABOVE OR THE EXPIRATION OF TWO YEARS FROM THE ORIGINAL ISSUANCE OF THE NOTE EVIDENCED HEREBY.

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E*TRADE GROUP, INC.

6% Convertible Subordinated Notes due 2007

No. _____ \$ _____
CUSIP No. _____

E*TRADE Group, Inc., a corporation duly organized and validly existing under the laws of the State of Delaware (herein called the "Company", which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to _____, or registered assigns, the principal sum of _____ Dollars [(which amount may from time to time be increased or decreased to such other principal amounts (which, taken together with the principal amounts of all other outstanding Notes, shall not exceed \$500,000,000 in aggregate at any time (or \$650,000,000 if the option set forth in Section 2(b) of the Purchase Agreement is exercised in full by the Initial Purchasers)) by adjustments made

on the records of the Trustee, as Custodian of the Depositary, in accordance with the rules and procedures of the Depositary)]/1/ on February 1, 2007 and to pay interest on said principal sum semi-annually on February 1 and August 1 of each year, commencing August 1, 2000 at the rate per annum specified in the title of this Note, accrued from the February 1 or August 1, as the case may be, next preceding the date of this Note to which interest has been paid or duly provided for, unless the date of this Note is a date to which interest has been paid or duly provided for, in which case interest shall accrue from the date of this Note, or unless no interest has been paid or duly provided for on this Note, in which case interest shall accrue from February 7, 2000 until payment of said principal sum has been made or duly provided for. Notwithstanding the foregoing, if the date hereof is after any January 15 or July 15 as the case may be, and before the following February 1 or August 1, this Note shall bear interest from such February 1 or August 1, respectively; provided, however, that

if the Company shall default in the payment of interest due on such February 1 or August 1, then this Note shall bear interest from the next preceding February 1 or August 1 to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for on this Note, from February 7, 2000. The interest so payable on any February 1 or August 1 will be paid to the person in whose name this Note (or one or more Predecessor Notes) is registered at the close of business on the record date, which shall be the January 15 or July 15 (whether or not a Business Day) next preceding such February 1 or August 1, respectively; provided that any such interest not punctually paid or duly

provided for shall be payable as provided in the Indenture. Payment of the principal of and interest accrued on this Note shall be made at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, The City of New York, or, at the option of the holder of this Note, at the Corporate Trust Office, in such lawful money of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts; provided further, however, that, with respect to any holder of

Notes with an aggregate principal amount equal to or in excess of \$2,000,000, at the request of such holder in writing to the Company, interest on such holder's Notes shall be paid by wire transfer in immediately available funds in accordance with

/1/ This language shall appear on each Global Note.

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the written wire transfer instruction supplied by such holder from time to time to the Trustee and paying agent (if different from the Trustee) at least two days prior to the applicable record date; provided that

any payment to the Depositary or its nominee shall be paid by wire transfer in immediately available funds in accordance with the wire transfer instruction supplied by the Depositary or its nominee from time to time to the Trustee and paying agent (if different from Trustee) at least two days prior to the applicable record date.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions subordinating the payment of principal of and premium, if any, and interest on this Note to the prior payment in full of all Senior Indebtedness as defined in the Indenture and provisions giving the holder of this Note the right to convert this Note into Common Stock of the Company on the terms and subject to the limitations referred to on the reverse hereof and as more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with and governed by the laws of said State (without regard to the conflicts of laws provisions thereof).

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

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IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

E*TRADE GROUP, INC.

By: _____
Name:
Title:

Attest:

By: _____
Name:
Title:

[FORM OF CERTIFICATE OF AUTHENTICATION]

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

THE BANK OF NEW YORK,
as Trustee, certifies that this is one
of the Notes described in the
within-named Indenture.

Dated:

By: _____
Authorized Signatory

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[FORM OF REVERSE OF NOTE]

E*TRADE GROUP, INC.

6% Convertible Subordinated Note Due 2007

This Note is one of a duly authorized issue of Notes of the Company, designated as its % Convertible Subordinated Notes due 2007 (herein called the "Notes"), limited to the aggregate principal amount of \$500,000,000 (or \$650,000,000 if the option set forth in Section 2(b) of the Purchase Agreement is exercised in full by the Initial Purchasers) all issued or to be issued under and pursuant to an Indenture dated as of February 1, 2000 (herein called the "Indenture"), between the Company and The Bank of New York, (herein called the "Trustee"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the holders of the Notes.

In case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of, premium, if any, and accrued interest (including Liquidated Damages, if any) on all Notes may be declared, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee in certain limited circumstances, without the consent of the holders of the Notes, and in other circumstances, with the consent of the holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or modifying in any manner the rights of the holders of the Notes; provided, however, that no such supplemental indenture shall (i) extend the fixed maturity of any Note, or

reduce the rate or extend the time of payment of interest thereon, or reduce the principal amount thereof or premium, if any, thereon, or reduce any amount payable on redemption or repurchase thereof, impair, or change in any respect adverse to the holder of Notes, the obligation of the Company to repurchase any Note at the option of the holder upon the happening of a Repurchase Event, or impair or adversely affect the right of any Noteholder to institute suit for the payment thereof, or change the currency in which the Notes are payable, or impair or change in any respect adverse to the Noteholders the right to convert the Notes into Common Stock subject to the terms set forth herein, including Section 15.6, or modify the provisions of this Indenture with respect to the subordination of the Notes in a manner adverse to the Noteholders, without the consent of the holder of each Note so affected, or (ii) reduce the aforesaid percentage of Notes, the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of all Notes then outstanding. It is also provided in the Indenture that, prior to any declaration accelerating the maturity of the Notes, the holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the holders of all of the Notes waive any past default or Event of Default under the Indenture and its consequences except (i) a default in the payment of interest or premium, if any, on, or the principal of, the Notes when due, (ii) a failure by the Company to convert

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any Notes into Common Stock or (iii) a default in respect of a covenant or provisions of the Indenture which under Article XI cannot be modified or amended without the consent of the holders of all Notes then outstanding. Any such consent or waiver by the holder of this Note (unless revoked as provided in the Indenture) shall be conclusive and binding upon such holder and upon all future holders and owners of this Note and any Notes which may be issued in exchange or substitution hereof, irrespective of whether or not any notation thereof is made upon this Note or such other Notes.

The indebtedness evidenced by the Notes is, to the extent and in the manner provided in the Indenture, expressly subordinate and subject in right of payment to the prior payment in full in cash or other payment satisfactory to the holders of Senior Indebtedness of all Senior Indebtedness of the Company, as defined in the Indenture, whether outstanding at the date of the Indenture or thereafter incurred, and this Note is issued subject to the provisions of the Indenture with respect to such subordination. Each holder of this Note, by accepting the same, agrees to and shall be bound by such provisions and authorizes the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and appoints the Trustee his attorney in fact for such purpose.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, premium, if any, and interest on this Note at the place, at the respective times, at the rate and in the lawful money herein prescribed.

Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

The Notes are issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, without payment of any service charge but with payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration or exchange of Notes, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations.

The Notes will not be redeemable at the option of the Company prior to February 4, 2003. On or after such date and prior to maturity the Notes may be redeemed at the option of the Company as a whole, or from time to time in part, upon mailing a notice of such redemption not less than 20 nor more than 60 days before the date fixed for redemption to the holders of Notes at their last registered addresses, all as provided in the Indenture, at the following redemption prices (expressed as percentages of the principal amount), together in each case with accrued interest, if any, to, but excluding, the date fixed for redemption.

If redeemed during the 12-month period beginning February 1 (February 4,

2003 through January 31, 2003 in the case of the first such period):

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Year	Redemption Price
----	-----
2003.....	103.43%
2004.....	102.57%
2005.....	101.71%
2006.....	100.86%

and 100% at February 1, 2007; provided that if the date fixed for redemption is

a February 1 or August 1, then the interest payable on such date shall be paid to the holder of record on the next preceding January 15 or July 15, respectively.

The Notes are not subject to redemption through the operation of any sinking fund.

Upon the occurrence of a "Repurchase Event," the Noteholder has the right, at such holder's option, to require the Company to repurchase all or any portion of such holder's Notes on the 40th calendar day (or, if such 40th day is not a Business Day, the next succeeding Business Day) after notice of such Repurchase Event at a price equal to 105% of the principal amount of the Notes such holder elects to require the Company to repurchase, together in each case with accrued interest to the date fixed for repurchase; provided that if such repurchase date

is February 1 or August 1, then the interest payable on such date shall be paid to the holder of record of the Note on the next preceding January 15 or July 15, respectively. The Company or, at the written request of the Company, the Trustee shall mail to all holders of record of the Notes a notice of the occurrence of a Repurchase Event and of the repurchase right arising as a result thereof on or before the fifteenth (15th) calendar day after the occurrence of such Repurchase Event. Payment of the repurchase price may be made in shares of the Company's Common Stock under certain circumstances as provided in Section 16.3 of the Indenture.

Subject to the provisions of the Indenture, the holder hereof has the right, at its option, at any time following the date of original issuance of the Notes and prior to the close of business on February 1, 2007, (except that with respect to any Note or portion of a Note which shall be called for redemption, prior to the close of business on the Business Day next preceding the date fixed for redemption) (unless the Company shall default in payment due upon redemption), to convert the principal hereof or any portion of such principal which is \$1,000 or an integral multiple thereof, into that number of fully paid and non-assessable shares of Company's Common Stock, as said shares shall be constituted at the date of conversion, obtained by dividing the principal amount of this Note or portion thereof to be converted by the conversion price of \$23.60 or such conversion price as adjusted from time to time as provided in the Indenture, upon surrender of this Note, together with a conversion notice as provided in the Indenture and this Note, to the Company at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, The City of New York, or at the option of such holder, the Corporate Trust Office, and, unless the shares issuable on conversion are to be issued in the same name as this Note, duly endorsed by, or accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the holder or by his duly authorized attorney; provided, however, that in the event, at any time this Note

is surrendered for conversion in whole or in part, the Company does not have available for issuance upon such

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conversion at least the number of shares of authorized Common Stock required to be issued pursuant hereto, then this Note (or portion thereof as to which conversion has been requested), to the extent and only to the extent sufficient shares of authorized Common Stock are not available, shall be converted into the right to receive a payment from the Company in lieu of the shares of Common Stock into which this Note would otherwise be converted and which the Company is unable to issue, equal to the number of shares of Common Stock which the Company is unable to issue multiplied by the average of the Closing Price (as defined in

the Indenture) for the Company's Common Stock (determined as set forth in the Indenture) during the five Trading Days immediately prior to the date on which the holder of such Note (or specified portion thereof) is deemed to have been converted pursuant to the Indenture. No adjustment in respect of interest or dividends will be made upon any conversion; provided, however, that if this Note

shall be surrendered for conversion during the period from the close of business on any record date for the payment of interest through the close of business on the Business Day next preceding the following interest payment date, this Note (unless the Note or the portion thereof being converted shall have been called for redemption pursuant to a redemption notice mailed to the Noteholders in accordance with Section 3.2 of the Indenture) must be accompanied by an amount, in funds acceptable to the Company, equal to the interest otherwise payable on such interest payment date on the principal amount being converted. No fractional shares of Common Stock will be issued upon any conversion, but an adjustment in cash will be paid to the holder, as provided in the Indenture, in respect of any fraction of a share which would otherwise be issuable upon the surrender of any Note or Notes for conversion.

Any Notes called for redemption, unless surrendered for conversion on or before the close of business on the date fixed for redemption, may be deemed to be purchased from the holder of such Notes at an amount equal to the applicable redemption price, together with accrued interest to the date fixed for redemption, by one or more investment bankers or other purchasers who may agree with the Company to purchase such Notes from the holders thereof and convert them into Common Stock of the Company and to make payment for such Notes as aforesaid to the Trustee in trust for such holders.

Upon due presentment for registration of transfer of this Note at the office or agency of the Company in the Borough of Manhattan, The City of New York, or at the option of the holder of this Note, at the Corporate Trust Office, a new Note or Notes of authorized denominations for an equal aggregate principal amount will be issued to the transferee in exchange thereof, subject to the limitations provided in the Indenture, without charge except for any tax or other governmental charge imposed in connection therewith.

The Company, the Trustee, any authenticating agent, any paying agent, any conversion agent and any Note registrar may deem and treat the registered holder hereof as the absolute owner of this Note (whether or not this Note shall be overdue and notwithstanding any notation of ownership or other writing hereon made by anyone other than the Company or any Note registrar), for the purpose of receiving payment hereof, or on account hereof, for the conversion hereof and for all other purposes, and neither the Company nor the Trustee nor any other authenticating agent nor any paying agent nor any other conversion agent nor any Note registrar shall be affected by any notice to

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the contrary. All payments made to or upon the order of such registered holder shall, to the extent of the sum or sums paid, satisfy and discharge liability for monies payable on this Note.

No recourse for the payment of the principal of or any premium or interest on this Note, or for any claim based hereon or otherwise in respect hereof, and no recourse under or upon any obligation, covenant or agreement of the Company in the Indenture or any indenture supplemental thereto or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer, director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

Terms used in this Note and defined in the Indenture are used herein as therein defined.

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ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of

(City, State and Zip Code)

Please print name and address

Principal amount to be converted (if less than all): \$_____,000

Social Security or Other Taxpayer Identification Number

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[FORM OF OPTION TO ELECT REPAYMENT
UPON A REPURCHASE EVENT]

To: E*TRADE Group, Inc.

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from E*TRADE Group, Inc. (the "Company") as to the occurrence of a Repurchase Event with respect to the Company and requests and instructs the Company to repay the entire principal amount of this Note, or the portion thereof (which is \$1,000 principal amount or an integral multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Note, together with accrued interest to, but excluding, such date, to the registered holder hereof.

Dated: _____

Signature(s)

Social Security or Other Taxpayer Identification Number

Principal amount to be repaid (if less than all): \$_____,000

NOTICE: The above signatures of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

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[FORM OF ASSIGNMENT AND TRANSFER]

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring within two years (or such shorter holding period required under Rule 144(k) of the Securities Act) of the original issuance of such Note (unless such Note is being transferred pursuant to a registration statement that has been declared effective under the Securities Act), the undersigned confirms that such Note is being transferred:

. *To E*TRADE, Group, Inc. or a subsidiary thereof; or

- . *Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or
- . *To an Institutional Accredited Investor pursuant to and in compliance with the Securities Act of 1933, as amended; or
- . *Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended;

and unless the box below is checked, the undersigned confirms that such Note is not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act of 1933, as amended (an "Affiliate"):

- . *The transferee is an Affiliate of the Company.

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Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if shares of Common Stock are to be issued, or Notes to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the conversion notice, the option to elect repurchase upon a Repurchase Event or the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

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EXHIBIT B

Ladies and Gentlemen:

We are delivering this letter in connection with the resale or transfer of ___% Convertible Subordinated Notes due 2007 (the "Notes") which are convertible into shares of Common Stock, \$0.01 par value (the "Common Stock"), of the "Company").

We hereby confirm that:

1. we are an "accredited investor" within the meaning of Rule 501(a)(1), (2) or (3) under the Securities Act of 1933 (the "Securities Act") or an entity in which all of the equity owners are accredited investors within the meaning of Rule 501(a)(1), (2) or (3) under the Securities Act;
2. (A) any purchase of Notes by us will be for our own account or for the account of one or more other Institutional Accredited Investors (defined below) or as fiduciary for the account of one or more trusts, each of which is an "accredited investor" within the meaning of Rule 501(a)(7) under the Securities Act (such trusts, together with accredited investors within the meaning of Rule 501(a)(1), (2) or (3) under the Securities Act,

an "Institutional Accredited Investor") and for each of which we exercise sole investment discretion or (B) we are a "bank," within the meaning of Section 3(a)(2) of the Securities Act, or a "savings and loan association" or other institution described in Section 3(1)(5)(a) of the Securities Act that is acquiring Notes as fiduciary for the account of one or more institutions for which we exercise sole investment discretion;

3. in the event that we purchase any Notes, we will acquire Notes having a minimum principal amount of not less than \$100,000 for our own account or for any separate account for which we are acting;

4. we have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of purchasing the Notes; and

5. we are not acquiring Notes with a view to distribution thereof or with any present intention of offering or selling Notes or the Common Stock issuable upon conversion thereof, except as permitted below; provided that the disposition of our property and property of any accounts for which we are acting as fiduciary shall remain at all times within our control.

We understand that the Notes are being offered in a transaction not involving any public offering within the United States within the meaning of the Securities Act and that the Notes and the shares of Common Stock issuable upon conversion thereof (the "Securities") have not been registered under the Securities Act, and we agree, on our own behalf and on behalf of each account

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for which we acquire any Securities, that if in the future we decide to resell or otherwise transfer such Securities, such Securities may be resold or otherwise transferred only (i) to the Company or any subsidiary thereof, or (ii) to a person who is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, or (iii) to an Institutional Accredited Investor that, prior to such transfer, furnishes to the Trustee or transfer agent for such Securities a signed letter containing certain representations and agreements relating to the restrictions on transfer of such Securities (the form of which letter can be obtained from such Trustee or transfer agent), or (iv) pursuant to the exemption from registration provided by Rule 144 under the Securities Act (if applicable), or (v) pursuant to a registration statement which has been declared effective under the Securities Act, and in each case, in accordance with any applicable securities laws of any State of the United States or any other applicable jurisdiction and in accordance with the legends set forth on the Securities. We further agree to provide any person purchasing any of the Securities other than pursuant to clause (v) above from us a notice advising such purchaser that resales of such securities are restricted as stated herein. We understand that the Trustee for the Notes and/or the transfer agent for the Common Stock will not be required to accept for registration of transfer any Notes or any shares of Common Stock issued upon conversion of the Notes except upon presentation of evidence satisfactory to the Company that the foregoing restrictions on transfer have been complied with. We further understand that any Notes and any certificates representing Common Stock will be in the form of definitive physical certificates and that such certificates will bear a legend reflecting the substance of this paragraph other than certificates representing Common Stock transferred pursuant to clause (v) above.

We acknowledge that the Company, others and you will rely upon our confirmations, acknowledgments and agreements set forth herein, and we agree to notify you promptly in writing if any of our representations or warranties herein ceases to be accurate and complete.

THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICTS OF LAWS AND PRINCIPLES THEREOF.

(Name of Purchaser)

By: _____

Name:

Title:

Address:

EMPLOYMENT AGREEMENT

This Agreement is made effective this 1/st/ day of June, 1999 (the "Effective Date"), by and between E*TRADE GROUP, INC., a Delaware corporation ("Company"), and CHRISTOS M. COTSAKOS, ("Executive").

BACKGROUND

Executive is serving as Chairman of the Board and Chief Executive Officer of Company pursuant to an Employment Agreement dated March 15, 1996 ("Prior Agreement"). The parties desire to enter into an amended 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 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 \$575,000 ("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 Company's Management Bonus Plan up to a maximum potential bonus of 300% of the then-current Base Salary.

(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) 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 grants in accordance with the enclosed schedule 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 5(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

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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) "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 5(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

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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.

(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.

(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 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 (g), (i) and (l) of Section 3 beginning on the date of such termination and ending on the date forty-eight months from the date of 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.

(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 resident and purchase of a new residence; all other expenses reasonably incurred in relocating

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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 \$30,000 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 twelve 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 (or estate, if none), the payment provided under this Section 6 and shall continue to pay the Base Salary plus most recent TQI 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 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 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

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(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) "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

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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 amount payable 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.

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(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 or 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.

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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.

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In Witness Whereof, the undersigned directors of the Company, have executed this Agreement as of the day and year first above written.

E*TRADE GROUP, INC.

[CORPORATE SEAL]

/s/ William A. Porter

William A. Porter, Chairman Emeritus

Attest: Secretary /s/ [ILLEGIBLE]^

EXECUTIVE

/s/ Christos M. Cotsakos

Christos M. Cotsakos

Witnesseth:

ACKNOWLEDGEMENT: /s/ [ILLEGIBLE]^

/s/ Richard Braddock

Richard Braddock
Chairman of Compensation Committee

/s/ William Ford

William Ford
Chairman of Audit Committee

EMPLOYMENT AGREEMENT

This Agreement is made effective this 1st day of June, 1999 (the "Effective Date"), by and between E*TRADE GROUP, INC., a Delaware corporation ("Company"), and KATHY LEVINSON ("Executive").

BACKGROUND

Executive is serving as President and Chief Operating Officer of 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. Any 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 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 her employment, Executive shall devote her effort and attention, on a full-time basis, to the performance of the duties required of her as an executive of Company. Notwithstanding the foregoing, Executive shall be entitled to serve as a director on the governing boards of no more than three (3) 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 her duties under this Agreement, and only with prior written approval by the Company Chairman and Chief Executive Officer.

3. Compensation. As compensation for her 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 her level in Company.

(b) Participation in Company's TQI bonus plan up to a maximum potential bonus of 200% of 80% of then-current Base Salary.

(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 \$20,000 per year and for annual physical examinations not to exceed \$10,000 per year.

(e) It is acknowledged that Executive has received option grants in accordance with the enclosed schedule. 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 expenses related to travel conducted pursuant to Company's travel policies.

(h) Reimbursement for the reasonable maintenance costs of a comprehensive security and monitoring system installed in the Executive's primary residence.

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, 2003 (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 5 below.

5. 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 5, and shall for the period or at the time specified provide the other benefits described in subsection (b) of this Section 5 if 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 5, or at the request of or pursuant to an agreement with a third party who has taken steps

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reasonably calculated to effect a Change in Control, or otherwise in connection with or in anticipation of a Change in Control.

(a) The payment shall be equal to eighteen (18) months of Executive's current Total Annual Compensation as defined in subsection (d) of this Section 5.

(b) In addition to the amount payable to Executive under subsection (a) of this Section 5, upon termination of Executive for any reason the health care (including medical and dental) and life insurance benefits coverage benefits provided to Executive at her date of termination shall be continued at the same level and in the same manner as if her 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), (f) and (g) 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) 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 (d)(vi) of this Section 5. Upon the effective date of a termination for Disability, the Company shall pay to the Executive the payment provided under subsection (a) of this Section 5. 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.

(d) 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

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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 her 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 her 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 her 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 her 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 her 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 her 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.

(e) In addition to the benefits payable under subsection (a) or (b) of this Section 5, 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 5, will place Executive in the same after-tax

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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 5 including any amounts paid under this subsection (e). 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) of this Section 5.

6. Non-Competition. Executive agrees that during the Initial Term Executive shall not, directly or indirectly, engage in any business or activity or render any services or provide any advice, whether as an employee, consultant, partner, principal, agent, or representative or in any other individual, corporate or representative capacity, to any business, entity or person engaged in the brokerage business, including without limitation any business, entity or person engaged in the electronic brokerage business, in any geographic area in which Company engages in its business or reasonably contemplates engaging in its business during the Executive's employment with Company. Notwithstanding the foregoing, Executive may own, directly or indirectly, up to one percent (1%) of any class of "publicly-traded securities" of any business or entity engaged in the brokerage business. For the purposes of this Section 6, "publicly-traded securities" shall mean securities that are traded on a national securities exchange or listed on the Nasdaq National Market.

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 her 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: Ms. Kathy Levinson
c/o E*Trade Group, Inc.
4500 Bohannon Drive
Menlo Park, California 94025

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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 5 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.

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In Witness Whereof, the undersigned directors of the Company, have executed this Agreement as of the day and year first above written.

E*TRADE GROUP, INC.

[CORPORATE SEAL]

/s/ William A. Porter

William A. Porter, Chairman Emeritus

Attest: Secretary /s/ [ILLEGIBLE]^^

EXECUTIVE

/s/ Kathy Levinson

Kathy Levinson

Witnesseth:

/s/ [ILLEGIBLE]^^

Purchase Agreement

February 1, 2000

FleetBoston Robertson Stephens Inc.
 Hambrecht & Quist LLC
 Goldman, Sachs & Co.
 c/o FleetBoston Robertson Stephens Inc.
 555 California Street, Suite 2600
 San Francisco, CA 94104

Ladies and Gentlemen:

Introductory. E*TRADE Group, Inc., a Delaware corporation (the "Company"), proposes to issue and sell to the several Initial Purchasers named in Schedule A (the "Initial Purchasers") an aggregate of \$500,000,000 principal amount of its 6% Convertible Subordinated Notes due 2007 (the "Firm Securities"). In addition, the Company has granted to the Initial Purchasers an option to purchase up to an additional aggregate \$150,000,000 principal amount of its 6% Convertible Subordinated Notes due 2007 (the "Option Securities") as provided in Section 2. The Firm Securities and, if and to the extent such option is exercised, the Option Securities are collectively called the "Securities." The Securities will be convertible into shares (the "Underlying Securities") of Common Stock, \$0.01 par value, of the Company (the "Common Stock"). The Securities will be issued pursuant to an Indenture (the "Indenture"), to be dated as of February 1, 2000, between the Company and The Bank of New York, as trustee (the "Trustee").

The Securities (and the Underlying Securities) will be offered without being registered under the Securities Act of 1933, as amended, in reliance on exemptions therefrom provided by the Act and the rules and regulations thereunder (collectively, the "Securities Act").

The Initial Purchasers and their direct and indirect transferees will be entitled to the benefits of a Registration Rights Agreement dated the date hereof between the Company and the Initial Purchasers (the "Registration Rights Agreement").

In connection with the offer and sale of the Securities, the Company has prepared a preliminary offering circular dated January 24, 2000 (the "Preliminary Circular") and a final offering circular dated February 1, 2000 (the "Final Circular") for delivery to prospective purchasers of the Securities. Each of the Preliminary Circular and the Final Circular includes or incorporates certain information concerning, among other things, the Company, the Securities and the Underlying Securities. The Final Circular also incorporates by reference each document or report filed by the Company with the Securities and Exchange Commission (the "Commission") pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), after the date thereof and prior to the termination of the distribution of the

Securities and as set forth in the Final Circular. As used herein, the terms "Preliminary Circular" and "Final Circular" shall include in each case the documents incorporated by reference therein (the "Incorporated Documents"), and any and all supplements and amendments to such documents incorporated by reference therein and any and all amendments and supplements to the Preliminary Circular or the Final Circular, as the case may be, and the term "Circular" shall include the Preliminary Circular and the Final Circular. The terms "supplement", "amendment" and "amend" as used herein shall include all documents deemed to be incorporated by reference in the Preliminary Circular or Final Circular that are filed subsequent to the date of such Circular with the Commission pursuant to the Exchange Act.

Section 1. Representations and Warranties of the Company.

The Company hereby represents, warrants and covenants to each Initial Purchaser that:

(a) The Circulars and SEC Documents. The Preliminary Circular does not, and the Final Circular in the form used by the Initial Purchasers to

confirm sales does not, and on the First Closing Date (as hereinafter defined) will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the immediately preceding sentence do not apply to statements or omissions from either Circular made in reliance upon and in conformity with information relating to any Initial Purchaser furnished to the Company in writing by the Initial Purchaser expressly for use therein.

(b) Exchange Act Documents. There are no contracts or other documents required to be described in the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 1999 that are not so described therein and there are no contracts or other documents required to be filed pursuant to Item 14 of such Annual Report on Form 10-K that are not so filed. The Company is subject to Section 13 or 15(d) of the Exchange Act. Since October 1, 1998, each of the Company and Telebanc Financial Corporation ("Telebanc") has timely filed with the Commission all the documents that it was required to file with the Commission under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (collectively, as filed, the "SEC Documents"). The SEC Documents, when they were filed with the Commission, conformed in all material respects to the requirements of the Exchange Act and the rules, regulations and instructions of the Commission thereunder, and any documents so filed and incorporated by reference in any Circular subsequent to the date hereof will, when they are filed with the Commission, conform in all material respects to the requirements of the Exchange Act and the rules, regulations and instructions of the Commission thereunder. No stop order or other similar order or decree preventing the use of any Circular, or any order or decree asserting that the transactions contemplated by this Agreement are subject to the registration requirements of the Securities Act has been issued and remains in effect and, to the knowledge of the Company, no proceedings for that purpose have been commenced or are contemplated.

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(c) The Telebanc Merger. The transactions contemplated by that certain Agreement and Plan of Merger, dated as of May 31, 1999 (the "Merger Agreement"), by and among the Company, Turbo Acquisition Corporation ("Turbo") and Telebanc, including the merger of Turbo with and into Telebanc (the "Merger") have been consummated in all material respects. The Merger became effective on January 12, 2000. The Merger and other transactions contemplated by the Merger Agreement and the related agreements have been approved by all requisite corporate approvals on the part of the Company, Turbo and Telebanc and did not and do not contravene (i) any provision of any applicable law or (ii) the charter or bylaws of the Company, Turbo or Telebanc or (iii) any agreement or other instrument binding upon the Company, Turbo or Telebanc or any of their respective subsidiaries or (iv) any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company, Turbo or Telebanc or any of their subsidiaries, except, in the case of clauses (i), (iii) and (iv), as would not individually or in the aggregate have a material adverse effect on the Company and its subsidiaries, taken as a whole; and no consent, approval, authorization or order of, or qualification or filing with, any governmental body or agency is required for performance of their respective obligations under the Merger Agreement and the related agreements except such as have been obtained or made.

(d) The Purchase Agreement. This purchase agreement (the "Agreement") has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company, enforceable against the Company in accordance with its terms, except as rights to indemnification and contribution hereunder may be limited by applicable law and except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles.

(e) The Registration Rights Agreement. The Registration Rights Agreement will have been duly authorized, executed and delivered by the Company at the Closing (as hereinafter defined), and will be a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except in the case of the Registration Rights Agreement as rights to indemnification and contribution thereunder may be limited by applicable law and except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles; the Registration Rights Agreement will conform in all material respects to the

description thereof in each Circular.

(f) The Indenture. The Indenture will have been duly authorized, executed and delivered by the Company at the Closing and will be a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles. The Indenture will conform in all material respects to the description thereof in each Circular.

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(g) The Securities. The Securities have been duly and validly authorized and, when executed and authenticated in accordance with the provisions of the Indenture and delivered and paid for by the Initial Purchasers in accordance with this Agreement, will be (i) valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles, (ii) be entitled to the benefits of the Indenture, and (iii) validly issued, fully paid and nonassessable, and will not be subject to any preemptive rights, co-sale rights, rights of first refusal or other rights to subscribe for or purchase securities, in each case pursuant to any instrument to which the Company is a party or pursuant to the Certificate of Incorporation and Bylaws of the Company; the Securities conform in all material respects to the description thereof contained in each Circular.

(h) The Underlying Securities. The Underlying Securities have been duly authorized and reserved for issuance and, upon issuance thereof upon conversion of the Securities in accordance with the terms of the Securities and the Indenture, will be validly issued, fully paid and nonassessable and will be issued free and clear of any pledge, lien, security interest, encumbrance, claim or equitable interest and will not be subject to any preemptive rights, co-sale rights, rights of first refusal or other right subject to subscribe for or purchase securities, in each case pursuant to any instrument to which the Company is a party or pursuant to the Certificate of Incorporation and Bylaws of the Company.

(i) No Applicable Registration or Other Similar Rights. There are no persons with registration or other similar rights to have any equity or debt securities included in the offering or registered for sale in accordance with the Registration Rights Agreement contemplated by this Agreement except for such rights as have been duly waived.

(j) No Material Adverse Change. Subsequent to the respective dates as of which information is given in the Final Circular: (i) there has been no material adverse change, or any development that could reasonably be expected to result in a material adverse change, in the condition, financial or otherwise, or in the earnings, business, operations or business prospects, whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, considered as one entity or any change which would adversely affect the power and ability of the Company to perform its obligations under this Agreement, the Indenture, the Registration Rights Agreement, the Underlying Securities or the Securities (any such change or effect, where the context so requires, is called a "Material Adverse Change" or a "Material Adverse Effect"); (ii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business nor entered into any material transaction or agreement not in the ordinary course of business; and (iii) there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other subsidiaries, any of its subsidiaries on any class of capital stock or repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock.

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(k) Independent Accountants. Deloitte & Touche LLP, who have expressed their opinion with respect to the financial statements (which term as used in this Agreement includes the related notes thereto) of the Company that are incorporated by reference or included in the Final Circular, are independent

certified public accountants with respect to the Company under Rule 101 of the AICPA's Code of Professional Conduct and its interpretations and rulings. Arthur Andersen LLP, who have expressed their opinion with respect to the financial statements (which term as used in this Agreement includes the related notes thereto) of Telebanc that are incorporated by reference or included in the Final Circular, are independent public or certified public accountants with respect to the Company under Rule 101 of the AICPA's Code of Professional Conduct and its interpretations and rulings.

(l) Preparation of the Financial Statements. The financial statements previously filed with the Commission that are incorporated by reference or included in the Final Circular present fairly in all material respects the consolidated financial position of the Company and its subsidiaries, or of Telebanc and its subsidiaries, as applicable, as of and at the dates indicated and the results of their operations and cash flows for the periods specified. Such financial statements have been prepared in conformity in all material respects with generally accepted accounting principles as applied in the United States applied on a consistent basis throughout the periods involved, except as may be expressly stated in the Circulars or in the related notes thereto. The financial data set forth in each Circular under the captions "Summary--Summary Supplemental Consolidated Financial Data," "Summary--Recent Financial Results," "Selected Supplemental Consolidated Financial Data" and "Capitalization" fairly present in all material respects the information set forth therein on a basis consistent with that of the audited and unaudited financial statements presented therein. The financial data set forth in each Circular in Annex B thereto under the caption "Supplemental Consolidating Financial Statements," giving retroactive effect to the acquisition of Telebanc by the Company have been properly compiled on a basis consistent with the audited and unaudited financial statements and information of the Company and Telebanc presented therein.

(m) Company's Accounting System. The Company and each of its subsidiaries maintain a system of accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(n) Subsidiaries of the Company. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Exhibit 21 to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 1999 and the subsidiaries listed in Exhibit 21 to Telebanc's Annual Report on Form 10-K for the fiscal year ended December 31, 1998. Except for Telebanc and E*TRADE Securities, Inc., none of

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the direct or indirect subsidiaries of the Company are "significant subsidiaries" as defined in Section 1-02(w) of Regulation S-X.

(o) Incorporation and Good Standing of the Company and its Subsidiaries. Each of the Company and its subsidiaries has been duly organized and is validly existing as a corporation or limited liability company, as the case may be, in good standing under the laws of the jurisdiction in which it is organized with full corporate power and authority to own its properties and conduct its business as described in each Circular, and is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction which requires such qualification.

(p) Capitalization of the Subsidiaries. All the outstanding shares of capital stock of each subsidiary have been duly and validly authorized and issued and are fully paid and nonassessable, and all outstanding shares of capital stock of the subsidiaries are owned by the Company either directly or through wholly owned subsidiaries free and clear of any security interests, claims, liens or encumbrances, in each case except as would not have a Material Adverse Effect.

(q) No Prohibition on Subsidiaries from Paying Dividends or

Making Other Distributions. Except as disclosed in each Circular, no subsidiary of the Company is currently prohibited or restricted, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's property or assets to the Company or any other subsidiary of the Company.

(r) Capitalization and Other Capital Stock Matters. The authorized, issued and outstanding capital stock of the Company is as set forth in the Final Circular under the caption "Capitalization" (other than for subsequent issuances, if any, pursuant to employee benefit plans described in the Final Circular or upon exercise of outstanding options or warrants described in the Final Circular). The Common Stock (including the Underlying Securities) conforms in all material respects to the description thereof contained in the Final Circular. All of the issued and outstanding Common Stock has been duly authorized and validly issued, are fully paid and nonassessable and have been issued in compliance with federal and state securities laws. None of the outstanding shares of Common Stock were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those accurately described in the Final Circular. The description of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth or incorporated by reference in the Final Circular accurately and fairly presents the information required to be shown with respect to such plans, arrangements, options and rights.

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(s) No Consents, Approvals or Authorizations Required. No consent, approval, authorization, filing with or order of any court or governmental agency or regulatory body is required to be obtained or made by the Company in connection with the transactions contemplated by this Agreement, the Registration Rights Agreement, the Indenture and the Securities, except such as may be required under the blue sky laws of any jurisdiction in connection with the purchase and distribution of the Securities by the Initial Purchasers in the manner contemplated here and in the Final Circular.

(t) Non-Contravention of Existing Instruments and Agreements. The execution and delivery by the Company of, and performance of its obligations under, this Agreement, the Registration Rights Agreement, the Indenture and the Securities, and the consummation of the transaction herein and therein contemplated does not and will not conflict with, or result in a breach or violation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, (i) the charter or by-laws of the Company or any of its subsidiaries, (ii) the terms of any material indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Company or any of its subsidiaries is a party or bound or to which its or their property is subject or (iii) any statute, law, rule, regulation, judgment, order or decree applicable to the Company or any of its subsidiaries of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or any of its subsidiaries or any of its or their properties, except in the case of clause (iii) above, for any of the same as would not have a Material Adverse Effect.

(u) No Defaults or Violations. Neither the Company nor any subsidiary is in violation or default of (i) any provision of its charter or by-laws, (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which it is a party or bound or to which its property is subject or (iii) any statute, law, rule, regulation, judgment, order or decree of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or such subsidiary or any of its properties, as applicable, except any such violation or default which would not, singly or in the aggregate, result in a Material Adverse Change and except as otherwise disclosed in the Final Circular.

(v) No Actions, Suits or Proceedings. No action, suit or proceeding by or before any court or governmental agency, authority or body or

any arbitrator involving the Company or any of its subsidiaries or its or their property is pending or, to the knowledge of the Company, threatened that (i) could reasonably be expected to have a material adverse effect on the performance by the Company of this Agreement or the consummation by the Company of any of the transactions contemplated hereby or (ii) could reasonably be expected to result in a Material Adverse Effect.

(w) All Necessary Permits, Etc. The Company and each subsidiary possess such valid and current certificates, authorizations or permits issued by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct their respective businesses, and

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neither the Company nor any subsidiary has received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, could reasonably be expected to result in a Material Adverse Change.

(x) Title to Properties. Each of the Company and its subsidiaries has good and marketable title to all the properties and assets reflected as owned in the financial statements included or incorporated by reference in the Final Circular, in each case free and clear of any security interests, mortgages, liens, encumbrances, equities, claims and other defects, except such as do not materially and adversely affect the value of such property and do not materially interfere with the use made or proposed to be made of such property by the Company or such subsidiary. The real property, improvements, equipment and personal property held under lease by the Company or any subsidiary are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property by the Company or such subsidiary.

(y) Tax Law Compliance. The Company and its subsidiaries have filed all necessary federal, state and foreign income and franchise tax returns or have properly requested extensions thereof and have paid all taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them, except as may be being contested in good faith and by appropriate proceedings. Each of the Company and Telebank has made adequate charges, accruals and reserves in the applicable financial statements included or incorporated by reference in the Final Circular in respect of all federal, state and foreign income and franchise taxes for all periods as to which the tax liability of the Company or any of its consolidated subsidiaries has not been finally determined. The Company is not aware of any tax deficiency that has been or might be asserted or threatened against the Company or Telebank that could result in a Material Adverse Change.

(z) Intellectual Property Rights. Each of the Company and its subsidiaries owns or possesses adequate rights to use all patents, patent rights or licenses, inventions, collaborative research agreements, trade secrets, trademarks, service marks, trade names and copyrights which are necessary to conduct its businesses as described in the Final Circular, the expiration of any patents, patent rights, trade secrets, trademarks, service marks, trade names or copyrights would not result in a Material Adverse Change that is not otherwise disclosed in the Final Circular; the Company has not received any written notice of, and has no knowledge of, any infringement of or conflict with asserted rights of the Company by others with respect to any patent, patent rights, inventions, trade secrets, trademarks, service marks, trade names or copyrights; and the Company has not received any notice of, and has no knowledge of, any infringement of or conflict with asserted rights of others with respect to any patent, patent rights, inventions, trade secrets, trademarks, service marks, trade names or copyrights which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, might have a Material Adverse Change. There is no claim being made against the Company regarding patents, patent rights or licenses, inventions, trade secrets, trademarks, service marks, trade names or copyrights. The Company and its subsidiaries do

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not in the conduct of their business as now or proposed to be conducted as described in the Final Circular infringe or conflict with any right or patent of any third party, or any discovery, invention, product or process which is the

subject of a patent application filed by any third party, known to the Company or any of its subsidiaries, which such infringement or conflict is reasonably likely to result in a Material Adverse Change.

(aa) Year 2000 Preparedness. There are no issues related to the Company's, or any of its subsidiaries', preparedness for the Year 2000 that (i) are of a character required to be described or referred to in the Final Circular or any Incorporated Document by the Securities Act or by the Exchange Act or the rules and regulations of the Commission thereunder which have not been accurately (in all material respects) described in the Final Circular or any Incorporated Document or (ii) might reasonably be expected to result in any Material Adverse Change or that might materially affect their properties, assets or rights. All internal computer systems and each Constituent Component (as defined below) of those systems and all computer-related products and each Constituent Component (as defined below) of those products of the Company and each of its subsidiaries comply in all material respects with Year 2000 Qualification Requirements. "Year 2000 Qualifications Requirements" means that the internal computer systems and each Constituent Component (as defined below) of those systems and all computer-related products and each Constituent Component (as defined below) of those products of the Company and each of its Subsidiaries (i) have been reviewed to confirm that they store, process (including sorting and performing mathematical operations, calculations and computations), input and output data containing date and information correctly regardless of whether the date contains dates and times before, on or after January 1, 2000, (ii) have been designated to ensure date and time entry recognition and calculations, and date data interface values that reflect the century, (iii) accurately manage and manipulate data involving dates and times, including single century formulas and multi-century formulas, and will not cause an abnormal ending scenario within the application or generate incorrect values or invalid results involving such dates, (iv) accurately process any date rollover, and (v) accept and respond to two-digit year date input in a manner that resolves any ambiguities as to the century. "Constituent Component" means all software (including operating systems, programs, packages and utilities), firmware, hardware, networking components, and peripherals provided as part of the configuration. The Company has disclosed in the Final Circular any issues with respect to the Year 2000 preparedness that might reasonably be expected to result in any Material Adverse Change.

(bb) No Transfer Taxes or Other Fees; No Solicitation Fees. There are no documentary stamp or other issuance or transfer taxes or other similar fees or charges under Federal law or the laws of any state, or any political subdivision thereof, required to be paid in connection with the execution and delivery of this Agreement, the Registration Rights Agreement, and the Indenture or the issuance and sale by the Company of the Securities. The Company has not paid or agreed to pay any person any compensation for soliciting another to purchase any securities of the Company (except as contemplated by this Agreement).

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(cc) Company Not an "Investment Company." The Company has been advised of the rules and requirements under the Investment Company Act of 1940, as amended (the "Investment Company Act"). The Company is not, and after receipt of payment for the Securities will not be, an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act and will conduct its business in a manner so that it will not become subject to the Investment Company Act.

(dd) Insurance. Each of the Company and its subsidiaries are insured by recognized, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for their businesses including, but not limited to, policies covering real and personal property owned or leased by the Company and its subsidiaries against theft, damage, destruction, acts of vandalism and earthquakes, general liability and Directors and Officers liability. The Company has no reason to believe that it or any subsidiary will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Change.

(ee) Labor Matters. To the Company's knowledge, no labor disturbance by the employees of the Company or any of its subsidiaries exists or is imminent; and the Company is not aware of any existing or imminent labor

disturbance by the employees of any of its principal suppliers, subcontractors, or international distributors that might be expected to result in a Material Adverse Change.

(ff) Regulation M. The Company has not taken and will not take, directly or indirectly, any action prohibited by Regulation M under the Exchange Act in connection with the sale or offering of the Securities or the Underlying Securities.

(gg) Lock-Up Agreements. Each executive officer and director of the company and each beneficial owner of five or more percent of the outstanding issued share capital of the Company has agreed to sign an agreement substantially in the form attached hereto as Exhibit A (the "Lock-up

Agreements"). The Company has provided to counsel for the Initial Purchasers true, accurate and complete copies of all of the Lock-up Agreements presently in effect or effected hereby. The Company hereby represents and warrants that it will not release any of its officers, directors or other stockholders from any Lock-up Agreements currently existing or hereafter effected without the prior written consent of FleetBoston Robertson Stephens Inc.

(hh) Related Party Transactions. There are no business relationships or related-party transactions involving the Company or any subsidiary or any other person required to be described in the Final Circular which have not been described as required.

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(ii) Rule 144A Eligibility. The Firm Securities and Option Securities satisfy the requirements set forth in Rule 144A(d)(3) under the Securities Act for securities to be eligible for trading pursuant to Rule 144A.

(jj) No General Solicitation. Assuming the accuracy and completeness of the Initial Purchasers' representations, warranties and agreements, neither the Company or its subsidiaries nor, to the knowledge of the Company any Affiliate (as defined in Rule 501(b) of Regulation D under the Securities Act) of the Company (other than a subsidiary), directly or through any agent or any person acting on its or their behalf, (i) has sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, or will sell, offer for sale, solicit offers to buy or otherwise negotiate in respect of any security (as defined in the Securities Act) which is or will be integrated with the sale of the Securities under Rule 502(a) of Regulation D under the Securities Act in a manner that would require the registration under the Securities Act of the Securities, or (ii) has engaged or will engage in any form of general solicitation or general advertising (as those terms are used in Rule 502(c) of Regulation D under the Securities Act) in connection with the offering of the Securities, or (iii) has engaged or will engage in any manner in a public offering in connection with the sale of the Securities within the meaning of Section 4(2) of the Securities Act (assuming, with respect to (ii) and (iii), the accuracy and completeness of the Initial Purchasers' representations, warranties and agreements in Sections 3(d) hereof).

(kk) No Registration Required. Assuming the accuracy and completeness of the Initial Purchasers' representations, warranties and agreements, it is not necessary in connection with the offer, sale and delivery of any of the Securities to the Initial Purchasers in the manner contemplated by this Agreement to register any of the Securities or the Underlying Securities under the Securities Act or to qualify the Indenture under the Trust Indenture Act of 1939, as amended.

(ll) No Unlawful Contributions or Other Payments. Neither the Company nor any of its subsidiaries nor, to the Company's knowledge, any employee or agent of the Company or any subsidiary, has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law or of the character required to be disclosed in the Final Circular.

(mm) Environmental Laws. Except as otherwise disclosed in the Final Circular, (i) the Company is in compliance in all material respects with all rules, laws and regulations relating to the use, treatment, storage and disposal of toxic substances and protection of health or the environment ("Environmental Laws") which are applicable to its business, except where the failure to comply would not result in a Material Adverse Change, (ii) the Company has received no written notice from any governmental authority or third

party of an asserted claim under Environmental Laws, (iii) the Company will not be required to make future material capital expenditures to comply with Environmental Laws and (iv) no property which is owned, leased or occupied by the Company has been designated as a Superfund site pursuant to the Comprehensive Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. (S) 9601, et seq.), or otherwise designated as a contaminated site under
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applicable state or local law.

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(nn) ERISA Compliance. The Company and its subsidiaries and any "employee benefit plan" (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, "ERISA")) established or maintained by the Company, its subsidiaries or their "ERISA Affiliates" (as defined below) are in compliance in all material respects with ERISA. "ERISA Affiliate" means, with respect to the Company or a subsidiary, any member of any group of organizations described in Sections 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the "Code") of which the Company or such subsidiary is a member. No "reportable event" (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates. No "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates, if such "employee benefit plan" were terminated, would have any "amount of unfounded benefit liabilities" (as defined under ERISA). Neither the Company, its subsidiaries nor any of their ERISA Affiliates has incurred or reasonably expects to incur any liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan" or (ii) Sections 412, 4971, 4975 or 4980B of the Code. Each "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

Any certificate signed by an officer of the Company and delivered to FleetBoston Robertson Stephens Inc. on behalf of the Initial Purchasers or to counsel for the Initial Purchasers shall be deemed to be a representation and warranty by the Company to each Initial Purchaser as to the matters set forth therein.

Section 2. Purchase, Sale and Delivery of the Securities.

(a) The Firm Securities. You have advised the Company that you have made and will make an offering of the Firm Securities purchased by you hereunder on the terms to be set forth in the Final Circular and in this Agreement, as soon after this Agreement is entered into as in your judgment is advisable. On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Initial Purchasers agree, severally and not jointly, to purchase from the Company \$500,000,000 of the aggregate principal amount of Firm Securities set forth opposite their name on Schedule A attached hereto at a purchase price of 100% of the principal amount thereof (the "Purchase Price") plus accrued interest, if any, from February 7, 2000 to the date of payment and delivery.

Delivery of definitive certificates for the Firm Securities to be purchased by the Initial Purchasers and payment therefor shall be made by the Company and the Initial Purchasers at the offices of Brobeck Phleger & Harrison LLP, Two Embarcadero Place, 2200 Geng Road, Palo Alto, California 94303 (or at such other place as may be agreed upon among the Initial Purchasers and the Company), at 6:00 A.M., San Francisco time, (i) on the third (3rd) full business day following the

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first day that Securities are traded, (ii) if this Agreement is executed and delivered after 1:30 p.m., San Francisco time, the fourth (4th) full business day following the day that this Agreement is executed and delivered or (iii) at such other time and date not later than seven (7) full business days following the first day that Securities are traded as the Initial Purchasers and the Company may determine (or at such time and date to which payment and delivery shall have been postponed pursuant to Section 8 hereof), such time and date of

payment and delivery being herein called the "First Closing Date"; provided, however, that if the Company has not made available to the Initial Purchasers copies of the Final Circular within the time provided in Section 2(e) hereof, the Initial Purchasers may, in its sole discretion, postpone the First Closing Date until no later than two (2) full business days following delivery of copies of the Final Circular to the Initial Purchasers. The certificates (including one or more global certificates), if any, for the Firm Securities to be so delivered will be made available to FleetBoston Robertson Stephens Inc. at such office or at such other location including, without limitation, in New York City, as FleetBoston Robertson Stephens Inc. may reasonably request for checking at least one (1) full business day prior to the First Closing Date and will be in such names and denominations as FleetBoston Robertson Stephens Inc. may request, such request to be made at least two (2) full business days prior to the First Closing Date. To the extent that the Initial Purchasers so elect, delivery of the Firm Securities held in global certificates may be made by credit through full fast transfer to the accounts at The Depository Trust Company ("DTC") designated by the Initial Purchasers.

(b) The Option Securities; the Second Closing Date. In addition, on the basis of the representations, warranties and agreements herein contained, and upon the terms but subject to the conditions herein set forth, the Company hereby grants an option to the several Initial Purchasers to purchase, severally and not jointly, up to an aggregate principal amount of \$150,000,000 of Option Securities from the Company at the Purchase Price plus accrued interest, if any, from February 7, 2000 to the date of payment and delivery to be paid by the Initial Purchasers for the Firm Securities. The option granted hereunder is for use by the Initial Purchasers. The option granted hereunder may be exercised at any time upon notice by the Initial Purchasers to the Company which notice may be given at any time within 45 days from the date of this Agreement. The time and date of delivery of the Option Securities, if subsequent to the First Closing Date, is called the "Second Closing Date" and shall be determined by the Initial Purchasers and shall not be earlier than three nor later than five full business days after delivery of such notice of exercise. If any Option Securities are to be purchased, each Initial Purchaser agrees, severally and not jointly, to purchase the principal amount of Option Securities (subject to such adjustments to eliminate fractional shares as the Initial Purchasers may determine) that bears the same proportion to the total principal amount of Option Securities to be purchased as the principal amount of Firm Securities set forth on Schedule A opposite the name of such -----
Initial Purchaser bears to the total principal amount of Firm Securities.

The certificates (including one or more global certificates), if any, for the Option Securities so to be delivered will be made available to FleetBoston Robertson Stephens Inc. at such office or other location including, without limitation, in New York City, as FleetBoston

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Robertson Stephens Inc. may reasonably request for checking at least one (1) full business day prior to the date of payment and delivery and will be in such names and denominations as FleetBoston Robertson Stephens Inc. may request, such request to be made at least two (2) full business days prior to such date of payment and delivery. To the extent that the Initial Purchasers so elect, delivery of the Option Securities in global form may be made by credit through full fast transfer to the accounts at DTC designated by the Initial Purchasers.

(c) Exercise of Option. Upon exercise of any option provided for in Section 7(b) hereof, the obligations of the Initial Purchasers to purchase such Option Securities will be subject (as of the date hereof and as of the date of payment for such Option Securities) to the accuracy of and compliance with the representations and warranties of the Company herein, to the accuracy of the statements of the Company and officers of the Company on the Company's behalf made pursuant to the provisions hereof, to the performance by the Company of its obligations under this Agreement, the Indenture, the Registration Rights Agreement and the Firm Securities and the Option Securities, and to the condition that all proceedings taken at or prior to the payment date in connection with the sale and transfer of such Option Securities shall be reasonably satisfactory in form and substance to you and to Initial Purchasers' counsel, and you shall have been furnished with all such documents, certificates and opinions as you may reasonably request in order to evidence the accuracy and completeness of any of the representations, warranties or statements, the performance of any of the covenants of the Company or the compliance with any of

the conditions herein contained.

(d) Payment for the Securities. Payment for the Securities shall be made at the First Closing Date (and, if applicable, at the Second Closing Date) by wire transfer in immediately available-funds to the order of the Company.

It is understood that FleetBoston Robertson Stephens Inc. has been authorized, for its own account and the accounts of the Initial Purchasers, to accept delivery of and receipt for, and make payment of the Purchase Price for, the Firm Securities and any Option Securities the Initial Purchasers have agreed to purchase. FleetBoston Robertson Stephens Inc., individually and not as the representative of the Initial Purchasers, may (but shall not be obligated to) make payment for any Securities to be purchased by any Initial Purchaser whose funds shall not have been received by FleetBoston Robertson Stephens Inc. by the First Closing Date or the Second Closing Date, as the case may be, for the account of such Initial Purchaser, but any such payment shall not relieve such Underwriter from any of its obligations under this Agreement.

(e) Delivery of Final Circular to the Initial Purchasers. Not later than 12:00 noon on the second business day following the date the Securities are released by the Initial Purchasers for sale to the investors, the Company shall deliver or cause to be delivered copies of the Final Circular in such quantities and at such places and FleetBoston Robertson Stephens Inc. shall request.

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(f) Initial Purchaser Representations. Each Initial Purchaser represents and warrants that such Initial Purchaser is an accredited investor as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act (an "Institutional Accredited Investor"). Each of the Initial Purchasers agrees with the Company that (a) it has not solicited and will not solicit offers for, or offer or sell, any Securities by any form of general solicitation or general advertising (as those terms are used in Rule 502(c) of Regulation D under the Securities Act) or engage in any manner in a public offering in connection with the sale of the Securities within the meaning of Section 4(2) of the Securities Act (assuming the accuracy and completeness of the Company's representations, warranties and compliance with its agreements in Sections 1(jj), 3(d) and 3(e) hereof), and (b) it has solicited and will solicit offers for the Securities only from, and has offered and will offer and sell the Securities only to, persons that it reasonably believes to be qualified institutional buyers, as defined in Rule 144A(a)(1) under the Securities Act ("QIBs").

Section 3. Covenants of the Company.

The Company further covenants and agrees with each Initial Purchaser as follows:

(a) Amendments and Supplements to the Final Circular. If, during such period after the date hereof and prior to the date on which all of the Securities shall have been sold by the Initial Purchasers, any event shall occur or condition exist as a result of which it is necessary in the judgment of the Company or in the reasonable opinion of the Initial Purchasers or counsel for the Initial Purchasers to amend or supplement the Final Circular in order to make the statements therein, in the light of the circumstances existing at the time the Final Circular is delivered to a purchaser, not misleading, or if it is necessary at any time to amend or supplement the Final Circular to comply with any law, the Company promptly will prepare and furnish, at its own expense, to the Initial Purchasers and to dealers, an appropriate amendment to the Final Circular so that the Final Circular as so amended or supplemented will not, in the light of the circumstances when it is so delivered, be misleading, or so that the Final Circular, will comply with the law.

(b) Blue Sky Compliance. The Company will cooperate with the Initial Purchasers and counsel for the Initial Purchasers in endeavoring to qualify the Securities for sale under the securities laws of such jurisdictions (both national and foreign) as the Initial Purchasers may reasonably have designated in writing and will make such applications, file such documents, and furnish such information as may be reasonably required for that purpose, provided the Company shall not be required to qualify as a foreign corporation or subject itself to taxation or to file a general consent to service of process in any jurisdiction where it is not now so qualified or required to file such a

consent. The Company will, from time to time, prepare and file such statements, reports and other documents, as are or may be required to continue such qualifications in effect for so long a period as the Initial Purchasers may reasonably request for distribution of the Shares.

(c) Copies of any Amendments and Supplements to each Circular. The Company will furnish to you copies of the Final Circular within the time period specified in Section 2(e) of this Agreement, any documents incorporated by reference therein and any amendments or

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supplements to such documents, all in such quantities as you may from time to time reasonably request until all of the Securities shall have been sold by the Initial Purchasers.

(d) No Integration. Neither the Company nor any Affiliate has sold, offered for sale or solicited offers to buy or otherwise negotiated in respect of any security (as defined in the Securities Act) or will do any of the foregoing which could be integrated with the sale of any of the Securities under Rule 502(a) of Regulation D under the Securities Act in a manner which would require the registration under the Securities Act of such Securities.

(e) No General Solicitation. Neither the Company nor any Affiliate has solicited or will solicit any offer to buy or offer or sell any of the Securities by means of any form of general solicitation or general advertising (as those terms are used in Rule 502(c) of Regulation D under the Securities Act) or has engaged or will engage in any manner in a public offering in connection with the sale of the Securities within the meaning of Section 4(2) of the Securities Act.

(f) Rule 144A Information. To the extent that any Securities or Underlying Securities remain outstanding and are "restricted securities" within the meaning of Rule 144 under the Securities Act, during the two year period following the First Closing Date (or, if later, the Second Closing Date) and during the two-year period following the sale of any such Security or Underlying Security, as the case may be, by an Affiliate of the Company (for purposes of this Section 3(f) only, as such term is defined in Rule 144(a)(1) under the Securities Act), the Company will make available, upon request, to any seller of such Securities or Underlying Securities, as the case may be, the information specified in Rule 144A(d)(4) under the Securities Act, unless the Company is then subject to and in compliance with Section 13 or 15(d) of the Exchange Act.

(g) Designation for Trading in The Portal Market. The Company will use its reasonable best efforts to permit the Securities to be designated securities eligible for trading in The Portal Market in accordance with the rules and regulations adopted by the National Association of Securities Dealers, Inc. relating to trading in The Portal Market and to permit the Securities to be eligible for clearance and settlement through DTC.

(h) Agreement by Company Not to Offer or Sell Additional Securities. The Company will not, without the prior written consent of FleetBoston Robertson Stephens Inc., for a period of 90 days following the date of the Final Circular, offer, sell or contract to sell, or otherwise dispose of or enter into any transaction which is designed to, or could be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise by the Company or any affiliate of the Company or any person in privity with the Company or any affiliate of the Company) directly or indirectly, or announce the offering of, any other Common Stock or any securities convertible into, or exchangeable for, Common Stock; provided, however, that the Company may (i) issue and sell Common Stock pursuant to any director or employee stock option plan, stock ownership plan or dividend reinvestment plan of the Company in effect at the date of the Final Circular and described in the Final Circular so long as none of those

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shares may be transferred during the period of 90 days from the date hereof through and including May 1, 2000 (the "Lock-Up Period") and the Company shall enter stop transfer instructions with its transfer agent and registrar against the transfer of any such Common Stock and (ii) the Company may issue Common Stock issuable upon the conversion of securities or the exercise of warrants

outstanding at the date of the Final Circular and described in the Final Circular.

(i) Reservation of Underlying Securities. The Company will at all times reserve and keep available, free of any preemptive rights, co-sale rights, registration rights, rights of first refusal, other rights to subscribe for or purchase securities or other right of security holders similar to any of the foregoing, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of the Securities into Underlying Securities, the full number of shares of Underlying Securities issuable upon the conversion of all outstanding Securities.

(j) Use of Proceeds. The Company shall apply the net proceeds from the sale of the Securities sold by it in the manner described under the caption "Use of Proceeds" in the Final Circular.

(k) Legends placed on the Securities. The Company will ensure that each certificate representing any Securities bears the legend required by the Indenture, if any.

(l) Legends placed on the Underlying Securities. The Company will ensure that each stock certificate representing Underlying Securities bears the legend required by the Indenture, if any.

(m) Lock-Up and No-Buy Agreements. Until such time as all of the restrictive legends required to be placed on the Securities pursuant to the Indenture have been removed or are removable, neither the Company nor any of its Affiliates will purchase any of the Securities, other than, in the case of the Company, Securities which upon such purchase are canceled and not reissued. The Company will not release any of its executive officers or directors from any Lock-up Agreements currently existing or hereafter effected without the prior written consent of FleetBoston Robertson Stephens. In addition the Company will use its best efforts to cause each executive officer and director of the Company and each other "affiliate" (as defined under Rule 144 of the Securities Act) of the Company to agree in writing not to purchase any of the Securities, other than Securities that have been or are being sold in a transaction registered under the Securities Act or in any other transaction as a result of which such person receives Securities without any restrictive legends, directly or indirectly, until after two years following the later to occur of the First Closing Date or the Second Closing Date, if any. In connection with the foregoing, the Company will use its best efforts to secure the agreement of any person who becomes an "affiliate" (as defined under Rule 144 of the Securities Act) of the Company after the effective date of this Agreement that they will not purchase any of the Securities other than Securities that have been or are being sold in a transaction registered under the Securities Act or in any other transaction as a result of which such person receives Securities without restrictive legends, until after two years following the later to occur of the First Closing Date or the Second Closing Date, if any, which steps shall include

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securing a written agreement that they will not purchase any of the Securities other than Securities that have been or are being registered under the Securities Act or in any other transaction as a result of which such person receives Securities without any restrictive legends until after two years following the later to occur of the First Closing Date or the Second Closing Date, the imposition of appropriate restrictive legends and the removal of any such Securities from DTC and trading in The Portal Market.

(n) Removal of Legends. In connection with any disposition of Securities or Underlying Securities pursuant to a transaction made in compliance with applicable state securities laws and (i) satisfying the requirements of Rule 144(k) under the Securities Act, (ii) made pursuant to an effective registration statement under the Securities Act or (iii) disposed of in any other transaction that does not require registration under the Securities Act, the Company will reissue certificates evidencing such Securities or Underlying Securities without the legends referred to in Section 3(k) or 3(l) hereof (provided, in the case of a transaction specified in clause (iii) above, that the legal opinion referred to therein supports the removal of such legends).

(o) DTC Compliance. The Company agrees to comply with all agreements set forth in the representation letters of the Company to DTC relating to the approval of the Securities by DTC for "book-entry" transfer.

(p) Notice of Subsequent Events. If at any time during the ninety (90) day period after the date hereof, any rumor, publication or event relating to or affecting the Company shall occur as a result of which in your opinion the market price of the Company Stock has been or is likely to be materially affected (regardless of whether such rumor, publication or event necessitates a supplement to or amendment of the Final Circular), the Company will, after written notice from you advising the Company to the effect set forth above, forthwith prepare, consult with you concerning the substance of and disseminate a press release or other public statement, reasonably satisfactory to you, responding to or commenting on such rumor, publication or event.

Section 4. Conditions of Obligations of the Initial Purchasers. The obligations of the Initial Purchasers to purchase and pay for the Firm Securities and Option Securities as provided herein, shall be subject to the accuracy, as of the date hereof and the First Closing Date or the Second Closing Date, as the case may be, of the representations and warranties of the Company herein, to the performance by the Company of its obligations hereunder and to each of the following additional conditions:

(a) No Material Adverse Change. Subsequent to the execution and delivery of this Agreement and prior to the First Closing Date or the Second Closing Date, as the case may be:

(i) there shall not have been any Material Adverse Change in the condition (financial or otherwise), earnings, operations, business or business prospects of the Company and its subsidiaries, considered as one enterprise, from that set forth in the Final Circular

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that, in your sole judgment, is material and adverse and that makes it, in your sole judgment, impracticable or inadvisable to market the Firm Securities or Option Securities as contemplated in the Final Circular.

(ii) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the Company's securities by any "nationally recognized statistical rating organization," as such term is defined for purposes of Rule 436(g)(2) under the Securities Act.

(b) Corporate Proceedings. All corporate proceedings and other legal matters in connection with this Agreement, the Registration Rights Agreement, the form of Preliminary Circular, the Indenture and the Final Circular, and the authorization, issue, sale and delivery of the Firm Securities and the Option Securities shall have been reasonably satisfactory to Initial Purchasers' counsel and such counsel shall have been furnished with such papers and information as they may reasonably have requested to enable them to pass upon the matters referred to in this Section.

(c) Opinion of Counsel for the Company. You shall have received on the First Closing Date or on the Second Closing Date, as the case may be, an opinion of Brobeck, Phleger & Harrison LLP, counsel for the Company substantially in the form of Exhibit B attached hereto (provided that certain

opinions may be rendered by another counsel as specified Exhibit B), dated the

First Closing Date or the Second Closing Date, as the case may be, addressed to the Initial Purchasers and with reproduced copies or signed counterparts thereof for each of the Initial Purchasers.

Counsel rendering the opinion contained in Exhibit B may limit

the opinion to the laws of the United States, the General Corporation Law of the State of Delaware and the laws of the States of California and New York, and may rely as to questions of fact upon representations or certificates of officers of the Company and of government officials. Copies of any opinion, representation or certificate so relied upon shall be delivered to you, as Initial Purchasers of the Initial Purchasers, and to the Initial Purchasers' counsel.

(d) Opinion of Counsel for the Initial Purchasers. You shall have received on the First Closing Date or on the Second Closing Date, as the case may be, an opinion of Wilson Sonsini Goodrich & Rosati, Professional

Corporation, substantially in form and substance satisfactory to you. The Company shall have furnished to such counsel such documents as they may have requested for the purpose of enabling them to pass upon such matters.

(e) Accountants' Comfort Letter. You shall have received on the First Closing Date or on the Second Closing Date, as the case may be, letters from Deloitte & Touche LLP and from Arthur Andersen LLP, each addressed to the Initial Purchasers, dated the First Closing Date or the Second Closing Date, as the case may be, confirming that they are independent certified

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public accountants with respect to the Company under Rule 101 of the AICPA's Code of Professional Conduct and its interpretations and rulings and based upon the procedures described in such letter delivered to you concurrently with the execution of this Agreement (herein, each called the "Original Letter"), but carried out to a date not more than four (4) business days prior to the First Closing Date or the Second Closing Date, as the case may be, (i) confirming, to the extent true, that the statements and conclusions set forth in such firm's Original Letter are accurate as of the First Closing Date or the Second Closing Date, as the case may be; and (ii) setting forth any revisions and additions to the statements and conclusions set forth in such firm's Original Letter which are necessary to reflect any changes in the facts described in such firm's Original Letter since the date of such letter, or to reflect the availability of more recent financial statements, data or information. The letter shall not disclose any change in the condition (financial or otherwise), earnings, operations, business or business prospects of the Company and its subsidiaries considered as one enterprise from that set forth in the Final Circular which, in your sole judgment, is material and adverse and makes it impracticable or inadvisable to proceed with the sale of the Firm Securities and the Option Securities as contemplated by the Circular. The Original Letter from Deloitte & Touche LLP, shall be addressed to or for the use of the Initial Purchasers in form and substance reasonably satisfactory to the Initial Purchasers and shall (i) represent, to the extent true, that they are independent certified public accountants with respect to the Company under Rule 101 of the AICPA's Code of Professional Conduct and its interpretations and rulings, and (ii) set forth their opinion with respect to their examination of the consolidated balance sheets of the Company as of September 30, 1999 and 1998 and related consolidated statements of operations, shareowners' equity, and cash flows for each of the three years in the period ended September 30, 1999, and address other matters agreed upon by Deloitte & Touche LLP and you. In addition, you shall have received from Deloitte & Touche LLP a letter addressed to the Company and made available to you for the use of the Initial Purchasers statement that their review of the Company's system of internal accounting controls, to the extent they deemed necessary in establishing the scope of their audit of the Company's consolidated financial statements as of September 30, 1999, did not disclose any weaknesses in internal controls that they considered to be material weaknesses. The Original Letter from Arthur Andersen LLP, shall be addressed to or for the use of the Initial Purchasers in form and substance reasonably satisfactory to the Initial Purchasers and shall (i) represent, to the extent true, that they are independent certified public accountants with respect to Telebank under Rule 101 of the AICPA's Code of Professional Conduct and its interpretations and rulings, (ii) set forth their opinion with respect to their examination of the consolidated statement of financial condition of Telebank as of December 31, 1998 and related consolidated statements of operations, stockholders' equity, and cash flows for the twelve (12) months ended December 31, 1998, (iii) state that Arthur Andersen LLP has performed the procedures set out in Statement on Auditing Standards No. 71 ("SAS 71") for a review of interim financial information for each of the quarters in the 3-quarter periods ended September 30, 1999 (the "Quarterly Financial Statements"), (iv) state that in the course of such review, nothing came to their attention that leads them to believe that any material modifications need to be made to any of the Quarterly Financial Statements in order for them to be in compliance with generally accepted accounting principles consistently applied across the periods presented, and address other matters agreed upon by Arthur Andersen LLP and you. In addition, you shall have

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received from Arthur Andersen LLP a letter addressed to Telebank and made available to you for the use of the Initial Purchasers statement that their review of Telebank's system of internal accounting controls, to the extent they deemed necessary in establishing the scope of their examination of the Company's

consolidated financial statements as of December 31, 1998, did not disclose any weaknesses in internal controls that they considered to be material weaknesses.

(f) Officers' Certificate. You shall have received on the First Closing Date and on the Second Closing Date, as the case may be, a certificate of the Company, dated the First Closing Date or the Second Closing Date, as the case may be, signed by the Chief Executive Officer and President of the Company, to the effect that, and you shall be satisfied that:

(i) The representations and warranties of the Company in this Agreement are true and correct in all material respects, as if made on and as of the First Closing Date or the Second Closing Date, as the case may be, and the Company has complied in all material respects with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the First Closing Date or the Second Closing Date, as the case may be;

(ii) As of the date of this Agreement and at all times subsequent thereto up to the delivery of such certificate, the Final Circular did not and does not include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which made, not misleading, and, since the date of this Agreement, there has occurred no event necessary to be set forth in an amended or supplemented Final Circular in order to make any statements in such Final Circular, in light of the circumstances under which made, not misleading in any material respect, which has not been so set forth; and

(iii) Subsequent to the respective dates as of which information is given in each Circular, there has not been (a) any material adverse change in the condition (financial or otherwise), earnings, operations, business or business prospects of the Company and its subsidiaries considered as one enterprise, (b) any transaction that is material to the Company and its subsidiaries considered as one enterprise, except transactions entered into in the ordinary course of business, (c) any obligation, direct or contingent, incurred by the Company or any of its subsidiaries that is material to the Company and its subsidiaries considered as one enterprise, except obligations incurred in the ordinary course of business, (d) any change in the capital stock or outstanding indebtedness of the Company or any of its subsidiaries which is material to the Company and its subsidiaries considered as one enterprise, except for the issuance of the Securities pursuant hereto, (e) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company or any of its subsidiaries, or (f) any loss or damage (whether or not insured) to the property of the Company or any of its subsidiaries which has been sustained or will have been sustained which has a material adverse effect on the condition (financial or otherwise), earnings, operations, business or business prospects of the Company and its subsidiaries considered as one enterprise.

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(g) Registration Rights Agreement and Indenture. The Registration Rights Agreement and the Indenture shall have been executed and delivered by all parties thereto other than the Initial Purchasers;

(h) Lock-up Agreement from Certain Stockholders. The Company shall have obtained and delivered to you an agreement substantially in the form of Exhibit A attached hereto from each executive officer and director of the

Company and each beneficial owner of five or more percent of the outstanding issued share capital of the Company;

(i) Compliance with Indebtedness Covenants. You shall have received on the First Closing Date and Second Closing Date, as the case may be, a certificate of the Company, dated the Closing Date or Second Closing Date, as the case may be, signed on behalf of the Company by either the Chief Executive Officer, the President or the Chief Financial Officer of the Company, to the effect that, and you shall be satisfied that:

(i) The only indentures, mortgages, deeds of trust, loan agreements, bonds, debentures, note agreements or other evidences of which any indebtedness to which the Company or any of its subsidiaries is a party or by of them are bound are set forth and delivered to the Initial Purchasers and attached to this Agreement as Exhibit C (true, correct and complete copies

of which have been delivered to counsel for the Initial Purchasers).

(ii) As of the First Closing Date and any Second Closing Date, as the case may be, the Company is not in breach of, or default under the provisions of the agreements and instruments referred to in paragraph (i) above, and the issuance and sale by the Company of the Firm Securities and Option Securities would not result in a breach of, or constitute a default under, the provisions of the agreements and instruments referred to in paragraph (i) above including, without limitation, with respect to the financial covenants in such agreements and instruments. The Company will attach as an exhibit to such certificate the computations demonstrating the compliance of such financial covenants. Such computations have been made in conformity with the provisions of such agreements and instruments, and the terms used in such agreements and instruments, and the terms used in such computations have the meanings assigned thereto in such agreements and instruments.

(iii) Attached as an exhibit to such certificate are copies of any required waivers or amendments or consents in respect of the agreements referred to above.

(iv) To such officers' knowledge (after having reviewed the provisions of the agreements and instruments referred to in paragraph (i) above and having made inquiries of those officers and employees of the Company responsible for administering them), as of the date of this Agreement, and as of the First Closing Date or any Second Closing Date, as the case may be, the Company is not in default under, or in breach of, any of the agreements and instruments referred to in paragraph (i) above, nor does any condition exist which, with the giving of notice or passage of time, would constitute such a default or breach.

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(j) Additional Documents. On or before each of the First Closing Date and the Second Closing Date, as the case may be, the Initial Purchasers and counsel for the Initial Purchasers shall have received such information, documents and opinions as they may reasonably require for the purposes of enabling them to pass upon the issuance and sale of the Securities as contemplated herein, or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the conditions or agreements, herein contained.

If any condition specified in this Section 4 is not satisfied when and as required to be satisfied, this Agreement may be terminated by the Initial Purchasers by notice to the Company at any time on or prior to the First Closing Date and, with respect to the Option Securities, at any time prior to the Second Closing Date, which termination shall be without liability on the part of any party to any other party, except that Section 5 (Payment of Expenses), Section 6 (Reimbursement of Initial Purchasers' Expenses), Section 7 (Indemnification and Contribution) and Section 10 (Representations and Indemnities to Survive Delivery) shall at all times be effective and shall survive such termination.

Section 5. Payment of Expenses. The Company agrees to pay all costs, fees and expenses incurred in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including without limitation (i) all expenses incident to the issuance and delivery of the Firm Securities and the Option Securities (including all printing and engraving costs), (ii) all fees and expenses of the registrar and transfer agent, (iii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of the Securities to the Initial Purchasers, (iv) all fees and expenses of the Company's counsel, independent public or certified public accountants and other advisors, (v) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Final Circular (including financial statements, exhibits, schedules, consents and certificates of experts) and each Preliminary Circular, and all amendments and supplements thereto, and this Agreement, the Indenture and the Registration Rights Agreement, (vi) all filing fees, attorneys' fees and expenses incurred by the Company or the Initial Purchasers in connection with qualifying (or obtaining exemptions from the qualification of) all or any part of the Securities for offer and sale under the state securities or blue sky laws or the provincial securities laws of Canada or any other country, and, if requested by the Initial Purchasers, preparing and printing a "Blue Sky Survey," an "International Blue Sky Survey" or other memorandum, and any supplements thereto, advising the Initial Purchasers of such qualifications, registrations and exemptions, (vii) the fees and expenses of the Trustee and Trustee's counsel

in connection with the Indenture and the Securities, (viii) the fees and expenses, if any, incurred in connection with the admission of such Securities for trading in The Portal Market and for clearance and settlement through DTC, Euroclear, Cedel, if applicable, and listing of the Underlying Securities on the Nasdaq National Market, and (ix) all costs and expenses incident to the preparation and undertaking of "road show" preparations to be made to prospective investors. Except as provided in this Section 5, Section 6, and Section 7 hereof, the Initial Purchasers shall pay their own expenses, including the fees and disbursements of their counsel.

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Section 6. Reimbursement of Initial Purchasers' Expenses. If this Agreement is terminated by the Initial Purchasers pursuant to Section 4, Section 7 or Section 9, or if the sale to the Initial Purchasers of the Securities on the First Closing Date is not consummated because of any refusal, inability or failure on the part of the Company to perform any agreement herein or to comply with any provision hereof, the Company agrees to reimburse the Initial Purchasers and the other Initial Purchasers (or such Initial Purchasers as have terminated this Agreement with respect to themselves), severally, upon demand for all out-of-pocket expenses that shall have been reasonably incurred by the Initial Purchasers and the Initial Purchasers in connection with the proposed purchase and the offering and sale of the Securities, including but not limited to reasonable fees and disbursements of counsel, printing expenses, travel expenses, postage, facsimile and telephone charges.

Section 7. Indemnification and Contribution.

(a) Indemnification of the Initial Purchaser.

(i) The Company agrees to indemnify and hold harmless each Initial Purchaser, its officers and employees, and each person, if any, who controls any Initial Purchaser within the meaning of the Securities Act and the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which such Initial Purchaser or such controlling person may become subject, under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of the Company, which consent shall not be unreasonably withheld), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based (i) upon any untrue statement or alleged untrue statement of a material fact contained in any Circular (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; or (ii) in whole or in part upon any inaccuracy in the representations and warranties of the Company contained herein; or (iii) in whole or in part upon any failure of the Company to perform its obligations hereunder or under law; or (iv) any act or failure to act or any alleged act or failure to act by any Initial Purchaser in connection with, or relating in any manner to, the Securities or the offering contemplated hereby, and which is included as part of or referred to in any loss, claim, damage, liability or action arising out of or based upon any matter covered by clause (i), (ii) or (iii) above, provided that the Company shall not be liable under this clause (iv) to the extent that a court of competent jurisdiction shall have determined by a final judgment that such loss, claim, damage, liability or action resulted directly from any such acts or failures to act undertaken or omitted to be taken by such Initial Purchaser through its bad faith or willful misconduct; and to reimburse each Initial Purchaser and each such controlling person for any and all expenses (including the reasonable fees and disbursements of counsel chosen by FleetBoston Robertson Stephens Inc.) as such expenses are reasonably incurred by such Initial Purchaser or such controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity

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agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by the Initial Purchasers expressly for use in any Circular (or any amendment or supplement thereto); and provided, further, that with respect to

the Preliminary Circular, the foregoing indemnity agreement shall not inure to the benefit of any Initial Purchaser from whom the person asserting any loss, claim, damage, liability or expense purchased Securities, or any person controlling such Initial Purchaser, if copies of the Final Circular were timely delivered to the Initial Purchaser pursuant to Section 2 and a copy of the Final Circular (as then amended or supplemented if the Company shall have furnished any amendments or supplements thereto) was not sent or given by or on behalf of such Initial Purchaser to such person, if required by law so to have been delivered, at or prior to the written confirmation of the sale of the Securities to such person, and if the Final Circular (as so amended or supplemented) would have cured the defect giving rise to such loss, claim, damage, liability or expense. The indemnity agreement set forth in this Section 7(a) shall be in addition to any liabilities that the Company may otherwise have.

(b) Indemnification of the Company, its Directors and Officers. Each Initial Purchaser agrees, severally and not jointly, to indemnify and hold harmless the Company, each of its directors, each of its officers and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act, against any loss, claim, damage, liability or expense, as incurred, to which the Company, or any such director, officer or controlling person may become subject, under the Securities Act, the Exchange Act, or other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Initial Purchaser), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon any untrue or alleged untrue statement of a material fact contained in any Circular (or any amendment or supplement thereto), or arises out of or is based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Final Circular (or any amendment or supplement thereto), in reliance upon and in conformity with written information furnished to the Company by the Initial Purchasers expressly for use therein; and to reimburse the Company, or any such director, officer or controlling person for any legal and other expense reasonably incurred by the Company, or any such director, officer or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The indemnity agreement set forth in this Section 7(b) shall be in addition to any liabilities that each Initial Purchaser may otherwise have.

(c) Information Provided by the Initial Purchasers. The Company hereby acknowledges that the only information that the Initial Purchasers have furnished to the Company expressly for use in any Circular (or any amendment or supplement thereto) are the statements set forth in the last sentence of the last paragraph on the front cover page of each Circular, the table in

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the first paragraph under the caption "Plan of Distribution" in each Circular, the third paragraph under the caption "Plan of Distribution" in each Circular and the paragraph under the caption "Plan of Distribution -- Stabilization"; and the Initial Purchasers confirm that such statements are correct.

(d) Notifications and Other Indemnification Procedures. Promptly after receipt by an indemnified party under this Section 7 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 7, notify the indemnifying party in writing of the commencement thereof, but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party for contribution or otherwise than under the indemnity agreement contained in this Section 7 or to the extent it is not prejudiced as a proximate result of such failure. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably

concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 7 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (together with local counsel), approved by the indemnifying party (FleetBoston Robertson Stephens Inc. in the case of Section 7(b) and Section 8), representing the indemnified parties who are parties to such action), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the Securities Action, or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party.

(e) Settlements. The indemnifying party under this Section 7 shall not be liable for any settlement of any proceeding effected without its prior written consent, which consent shall not be unreasonably withheld, but if settled with such consent or if there be a final judgment for

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the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by Section 7(d) hereof, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its prior written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent includes (i) an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(f) Contribution. If the indemnification provided for in this Section 7 is unavailable to or insufficient to hold harmless an indemnified party under Section 7(a) or (b) above in respect of any losses, claims, damages or liabilities (or actions or proceedings in respect thereof) then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Initial Purchasers on the other from the offering of the Securities. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Initial Purchasers on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions or proceedings in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Initial Purchaser on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bears to the total underwriting discounts and commissions received by the Initial Purchasers, in each case as

set forth in the table on the cover page of the Final Circular. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Initial Purchasers on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and Initial Purchasers agree that it would not be just and equitable if contributions pursuant to this Section 7(f) were determined by pro rata allocation (even if the Initial Purchasers were treated as one entity for such purpose) or by any other method of

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allocation which does not take account of the equitable considerations referred to above in this Section 7(f). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to above in this Section 7(f) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (f), (i) no Initial Purchaser shall be required to contribute any amount in excess of the underwriting discounts and commissions applicable to the Shares purchased by such Initial Purchaser and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Initial Purchasers' obligations in this Section 7(f) to contribute are several in proportion to their respective underwriting obligations and not joint.

(g) Timing of Any Payments of Indemnification. Any losses, claims, damages, liabilities or expenses for which an indemnified party is entitled to indemnification or contribution under this Section 7 shall be paid by the indemnifying party to the indemnified party as such losses, claims, damages, liabilities or expenses are incurred, but in all cases, no later than thirty (30) days of invoice to the indemnifying party.

(h) Survival. The indemnity and contribution agreements contained in this Section 7 and the representation and warranties of the Company set forth in this Agreement shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any Initial Purchaser or any person controlling any Initial Purchaser, the Company, its directors or officers or any persons controlling the Company, (ii) acceptance of any Notes and payment therefor hereunder, and (iii) any termination of this Agreement. A successor to any Initial Purchaser, or to the Company, its directors or officers, or any person controlling the Company, shall be entitled to the benefits of the indemnity, contribution and reimbursement agreements contained in this Section 7.

(i) Acknowledgements of Parties. The parties to this Agreement hereby acknowledge that they are sophisticated business persons who were represented by counsel during the negotiations regarding the provisions hereof including, without limitation, the provisions of this Section 7, and are fully informed regarding said provisions. They further acknowledge that the provisions of this Section 7 fairly allocate the risks in light of the ability of the parties to investigate the Company and its business in order to assure that adequate disclosure is made in the Final Circular.

Section 8. Default of One or More of the Several Initial Purchasers. If, on the First Closing Date or the Second Closing Date, as the case may be, any one or more of the several Initial Purchasers shall fail or refuse to purchase Securities that it or they have agreed to purchase hereunder on such date, and the aggregate principal amount of Firm Securities, or Option Securities, as the case may be which such defaulting Initial Purchaser or Initial Purchasers agreed but failed or refused to purchase does not exceed 10% of the aggregate principal amount of the Securities to be purchased on such date, the other Initial Purchasers shall be obligated, severally, in the proportions that the

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principal amount of Firm Securities set forth opposite their respective names on Schedule A bears to the principal amount of Firm Securities set forth opposite

the names of all such non-defaulting Initial Purchasers, or in such other proportions as may be specified by the Initial Purchasers with the consent of the non-defaulting Initial Purchasers, to purchase the Securities which such defaulting Initial Purchaser or Initial Purchasers agreed but failed or refused to purchase on such date. If, on the First Closing Date or the Second Closing Date, as the case may be, any one or more of the Initial Purchasers shall fail or refuse to purchase Securities and the aggregate principal amount of Securities with respect to which such default occurs exceeds 10% of the aggregate principal amount of Securities to be purchased on such date, and arrangements satisfactory to the Initial Purchasers and the Company for the purchase of such Securities are not made within 48 hours after such default, this Agreement shall terminate without liability of any party to any other party except that the provisions of Section 4, and Section 7 shall at all times be effective and shall survive such termination. In any such case either the Initial Purchasers or the Company shall have the right to postpone the First Closing Date or the Second Closing Date, as the case may be, but in no event for longer than seven days in order that the required changes, if any, to the Final Circular or any other documents or arrangements may be effected.

As used in this Agreement, the term "Initial Purchaser" shall be deemed to include any person substituted for a defaulting Initial Purchaser under this Section 8. Any action taken under this Section 8 shall not relieve any defaulting Initial Purchaser from liability in respect of any default of such Initial Purchaser under this Agreement.

Section 9. Termination of this Agreement. Prior to the First Closing Date, this Agreement may be terminated by the Initial Purchasers by notice given to the Company if at any time (i) trading or quotation in any of the Company's securities shall have been suspended or limited by the Commission or by the Nasdaq Stock Market or trading in securities generally on either the Nasdaq Stock Market or the New York Stock Exchange shall have been suspended or limited, or minimum or maximum prices shall have been generally established on any of such stock exchanges by the Commission or the National Association of Securities Dealers, LLC; (ii) a general banking moratorium shall have been declared by any of federal, New York, Delaware or California authorities; (iii) there shall have occurred any outbreak or escalation of national or international hostilities or any crisis or calamity, or any change in the United States or international financial markets, or any substantial change or development involving a prospective change in United States' or international political, financial or economic conditions, as in the judgment of the Initial Purchasers is material and adverse and makes it impracticable or inadvisable to market the Securities in the manner and on the terms described in the Final Circular or to enforce contracts for the sale of securities; (iv) in the judgment of the Initial Purchasers there shall have occurred any Material Adverse Change; or (v) the Company shall have sustained a loss by strike, fire, flood, earthquake, accident or other calamity of such character as in the judgment of the Initial Purchasers may interfere materially with the conduct of the business and operations of the Company regardless of whether or not such loss shall have been insured. Any termination pursuant to this Section 9 shall be without liability on the part of (a) the Company to any Initial Purchaser, except that the Company shall be

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obligated to reimburse the expenses of the Initial Purchasers and the Initial Purchasers pursuant to Sections 5 and 6 hereof, (b) any Initial Purchaser to the Company, or (c) of any party hereto to any other party except that the provisions of Section 7 shall at all times be effective and shall survive such termination.

Section 10. Representations and Indemnities to Survive Delivery. The respective indemnities, agreements, representations, warranties and other statements of the Company, of its officers and of the several Initial Purchasers set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Initial Purchaser or the Company or any of its or their partners, officers or directors or any controlling person, as the case may be, and will survive delivery of and payment for the Securities sold hereunder and any termination of this Agreement.

Section 11. Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered or telecopied and confirmed to the parties hereto as follows:

If to the Initial Purchasers:

FleetBoston Robertson Stephens Inc.
555 California Street
San Francisco, California 94104
Facsimile: (415) 676-2696
Attention: General Counsel

If to the Company:

E*TRADE Group, Inc.
4500 Bohannon Drive
Menlo Park, California 94025
Facsimile: (650) 331-6000
Attention: Chief Financial Officer

With a copy to:

Brobeck, Phleger & Harrison LLP
Two Embarcadero Place
2200 Geng Road
Palo Alto, California 94303
Facsimile: (650) 496-2885
Attn: Curtis L. Mo, Esq.

Any party hereto may change the address for receipt of communications by giving written notice to the others.

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Section 12. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto, including any substitute Initial Purchasers pursuant to Section 9 hereof, and to the benefit of the employees, officers and directors and controlling persons referred to in Section 7, and to their respective successors, and no other person will have any right or obligation hereunder. The term "successors" shall not include any purchaser of the Securities as such from any of the Initial Purchasers merely by reason of such purchase.

Section 13. Partial Unenforceability. The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

Section 14. Governing Law Provisions.

(a) Governing Law. This agreement shall be governed by and construed in accordance with the internal laws of the state of New York applicable to agreements made and to be performed in such state.

(b) Consent to Jurisdiction. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby ("Related Proceedings") may be instituted in the federal courts of the United States of America located in the City and County of San Francisco or the courts of the State of California in each case located in the City and County of San Francisco (collectively, the "Specified Courts"), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court (a "Related Judgment"), as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party's address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum. Each party not located in the United States irrevocably appoints CT Corporation System, which currently maintains a San Francisco office at 49 Stevenson Street, San Francisco, California 94105, United States of America, as its agent to receive service of process or other legal summons for purposes of any such suit, action

or proceeding that may be instituted in any state or federal court in the City and County of San Francisco.

(c) Waiver of Immunity. With respect to any Related Proceeding, each party irrevocably waives, to the fullest extent permitted by applicable law, all immunity (whether on the basis of sovereignty or otherwise) from jurisdiction, service of process, attachment (both before and after judgment) and execution to which it might otherwise be entitled in the Specified Courts, and with respect to any Related Judgment, each party waives any such immunity in the Specified

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Courts or any other court of competent jurisdiction, and will not raise or claim or cause to be pleaded any such immunity at or in respect of any such Related Proceeding or Related Judgment, including, without limitation, any immunity pursuant to the United States Foreign Sovereign Immunities Act of 1976, as amended.

Section 15. General Provisions. This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

[The remainder of this page has been intentionally left blank.]

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If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,

E*TRADE GROUP, INC.

By: _____
Title:

The foregoing Purchase Agreement is hereby confirmed and accepted by the Initial Purchasers as of the date first above written.

FLEETBOSTON ROBERTSON STEPHENS INC.
HAMBRECHT & QUIST LLC
GOLDMAN, SACHS & CO.

By FLEETBOSTON ROBERTSON STEPHENS INC.

By: _____
Authorized Signatory

SCHEDULE A

Initial Purchasers	Aggregate Principal Amount of Firm Securities to be Purchased
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FLEETBOSTON ROBERTSON STEPHENS INC.....	\$175,000,000
HAMBRECHT & QUIST LLC.....	175,000,000
GOLDMAN, SACHS & CO.....	150,000,000

Total.....

\$500,000,000

EXHIBIT A

Lock-Up and No Buy Agreement

FleetBoston Robertson Stephens Inc.
Hambrecht & Quist LLC
c/o FleetBoston Robertson Stephens Inc.
555 California Street, Suite 2600
San Francisco, California 94104

RE: E*TRADE Group, Inc. (the "Company")

Ladies & Gentlemen:

The undersigned is an owner of record or beneficially of certain shares of Common Stock of the Company ("Common Stock") or securities convertible into or exchangeable or exercisable for Common Stock. The Company proposes to carry out an offering (the "Offering") of 6% Convertible Subordinated Notes due 2007 (the "Notes") for which you are the Initial Purchasers. The undersigned recognizes that the Offering will be of benefit to the undersigned and will benefit the Company by, among other things, raising additional capital for its operations. The undersigned acknowledges that the Initial Purchasers are relying on the representations and agreements of the undersigned contained in this letter in carrying out the Offering and in entering into purchase arrangements with the Company with respect to the Offering.

In consideration of the foregoing, the undersigned hereby agrees that the undersigned will not offer to sell, contract to sell, or otherwise sell, dispose of, loan, pledge or grant any rights with respect to (collectively, a "Disposition") any shares of Common Stock, any options or warrants to purchase any shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock (collectively, "Securities") now owned or hereafter acquired directly by such person or with respect to which such person has or hereafter acquires the power of disposition, otherwise than (i) as a bona fide gift or gifts, provided the donee or donees thereof agree in writing to be bound by this restriction, (ii) as a distribution to partners or shareholders of such person, provided that the distributees thereof agree in writing to be bound by the terms of this restriction, (iii) with respect to dispositions of Securities acquired on the open market or (iv) with the prior written consent of FleetBoston Robertson Stephens Inc., for a period commencing on the date hereof and continuing to a date 90 days after the date of the Final Circular (the "Lock-up Period"). The foregoing restriction has been expressly agreed to preclude the holder of the Securities from engaging in any hedging or other transaction which is designed to or reasonably expected to lead to or result in a Disposition of Securities during the Lock-up Period, even if such Securities would be disposed of by someone other than such holder. Such prohibited hedging or other transactions would include, without limitation, any short sale (whether or not against the box) or any purchase, sale or grant of any right (including, without limitation, any put or call option) with respect to any Securities or with

respect to any security (other than a broad-based market basket or index) that included, relates to or derives any significant part of its value from Securities. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of shares of Common Stock or Securities held by the undersigned except in compliance with the foregoing restrictions.

In addition, the undersigned hereby agrees that neither the undersigned nor any person related or associated with the undersigned included in the definition of an "affiliate" under Rule 144 of the rules and regulations promulgated under the Securities Act of 1933, as amended (the "Act") will purchase any of the Notes or any security issued upon the conversion of the Notes, either directly or indirectly from any seller, other than any such securities that have been or are being sold in (i) a transaction registered under the Act, or (ii) any other transaction as a result of which the undersigned receives securities without any restrictive legends.

This agreement is irrevocable and will be binding on the undersigned and the respective successors, heirs, personal representatives, and assigns of the undersigned.

Dated: _____

Printed Name of Holder

By: _____
Signature

Printed Name of Person Signing
(and indicate capacity of person
signing if signing as custodian,
trustee, or on behalf of an entity)

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EXHIBIT B

Matters to be Covered in the Opinion of Company Counsel

(i) The Company and each Significant Subsidiary (as that term is defined in Regulation S-X of the Securities Act) of the Company (a "Significant Subsidiary") has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation;

(ii) The Company and each Significant Subsidiary has the corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Final Circular;

(iii) The Company and each Significant Subsidiary is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction listed on Annex A to such counsel's opinion letter. To such counsel's knowledge, the Company does not own or control, directly or indirectly, any Significant Subsidiary other than Telebank Financial Corporation and E*TRADE Securities, Inc.;

(iv) To such counsel's knowledge, the authorized, issued and outstanding capital stock of the Company is as set forth in the Final Circular under the caption "Capitalization" as of the dates stated therein;

(v) All issued and outstanding shares of capital stock of each Significant Subsidiary of the Company have been duly authorized and validly issued and are fully paid and nonassessable, and, to such counsel's knowledge, have not been issued in violation of or subject to any preemptive right, co-sale right, registration right, right of first refusal or other similar right and are owned by the Company free and clear of any pledge, lien, security interest, encumbrance, claim or equitable interest;

(vi) The certificates for the Securities as delivered to the Initial Purchaser and the certificates representing the Underlying Securities to be delivered upon the conversion of the Securities are in due and proper form;

(vii) The Securities have been duly authorized and, when executed and authenticated in accordance with the provisions of the Indenture and delivered and paid for in accordance with the terms of this Agreement, will (X) constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally or by general equitable principles; and (Y) be entitled to the benefits of the Indenture;

(viii) All of the shares of Underlying Securities initially issuable upon conversion of the Securities have been duly authorized and reserved for issuance upon conversion of the Securities

and, when issued in accordance with the terms of the Indenture, will be validly issued, fully paid and non-assessable and will not have been issued in violation of any preemptive right, co-sale right, registration right, right of first refusal or other similar right under the certificate of incorporation or bylaws

of the Company or any of the documents listed as exhibits to the Company's Annual Report on Form 10-K for the year ended September 30, 1999, included therein pursuant to the requirements of clauses (2), (4), (9) or (10) of Item 601(b) of Regulation S-K, or any of the documents in effect on the date hereof which are required to be listed as exhibits to the Company's Quarterly Reports on Form 10-Q which will be filed after the date hereof pursuant to the requirements of clauses (2), (4), (9) or (10) of Item 601(b) of Regulation S-K (each such document, a "Material Agreement");

(ix) The Company has the corporate power and authority to enter into this Agreement, the Indenture, the Registration Rights Agreement and the Securities, and to issue, sell and deliver to the Initial Purchasers the Securities to be issued and sold by it hereunder and to perform its obligations under this Agreement, the Indenture, the Registration Rights Agreement and the Securities;

(x) This Agreement, the Indenture and the Registration Rights Agreement have been duly authorized by all necessary corporate action on the part of the Company and have been duly executed and delivered by the Company and, assuming due authorization, execution and delivery by you and the Trustee, as applicable, each is a valid and binding agreement of the Company, enforceable against the Company in accordance with its respective terms, except, in the case of this Agreement and the Registration Rights Agreement, insofar as rights to indemnification hereunder may be limited by applicable law and except with respect to all such agreements as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally or by general equitable principles;

(xi) The information in the Final Circular under the captions "Description of Notes," "Description of Capital Stock," "Material United States Federal Income Tax Considerations," "Plan of Distribution," "Transfer Restrictions," "Risk Factors -- We may be fined or forced out of business if we do not maintain the net capital levels," "Risk Factors -- Due to our recent acquisition of Telebank, we may be restricted in expanding our activities, and our inexperience with being regulated as a savings and loan holding company could negatively affect both us and Telebank," "Risk Factors -- The notes are unsecured and, in the event of our insolvency, liquidation or similar event, we must pay in full all of our senior indebtedness before we can make any payments on the notes," "Risk Factors -- We may incur significant costs to avoid investment company status and may suffer adverse consequences if we are deemed to be an investment company," and "Legal and Administrative Proceedings," to the extent that such statements constitute a summary of the legal matters, documents and proceedings referred to therein, have been reviewed by such counsel and is a fair summary of such matters and conclusions (although such counsel does not opine as to the completeness of the information contained in such sections with respect to the subject matters thereof);

(xii) The descriptions in the Final Circular of the certificate of incorporation and bylaws of the Company and of statutes insofar as such descriptions constitute summaries of such documents or

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statutes are accurate and fairly present in all material respects the information required to be presented by the Security Act;

(xiii) To such counsel's knowledge, there are no agreements, contracts, leases or documents to which the Company is a party of a character required to be described or referred to in the Final Circular or to be filed as an exhibit to the Company's most recent Annual Report on Form 10-K which are not described or referred to therein or filed as required;

(xiv) The execution and delivery by the Company of, and performance of its obligations under, this Agreement, the Indenture, the Registration Rights Agreement and the consummation of the transactions provided for herein or therein (other than performance of the Company's indemnification and contribution obligations hereunder and under the Registration Rights Agreement, concerning which no opinion need be expressed) will not (a) result in any violation of the Company's certificate of incorporation or bylaws or (b) result in a breach or violation of any of the terms and provisions of, or constitute a default under, any bond, debenture, note or other evidence of indebtedness, or any lease, contract, indenture, mortgage, deed of trust, loan agreement, joint venture or other agreement or instrument which the Company is a party or by which its properties are bound and which is a Material Agreement, or any applicable United States federal or California state statute, rule or regulation

known to such counsel or, to such counsel's knowledge (without conducting any docket search or similar inquiry), any order, writ or decree of any court, government or governmental agency or body having jurisdiction over the Company or any of its subsidiaries, or over any of their properties or operations;

(xv) No consent, approval, authorization or order of or qualification with any court, government or governmental agency or body having jurisdiction over the Company or any of its subsidiaries, or over any of their properties or operations is necessary in connection with the consummation by the Company of the transactions contemplated by this Agreement, the Indenture, the Registration Rights Agreement and the Securities, except such as may be required under state or other securities or Blue Sky laws in connection with the purchase and the distribution of the Securities by the Initial Purchasers;

(xvi) To such counsel's knowledge, there are no legal or governmental proceedings pending or threatened against the Company or any of its subsidiaries of a character required to be disclosed in an Annual Report on Form 10-K for the Company (if it were filed at the date of such Opinion) or any Incorporated Document by the Securities Act, other than those fairly summarized in all material respects in the Final Circular;

(xvii) To such counsel's knowledge, except as set forth in the Final Circular and any Incorporated Document, no holders of Common Stock or other securities of the Company have registration rights with respect to securities of the Company and, except as set forth in the Final Circular, all holders of securities of the Company having rights known to such counsel to registration of such shares of Common Stock or other securities, with respect to the offering contemplated

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thereby, waived such rights or such rights have expired by reason of lapse of time following notification of the Company's intent to offer the Securities.

(xviii) The Company is not an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(xix) Each document filed pursuant to the Exchange Act (other than the financial statements and schedules and financial and statistical data included therein or incorporated by reference, as to which no opinion need be rendered) and incorporated or deemed to be incorporated by reference in the Final Circular complied when so filed as to form in all material respects with the Exchange Act.

(xx) The Firm Securities or Option Securities, as the case may be, satisfy the requirements set forth in Rule 144A(d)(3) under the Securities Act for securities to be eligible for trading pursuant to Rule 144A;

(xxi) Based upon the representations, warranties and agreements of the Company in Sections 1(jj), 3(d) and 3(e) of this Agreement, and of the Initial Purchasers in Section 2(f) of this Agreement, it is not necessary in connection with the offer, sale and delivery of the Firm Securities and Option Securities to the Initial Purchasers under this Agreement or in connection with the initial resale of such Firm Securities and Option Securities by the Initial Purchaser in accordance with Section 3 of this Agreement to register the Securities under the Securities Act or to qualify the Indenture under the Trust Indenture Act of 1939, as amended;

In addition, such counsel shall state that such counsel has participated in conferences with officials and other representatives of the Company, the Initial Purchasers, Initial Purchasers' Counsel and the independent certified public accountants of the Company, at which such conferences the contents of the Preliminary Circular and the Final Circular and related matters were discussed, and although they have not verified the accuracy or completeness of the statements contained in the Final Circular (other than with respect to the opinions set forth in clause (xi), above) nothing has come to the attention of such counsel which leads them to believe that, on the date of the Final Circular and at all times subsequent thereto up to and on the First Closing Date or the Second Closing Date, as the case may be, the Final Circular and any amendment or supplement thereto and any Incorporated Document, when such documents became effective or were filed with the Commission (other than the financial statements including schedules and other financial and statistical information, as to which such counsel need express no comment) contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein

or necessary to make the statements therein not misleading, or at the First Closing Date or the Second Closing Date, as the case may be, the Final Circular and any amendment or supplement thereto and any Incorporated Document (except as aforesaid) contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

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With respect to the opinion in paragraph (xi) regarding the statements made under the caption "Risk Factors - We may incur significant costs to avoid investment company status and may suffer adverse consequences if we are deemed to be an investment company" and the opinion set forth in paragraph (xviii) above, such opinion may be rendered by another counsel to the Company reasonably satisfactory to the Initial Purchasers.

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6% CONVERTIBLE SUBORDINATED NOTES DUE 2007

REGISTRATION RIGHTS AGREEMENT

Dated as of February 1, 2000

between

E*TRADE GROUP, INC.

as the Company,

and

FLEETBOSTON ROBERTSON STEPHENS INC.

HAMBRECHT & QUIST LLC

GOLDMAN, SACHS & CO.

as Purchasers

This Registration Rights Agreement is made and entered into as of February 1, 2000, between E*TRADE Group, Inc., a Delaware corporation (the "Company"), and FleetBoston Robertson Stephens Inc., Hambrecht & Quist LLC and Goldman, Sachs & Co. (the "Purchasers") who have purchased or have the right to purchase up to \$500,000,000 in aggregate principal amount of 6% Convertible Subordinated Notes due 2007 (or up to \$650,000,000 if the option set forth in Section 2(b) of the Purchase Agreement (as defined) is exercised in full by the Initial Purchasers) of the Company pursuant to the Purchase Agreement (as such term is defined in Section 1 hereof).

This Agreement is made pursuant to the Purchase Agreement, dated February 1, 2000, among the Company and the Purchasers (the "Purchase Agreement"). In order to induce the Purchasers to enter into the Purchase Agreement, the Company has agreed to provide the registration rights provided for in this Agreement to the Purchasers and their respective direct and indirect transferees (i) for the benefit of the Purchasers, (ii) for the benefit of the holders from time to time of the Notes (as such term is defined in Section 1 hereof) (including the Purchasers) and the holders from time to time of the Common Stock issuable or issued upon conversion of the Notes and (iii) for the benefit of the securities constituting the Transfer Restricted Securities (as such term is defined in Section 1 hereof). The execution of this Agreement is a condition to the closing of the transactions contemplated by the Purchase Agreement.

The parties hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms shall

have the following meanings:

Act: As defined in the final paragraph of this Section 1.

Advice: As defined in the last paragraph of Section 2(d) hereof.

Affiliate: An affiliate of any specified person shall mean any other

person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, "control," when used with respect to any person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise and the terms "affiliated," "controlling" and "controlled" have meanings correlative to the foregoing.

Agreement: This Registration Rights Agreement, as the same may be

amended, supplemented or modified from time to time in accordance with the terms hereof.

Business Day: Each Monday, Tuesday, Wednesday, Thursday and Friday

that is not a day on which banking institutions in New York, New York are authorized or obligated by law or executive order to close.

Closing Date: February 7, 2000

Common Stock: Common Stock, \$0.01 par value per share, of the Company

and any other shares of common stock as may constitute "Common Stock" for purposes of the Indenture, in each case, as issuable or issued upon conversion of the Notes.

Company: E*TRADE Group, Inc., a Delaware corporation, and any

successor corporation thereto.

controlling person: As defined in Section 6(a) hereof.

Damages Payment Date: Each of the semi-annual interest payment dates

provided in the Indenture.

Effectiveness Period: As defined in Section 2(a) hereof.

Effectiveness Target Date: The 150th day following the Closing Date.

Exchange Act: The Securities Exchange Act of 1934, as amended, and

the rules and regulations promulgated by the SEC thereunder.

Filing Date: The 90th day after the Closing Date.

Holder: Each owner of any Transfer Restricted Securities.

Indemnified Person: As defined in Section 6(a) hereof.

Indenture: The Indenture, dated as of the date hereof, between the

Company and the Trustee, pursuant to which the Notes are being issued, as the same may be amended, modified or supplemented from time to time in accordance with the terms thereof.

Liquidated Damages: As defined in Section 3(a) hereof.

Notes: The \$500,000,000 aggregate principal amount of 6% Convertible

Subordinated Notes due 2007 of the Company being issued pursuant to the Indenture (or \$650,000,000 if the option set forth in Section 2(b) of the Purchase Agreement is exercised in full by the Initial Purchasers).

Notice and Questionnaire: A written notice delivered to the Company

containing substantially the information called for by the Selling Securityholder Notice and Questionnaire attached as Annex A to the Offering

Circular of the Company dated February 1, 2000 relating to the Notes.

Proceeding: An action, claim, suit or proceeding (including, without

limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

Prospectus: The prospectus included in any Registration Statement, as

amended or supplemented by any prospectus supplement, with respect to the resale
of any of the Transfer

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Restricted Securities covered by such Registration Statement, and all other
amendments and supplements to any such prospectus, including post-effective
amendments, and all materials incorporated by reference or deemed to be
incorporated by reference, if any, in such prospectus.

Purchase Agreement: As defined in the second paragraph hereof.

Purchasers: As defined in the first paragraph hereof.

Record Holder: (i) with respect to any Damages Payment Date relating

to any Note as to which any such Liquidated Damages have accrued, the registered
Holder of such Note on the record date with respect to the interest payment date
under the Indenture on which such Damages Payment Date shall occur and (ii) with
respect to any Damages Payment Date relating to any shares of Common Stock as to
which any such Liquidated Damages have accrued, the registered Holder of such
shares 15 days prior to the next succeeding Damages Payment Date.

Registration Default: As defined in Section 3(a) hereof.

Registration Statement: Any registration statement of the Company

filed with the SEC pursuant to the Securities Act that covers the resale of any
of the Transfer Restricted Securities pursuant to the provisions of this
Agreement, including the Prospectus, amendments and supplements to such
registration statement or Prospectus, including pre- and post-effective
amendments, all exhibits thereto, and all material incorporated by reference or
deemed to be incorporated by reference, if any, in such registration statement.

Requisite Information: As defined in Section 2(c) hereof.

Restricted Notes: Notes required pursuant to the Indenture to bear

the legend set forth in Section 2.5(d) of the Indenture.

Rule 144: Rule 144 promulgated by the SEC pursuant to the Securities

Act, as such Rule may be amended from time to time, or any successor rule or
regulation.

Rule 144A: Rule 144A promulgated by the SEC pursuant to the

Securities Act, as such Rule may be amended from time to time, or any successor
rule or regulation.

Rule 415: Rule 415 promulgated by the SEC pursuant to the Securities

Act, as such Rule may be amended from time to time, or any successor rule or
regulation.

Rule 424: Rule 424 promulgated by the SEC pursuant to the Securities

Act, as such Rule may be amended from time to time, or any successor rule or
regulation.

SEC: The Securities and Exchange Commission.

Securities Act: The Securities Act of 1933, as amended, and the rules

and regulations promulgated by the SEC thereunder.

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Shelf Registration Statement: As defined in Section 2(a) hereof.

Special Counsel: The special counsel to the Holders.

TIA: The Trust Indenture Act of 1939, as amended, and the rules and

regulations promulgated by the SEC thereunder.

Transfer Restricted Securities: The Restricted Notes and the shares

of Common Stock into which such Restricted Notes are converted or convertible
(including any shares of Common Stock issued or issuable thereon upon any stock
split, stock combination, stock dividend or the like) upon original issuance
thereof, and at all times subsequent thereto, and associated related rights, if
any, until, in the case of any such Restricted Note or shares of Common Stock
(and associated rights) (i) the date on which the resale thereof has been
effectively registered under the Securities Act and disposed of in accordance
with the Registration Statement relating thereto, (ii) the date on which such
security has been distributed to the public pursuant to Rule 144 or is saleable
pursuant to paragraph (k) of Rule 144 or (iii) the date on which such security
ceases to be outstanding, whichever date is earliest.

Trustee: The trustee under the Indenture.

underwritten registration or underwritten offering: A registration in

connection with which securities of the Company are sold to one or more
underwriters for reoffering to the public pursuant to an effective Registration
Statement.

References herein to the term "Holders of a majority in aggregate
principal amount of Transfer Restricted Securities" or words to a similar effect
shall mean, with respect to any request, notice, demand, objection or other
action by the Holders hereunder or pursuant hereto (each, an "Act"), registered
Holders of a number of shares of then-outstanding Common Stock constituting
Transfer Restricted Securities and an aggregate principal amount of then
outstanding Notes constituting Transfer Restricted Securities, such that the sum
of such shares of Common Stock and the shares of Common Stock issuable upon
conversion of such Notes constitutes in excess of 50% of the sum of all of the
then-outstanding shares of Common Stock constituting Transfer Restricted
Securities and the number of shares of Common Stock issuable upon conversion of
then-outstanding Notes constituting Transfer Restricted Securities. For
purposes of the preceding sentence, Transfer Restricted Securities owned,
directly or indirectly, by the Company or its Affiliates shall be deemed not to
be outstanding.

2. Shelf Registration Statement -----

(a) The Company agrees to file with the SEC on or prior to the Filing
Date a Registration Statement for an offering to be made on a continuous basis
pursuant to Rule 415 covering all of the Transfer Restricted Securities or
separate Registration Statements for an offering to be made on a continuous
basis pursuant to Rule 415 covering all of the Notes constituting Transfer
Restricted Securities and all of the Common Stock constituting Transfer
Restricted Securities, respectively (such Registration Statement or Statements,
collectively, the "Shelf

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Registration Statement"). Each Shelf Registration Statement shall be on Form S-3
under the Securities Act or another appropriate form selected by the Company
permitting registration of such Transfer Restricted Securities for resale by the
Holders in the manner or manners reasonably designated by Holders of a majority
in aggregate principal amount of Transfer Restricted Securities being sold
(including, without limitation, up to three underwritten offerings). The Company
shall not permit any securities other than the Transfer Restricted Securities to
be included in any Shelf Registration Statement. The Company shall use its
reasonable efforts to cause each Shelf Registration Statement to be declared
effective pursuant to the Securities Act as promptly as is practicable following

the filing thereof and to keep each Shelf Registration Statement continuously effective under the Securities Act for two years after the latest date of original issuance of any of the Notes (subject to extension pursuant to Sections 2(d) hereof) (the "Effectiveness Period"), or such shorter period ending when there cease to be any Transfer Restricted Securities outstanding.

(b) Supplements and Amendments. The Company shall use its

reasonable efforts to keep each Shelf Registration Statement continuously effective by supplementing and amending the Shelf Registration Statement if required by the rules, regulations or instructions applicable to the registration form used for such Shelf Registration Statement, if required by the Securities Act or if reasonably requested by the Holders of a majority in aggregate principal amount of the Transfer Restricted Securities or by any underwriter of such Transfer Restricted Securities; provided, however, that the Effectiveness Period shall be extended to the extent provided in Section 2(d) hereof.

(c) Selling Securityholder Information. Each Holder of Transfer

Restricted Securities agrees that if such Holder wishes to sell Transfer Restricted Securities pursuant to a Shelf Registration Statement and the related Prospectus, it will do so only in accordance with this Section 2. Each Holder of Transfer Restricted Securities wishing to sell Transfer Restricted Securities pursuant to a Shelf Registration Statement and the related Prospectus agrees to deliver a Notice and Questionnaire that includes such information regarding the distribution of its Transfer Restricted Securities as is required by law to be disclosed by the Holder in the applicable Registration Statement (the "Requisite Information") to the Company prior to any intended distribution of Transfer Restricted Securities under the Shelf Registration Statement. From and after the date the Shelf Registration Statement becomes effective, the Company shall, as promptly as is practicable after the date a Notice and Questionnaire is delivered, and in any event within five (5) Business Days after such date, (i) if required by applicable law, file with the SEC a post-effective amendment to the Shelf Registration Statement or prepare and, if required by applicable law, file a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document so that the Holder delivering such Notice and Questionnaire is named as a selling securityholder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of the Transfer Restricted Securities in accordance with applicable law and, if the Company shall file a post-effective amendment to the Shelf Registration Statement, use its reasonable best efforts to cause such post-effective amendment to be declared effective under the Securities Act as promptly as is practicable, but in any event by the date that is forty-five (45) days after the date such post-effective amendment is required by this clause to be filed; (ii) provide such Holder copies of any documents

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filed pursuant to Section 2(c) (i); and (iii) notify such Holder as promptly as practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2(c) (i); provided, that if such Notice and Questionnaire is delivered during the time a Holder receives a notice from the Company pursuant to Section 2(d) that the use of the Prospectus shall be discontinued, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (i), (ii) and (iii) above upon such time the use of the Prospectus may be resumed, provided, further, that if under applicable law the Company has more than one option as to the type or manner of making any such filing, it will make the required filing or filings in the manner or of a type reasonably expected to result in the earliest availability of the Prospectus for effecting resales of Transfer Restricted Securities.

If any such Registration Statement refers to any Holder by name or otherwise as the holder of any securities of the Company, then such Holder shall have the right to require, in the event that such reference to such Holder by name or otherwise is not required by the Securities Act or any similar Federal statute then in force, the deletion of the reference to such Holder in such Registration Statement at any time subsequent to the time that such reference ceases to be required.

(d) Certain Notices; Suspension of Sales. Each Holder agrees by

acquisition of such Transfer Restricted Securities that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 4(c)(ii), 4(c)(iii), 4(c)(v) or 4(c)(vi) hereof, such Holder will forthwith discontinue disposition of such Transfer Restricted Securities covered by such Registration Statement and Prospectus (other than in transactions exempt from the registration requirements under the Securities Act) until such Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Sections 4(c)(i) and 4(k) hereof, or until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus. If the Company shall give any such notice, the Effectiveness Period shall be extended by the number of days during such period from and including the date of the giving of such notice to and including the date when each Holder shall have received (x) the copies of the supplemented or amended Prospectus contemplated by Sections 4(c)(i) and 4(k) hereof or (y) the Advice, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus.

3. Liquidated Damages -----

(a) The Company and the Purchasers agree that the Holders will suffer damages if the Company fails to fulfill its obligations pursuant to Section 2 hereof and that it would not be possible to ascertain the extent of such damages. Accordingly, the Company hereby agrees to pay liquidated damages ("Liquidated Damages") under the circumstances and to the extent set forth below:

(i) to each Holder if the Shelf Registration Statement has not been filed with the SEC on or prior to the Filing Date; or

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(ii) to each Holder if each Shelf Registration Statement is not declared effective by the SEC on or prior to the applicable Effectiveness Target Date;

(iii) to each Holder if any Shelf Registration Statement ceases to be effective or usable at any time during the Effectiveness Period (without being succeeded on the same day immediately by a post-effective amendment or supplement to such Registration Statement that cures such failure and that is itself, in the case of post-effective amendment, immediately declared effective) for a period of time which shall exceed 90 days in the aggregate in any period of 365 consecutive days; or

(iv) to the particular Holder affected by the Company's failure to perform its obligations set forth in Section 2(c) within the time period required therein;

(any of the foregoing, a "Registration Default"); provided that the fact that a Shelf Registration Statement is not usable by a particular Holder at any given time solely as a result of the failure of such Holder to provide Requisite Information with respect to it shall not be relevant for purposes of clause (iii) above unless such Holder shall have provided such information to the Company and the Company shall have failed to file an appropriate Prospectus supplement or post-effective amendment to the Registration Statement. In the event of any such Registration Default, the Company shall accrue Liquidated Damages to each applicable Holder during the first 90-day period immediately in an amount equal to \$.05 per week per \$1,000 principal amount of Notes held by such Holder and, if applicable, on an equivalent basis per share (subject to adjustment in the event of any stock split, stock combination, stock dividends and the like) of Common Stock constituting Transfer Restricted Securities held by such Holder for each week or portion thereof that the Registration Default continues. The weekly rate at which such Liquidated Damages accrue shall increase by an additional \$.05 per \$1,000 principal amount of Notes and, if applicable, an equivalent amount per week per share (subject to adjustment as set forth above) of Common Stock constituting Transfer Restricted Securities for each subsequent continuing 90-day period following the occurrence of such Registration Default until all Registration Defaults have been cured; provided, however, that Liquidated Damages shall not at any time exceed \$.25 per week per

\$1,000 principal amount of Notes or, as applicable, an equivalent amount per week per share (subject to adjustment as set forth above) of Common Stock constituting Transfer Restricted Securities. Following the cure of all Registration Defaults, the accrual of Liquidated Damages shall cease (without in any way limiting the effect of any subsequent Registration Default). A Registration Default under clause (i) above shall be cured on the date that the applicable Shelf Registration Statement is filed with the SEC; a Registration Default under clause (ii) above shall be cured on the date that the applicable Shelf Registration Statement is declared effective by the SEC; a Registration Default under clause (iii) above shall be cured on the date the applicable Shelf Registration Statement is declared effective or otherwise usable; and a Registration Default under clause (iv) above shall be cured on the date the applicable prospectus supplement to the Shelf Registration Statement is filed or the post-effective amendment with respect to such Shelf Registration Statement is declared effective.

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(b) The Company shall notify the Trustee within one Business Day after each and every date on which a Registration Default occurs. Liquidated Damages shall be paid by the Company to the Record Holders on each Damages Payment Date in the same manner as interest is paid under the Indenture, in the case of the Notes, and by mailing checks to their registered addresses in the register of the Company for the Common Stock, in the case of shares of Common Stock; provided, however, that any Liquidated Damages accrued with respect

to any Note or portion thereof called for redemption on a redemption date, repurchased in connection with a Repurchase Event (as defined in the Indenture) on a repurchase date, or converted into shares of Common Stock on a conversion date prior to the Damages Payment Date, shall, in any such event, be paid instead to the Holder who submitted such Note or portion thereof for redemption, repurchase or conversion on the applicable redemption date, repurchase date or conversion date, as the case may be, on such date (promptly following the conversion date, in the case of conversion of a Note). In no event shall the Company be required to pay Liquidated Damages in excess of the applicable maximum weekly amount set forth above, regardless of whether one or multiple Registration Defaults shall exist.

(c) All of the Company's obligations set forth in this Section 3 which are unsatisfied to any extent with respect to any Transfer Restricted Securities at the time such security ceases to be a Transfer Restricted Security shall survive until such time as all such obligations with respect to such security have been satisfied in full (notwithstanding the earlier termination of this Agreement).

(d) Any payments due and payable pursuant to this Section 3 with respect to any Notes shall be subject to the provisions of Article IV of the Indenture as if such payments were additional interest on the Notes.

(e) The parties hereto agree that the Liquidated Damages provided for in this Section 3 constitute a reasonable estimate of the damages that may be incurred by holders of record of Transfer Restricted Securities by reason of the failure of the Shelf Registration Statement to be filed or declared effective or unavailable (absolutely or as a practical matter) for effecting resales of Transfer Restricted Securities in accordance with the provisions hereof. Notwithstanding the foregoing, the parties agree that the sole contractual damages payable for a violation of the terms of this Agreement with respect to which Liquidated Damages are expressly provided shall be such Liquidated Damages. Nothing in this Section 3(e), however, shall preclude a holder of Transfer Restricted Securities from pursuing or obtaining specific performance or other equitable relief with respect to the Company's failure to pay Liquidated Damages pursuant to this Agreement.

4. Registration Procedures. In connection with the Company's

registration obligations hereunder, the Company shall effect such registrations on the appropriate form selected by the Company to permit the resale of Transfer Restricted Securities in accordance with the intended method or methods of disposition thereof, and pursuant thereto the Company shall as expeditiously as reasonably possible:

(a) No fewer than five Business Days prior to the initial filing of a Registration Statement or Prospectus and no fewer than two Business Days

or supplement thereto (excluding, unless requested, any document that would be incorporated or deemed to be incorporated therein by reference), furnish to the registered (as of the most recent reasonably practicable date which shall not be more than two Business Days prior to the date such document is personally delivered, delivered to a next-day courier, deposited in the mail or telecopied, as the case may be) Holders, Special Counsel and the managing underwriters, if any, copies of all such documents proposed to be filed (excluding, unless requested, those incorporated or deemed to be incorporated by reference) and cause the officers and directors of the Company, counsel to the Company and independent certified public accountants to the Company to respond to such inquiries as shall be necessary in connection with such Registration Statement, in the opinion of Special Counsel and counsel to such underwriters, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file any such Registration Statement or related Prospectus or any amendments or supplements thereto to which the Holders of a majority in aggregate principal amount of the Transfer Restricted Securities, Special Counsel, or the managing underwriters, if any, shall reasonably object on a timely basis;

(b) Prepare and file with the SEC such amendments, including post-effective amendments, to each Registration Statement as may be necessary to keep such Registration Statement continuously effective for the applicable time period set forth in Section 2(a) hereof; cause the related Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the Securities Act and the Exchange Act with respect to the disposition of all securities covered by such Registration Statement during such period in accordance with the intended method or methods of disposition by the Holder set forth in such Registration Statement as so amended or in such Prospectus as so supplemented (including, without limitation, the filing of any Prospectus supplement pursuant to Rule 424 in order to add or change any selling security holder information (including any such supplements or amendments pursuant to Section 2(c) hereof, provided such Holder

to which such change applies complies with the Requisite Information requirements of Section 2(c) hereof));

(c) Notify the registered (as of the most recent reasonably practicable date which shall not be more than two Business Days prior to the date such notice is personally delivered, delivered to a next-day courier, deposited in the mail or telecopied, as the case may be) Holders, Special Counsel and the managing underwriters, if any, promptly (and in the case of an event specified by clause (i)(A) of this paragraph in no event fewer than two Business Days prior to such filing), and (if requested by any such person), confirm such notice in writing, (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment is proposed to be filed, and, (B) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request of the SEC or any other Federal or state governmental authority for amendments or supplements to such Registration Statement or related Prospectus or for additional information related thereto, (iii) of the issuance by the SEC, any state securities commission, any other governmental agency or any court of any stop order, order or injunction suspending or enjoining the use or the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose, (iv) if at any time any of the representations and warranties of the Company contained in any agreement (including any underwriting agreement) contemplated by Section 4(m) hereof are not true and correct in all material respects, (v) of the receipt by the

Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Transfer Restricted Securities for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose, and (vi) of the existence of any fact and the happening of any event that makes any statement made in such Registration Statement or related Prospectus untrue in any material respect, or that requires the making of any changes in such Registration Statement or Prospectus so that in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or

necessary to make the statements therein not misleading and that, in the case of the Prospectus, such Prospectus will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(d) Use its best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of any stop order or order enjoining or suspending the use or effectiveness of a Registration Statement or the lifting of any suspension of the qualification (or exemption from qualification) of any of the Transfer Restricted Securities for sale in any jurisdiction, at the earliest practicable moment;

(e) If requested by the Special Counsel, the managing underwriters, if any, or the Holders of a majority in aggregate principal amount of the Transfer Restricted Securities being sold in connection with such offering, (i) promptly include in a Prospectus supplement or post-effective amendment such information as the Special Counsel, the managing underwriters, if any, and such Holders agree should be included therein, and (ii) make all required filings of such Prospectus supplement or such post-effective amendment as soon as reasonably practicable after the Company has received notification of the matters to be included in such Prospectus supplement or post-effective amendment; provided, however, that the Company shall not be required to take

any action pursuant to this Section 4(e) that would, in the opinion of counsel for the Company, violate applicable law or which is not reasonably required to comply with applicable securities laws;

(f) Furnish to each Holder who so requests, Special Counsel and each managing underwriter, if any, without charge, at least one conformed copy of each Registration Statement and each amendment thereto, including financial statements (but excluding schedules, all documents incorporated or deemed to be incorporated therein by reference and all exhibits, unless requested in writing by such Holder, Special Counsel or managing underwriter);

(g) Deliver to each Holder, the Special Counsel, and the underwriters, if any, without charge, as many copies of the Prospectus or Prospectuses (including each form of Prospectus) and each amendment or supplement thereto to as such persons may reasonably request; and, unless the Company shall have given notice to such Holder pursuant to Section 4(c)(vi), the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders of Transfer Restricted Securities and the underwriters, if any, in connection with the offering and sale of the Transfer Restricted Securities covered by such Prospectus and any amendment or supplement thereto, provided, however, that no Holder shall be

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entitled to use the Prospectus unless and until such Holder shall have furnished to the Company any and all Requisite Information pursuant to Section 2(c) hereof;

(h) Use its best efforts to register or qualify, or cooperate with the Holders of Transfer Restricted Securities to be sold or tendered for, the underwriters, if any, and their respective counsel in connection with the registration or qualification (or exemption from such registration or qualification) of, such Transfer Restricted Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder or underwriter reasonably requests in writing, keep each such registration or qualification (or exemption therefrom) effective during the period such Registration Statement is required to be kept effective and do any and all other acts or things necessary legally to enable the disposition in such jurisdictions of the Transfer Restricted Securities covered by the applicable Registration Statement; provided, however, that the Company shall not be

required to qualify generally to do business in any jurisdiction where it is not then so qualified, take any action that would subject it to general service of process in any such jurisdiction where it is not then so subject or subject the Company to any tax in any such jurisdiction where it is not then so subject;

(i) In connection with any sale or transfer of Transfer Restricted Securities that will result in such securities no longer being Transfer Restricted Securities, cooperate with the Holders and the managing underwriters,

if any, to (A) facilitate the timely preparation and delivery of certificates representing Transfer Restricted Securities to be sold, which certificates shall not bear any restrictive legends, shall bear a CUSIP number different from the CUSIP number for the Transfer Restricted Securities and shall be in a form eligible for deposit with The Depository Trust Company and (B) enable such Transfer Restricted Securities to be in such denominations and registered in such names as the managing underwriters, if any, or Holders may reasonably request at least two Business Days prior to any sale of Transfer Restricted Securities;

(j) Use its best efforts to cause the offering of the Transfer Restricted Securities covered by the Registration Statement to be registered with or approved by such other governmental agencies or authorities within the United States, except as may be reasonably required as a consequence of the nature of a Holder's business, in which case the Company will cooperate in all reasonable respects with the filing of such Registration Statement and the granting of such approvals as may be reasonably necessary to enable the seller or sellers thereof or the underwriters, if any, to consummate the disposition of such Transfer Restricted Securities; provided, however, that the Company shall

not be required to register the Transfer Restricted Securities in any jurisdiction that would require the Company to qualify to do business in any jurisdiction where it is not then so qualified, subject it to general service of process in any such jurisdiction where it is not then so subject or subject the Company to any tax in any such jurisdiction where it is not then so subject or to;

(k) Upon the occurrence of any event contemplated by Section 4(c) (vi) hereof, as promptly as reasonably practicable, prepare a supplement or amendment, including, if appropriate, a post-effective amendment, to each Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other

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required document so that, as thereafter delivered, such Prospectus will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(l) Prior to the effective date of the first Registration Statement relating to the Transfer Restricted Securities, to provide a CUSIP number for the Transfer Restricted Securities to be sold pursuant to the Registration Statement;

(m) Enter into such agreements (including an underwriting agreements in form, scope and substance as are customary in underwritten offerings) reasonably satisfactory to the Company and take all such other reasonable actions in connection therewith (including those reasonably requested by the managing underwriters, if any, or the Holders of a majority in aggregate principal amount of the Transfer Restricted Securities being sold) in order to expedite or facilitate the sale of such Transfer Restricted Securities; provided, however, that the Company is required to facilitate no more than two

underwritten offerings. In such connection, regardless of whether an underwriting agreement is entered into and regardless of whether the registration is an underwritten registration, (i) make such representations and warranties to the Holders of such Transfer Restricted Securities and the underwriters, if any, with respect to the business of the Company and its subsidiaries (including with respect to businesses or assets acquired or to be acquired by any of them), and the Registration Statement, Prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, in form, substance and scope as are customarily made by issuers to underwriters in underwritten offerings and reasonably acceptable to the Company, and confirm the same if and when requested; (ii) seek to obtain opinions of counsel to the Company and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the managing underwriters, if any, and Special Counsel to the Holders of the Transfer Restricted Securities being sold), addressed to each selling Holder of Transfer Restricted Securities and each of the underwriters, if any, covering the matters customarily covered in opinions requested in underwritten offerings (including any such matters as may be reasonably requested by such Special Counsel and underwriters); (iii) use all reasonable efforts to obtain customary

"cold comfort" letters and updates thereof from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data is, or is required to be, included in the Registration Statement), addressed (where reasonably possible) to each selling Holder of Transfer Restricted Securities and each of the underwriters, if any, such letters to be in customary form and covering matters of the type customarily covered in "cold comfort" letters in connection with underwritten offerings; (iv) if an underwriting agreement is entered into, the same shall contain indemnification provisions and procedures no less favorable to the selling Holders of Transfer Restricted Securities and the underwriters, if any, than those set forth in Section 6 hereof (or such other provisions and procedures acceptable to Holders of a majority in aggregate principal amount of the Transfer Restricted Securities covered by such Registration Statement and the managing underwriters); and (v) deliver such documents and certificates as may be reasonably requested by the Holders of majority in aggregate principal amount of the Transfer Restricted Securities being sold, their Special Counsel or

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the managing underwriters, if any, to evidence the continued validity of the representations and warranties made pursuant to clause (i) of this Section 4(m) and to evidence compliance with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company;

(n) Make available for inspection by a representative of the Holders of Transfer Restricted Securities being sold, any underwriter participating in any such disposition of Transfer Restricted Securities, if any, and any attorney, consultant or accountant retained by such selling Holders or underwriter, at the offices where normally kept, during reasonable business hours, all financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries as they may reasonably request, and cause the officers, directors, agents and employees of the Company and its subsidiaries to supply all information in each case reasonably requested by any such representative, underwriter, attorney, consultant or accountant in connection with such Registration Statement, provided, however, that such

persons shall first agree in writing with the Company that any information that is reasonably and in good faith designated by the Company in writing as confidential at the time of delivery or inspection (as the case may be) of such information shall be kept confidential by such persons, unless (i) disclosure of such information is required by court or administrative order or is necessary to respond to inquiries of regulatory authorities, (ii) disclosure of such information is required by law (including any disclosure requirements pursuant to Federal securities laws in connection with the filing of any Registration Statement or the use of any Prospectus), (iii) such information becomes generally available to the public other than as a result of a disclosure or failure to safeguard by any such person or (iv) such information becomes available to any such person from a source other than the Company and such source is not bound by a confidentiality agreement.

(o) Cause the Indenture to be qualified under the TIA not later than the effective date of the first Registration Statement relating to the Transfer Restricted Securities; and in connection therewith, cooperate with the Trustee and the Holders of Notes constituting Transfer Restricted Securities to effect such changes to the Indenture, if any, as may be required for such Indenture to be so qualified in accordance with the terms of the TIA; and execute, and use its best efforts to cause the Trustee to execute, all customary documents as may be required to effect such changes, and all other forms and documents (including Form T-1) required to be filed with the SEC to enable the Indenture to be so qualified under the TIA in a timely manner.

(p) Comply with applicable rules and regulations of the SEC and make generally available to its security holders earning statements satisfying the provisions of Section 11(a) of the Securities Act or Rule 158 of the Securities Act (or any similar rule promulgated under the Securities Act), no later than 45 days after the end of any 12-month period (or 90 days after the end of any 12-month period if such period is a fiscal year) (i) commencing at the end of any fiscal quarter in which Transfer Restricted Securities are sold to underwriters in a firm commitment or best efforts underwritten offering and (ii) if not sold to underwriters in such an offering, commencing on the first day of the first fiscal quarter after the effective date of a Registration Statement, which statement shall cover said period, consistent with the requirements of Rule 158

(q) (i) list all shares of Common Stock covered by such Registration Statement on any securities exchange on which the Common Stock is then listed or (ii) authorize for quotation on the National Association of Securities Dealers Automated Quotation System ("Nasdaq") or the National Market of Nasdaq all Common Stock covered by such Registration Statement if the Common Stock is then so authorized for quotation.

5. Registration Expenses

(a) All fees and expenses incident to the performance of or compliance with this Agreement by the Company shall be borne by it whether or not any Registration Statement is filed or becomes effective and regardless of whether any securities are offered or sold pursuant to any Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filings fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with the National Association of Securities Dealers, Inc. and (B) in compliance with securities or Blue Sky laws (including, without limitation and in addition to that provided for in (b) below, reasonable fees and disbursements of counsel for the underwriters or Special Counsel in connection with Blue Sky qualifications of the Transfer Restricted Securities and determination of the eligibility of the Transfer Restricted Securities for investment under the laws of such jurisdictions as the managing underwriters, if any, or Holders of a majority in aggregate principal amount of Transfer Restricted Securities, may designate), (ii) printing expenses (including, without limitation, expenses of printing certificates for Transfer Restricted Securities in a form eligible for deposit with The Depository Trust Company and of printing Prospectuses if the printing of Prospectuses is required by the managing underwriters, if any, or by the Holders of a majority in aggregate principal amount of the Transfer Restricted Securities included), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company and the Special Counsel (plus any local counsel deemed appropriate by the Holders of a majority in aggregate principal amount of the Transfer Restricted Securities) in accordance with the provisions of Section 5(b) hereof, (v) fees and disbursements of all independent certified public accountants referred to in Section 4(m)(iii) (including, without limitation, the expenses of any special audit and "comfort" letters required by or incident to such performance), (vi) Securities Act liability insurance, if the Company desires such insurance, and (vii) fees and expenses of all other persons retained by the Company. In addition, the Company shall pay its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of an annual audit and the fees and expenses incurred in connection with the listing of the securities to be registered on any securities exchange or the Nasdaq National Market. Notwithstanding anything in this Agreement to the contrary, each Holder shall pay all underwriting discounts and brokerage commissions with respect to any Transfer Restricted Securities sold by it.

(b) In connection with any registration hereunder, the Company shall reimburse the Holders of the Transfer Restricted Securities being registered or tendered for in such registration for the reasonable fees and disbursements of not more than one firm of attorneys representing the selling Holders, which firm shall initially be Wilson Sonsini Goodrich & Rosati, Professional Corporation, but that may, with the written consent of the Initial Purchasers (which shall not be

unreasonably withheld), be another nationally recognized law firm experienced in securities law matters designated by the Company unless and until another Special Counsel shall have been selected by a majority in aggregate principal amount of the Transfer Restricted Securities and notice hereof shall have been given to the Company.

6. Indemnification

(a) The Company agrees to indemnify and hold harmless (i) the

Purchasers, (ii) each Holder, (iii) each person, if any, who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) any of the foregoing (any of the persons referred to in this clause (iii) being hereinafter referred to as a "controlling person"), and (iv) the respective officers, directors, partners, employees, representatives and agents of the Purchasers, the Holders (including predecessor Holders), or any controlling person (any person referred to in clause (i), (ii), (iii) or (iv) may hereinafter be referred to as an "Indemnified Person"), from and against any and all losses, claims, damages, liabilities, expenses and judgments caused by any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or Prospectus or in any amendment or supplement thereto or in any preliminary Prospectus, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading, except insofar as such losses, claims, damages, liabilities, expenses or judgments are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Indemnified Person furnished to the Company by or on behalf of such Indemnified Person expressly for use therein; provided, however, that the foregoing

indemnity with respect to any preliminary Prospectus shall not inure to the benefit of any Indemnified Person from whom the person asserting such losses, claims, damages, liabilities, expenses and judgments purchased securities if such untrue statement or omission or alleged untrue statement or omission made in such preliminary Prospectus is eliminated or remedied in the Prospectus and a copy of the Prospectus shall not have been furnished to such person in a timely manner due to the wrongful action or wrongful inaction of such Indemnified Person, whether as a result of negligence or otherwise.

(b) In case any action shall be brought against any Indemnified Person, based upon any Registration Statement or any such Prospectus or any amendment or supplement thereto and with respect to which indemnity may be sought against the Company, such Indemnified Person shall promptly notify the Company in writing and the Company shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Person and payment of all fees and expenses. Any Indemnified Person shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person, unless (i) the employment of such counsel shall have been specifically authorized in writing by the Company, (ii) the Company shall have failed to assume the defense and employ counsel or (iii) such Indemnified Person or Persons shall have been advised by counsel that there may be a conflict between the positions of the indemnifying party or parties and of the indemnified party or parties in conducting the defense of such action or proceeding or that there may be legal defenses available to such Indemnified Person

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or Persons different from or in addition to those available to the indemnifying party or parties (in which case the Company shall not have the right to assume the defense of such action on behalf of such Indemnified Person, it being understood, however, that the Company shall not, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) for all such Indemnified Persons, which firm shall be designated in writing by such Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred). The Company shall not be liable for any settlement of any such action effected without its written consent but if settled with the written consent of the Company, the Company agrees to indemnify and hold harmless any Indemnified Person from and against any loss or liability by reason of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(c) In connection with any Registration Statement pursuant to which any Holder (or predecessor Holder) sold or offered for resale Transfer Restricted Securities, such Holder (or predecessor Holder) agrees, severally and

not jointly, to indemnify and hold harmless the Company, its directors, its officers and any person controlling the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from the Company to each Indemnified Person but only with reference to information relating to such Indemnified Person furnished by or on behalf of such Indemnified Person expressly for use in such Registration Statement. In case any action shall be brought against the Company, any of its directors, any such officer or any person controlling the Company based on such Registration Statement and in respect of which indemnity may be sought against any Indemnified Person, the Indemnified Person shall have the rights and duties given to the Company (except that if the Company shall have assumed the defense thereof, such Indemnified Person shall not be required to do so, but may employ separate counsel therein and participate in defense thereof but the fees and expenses of such counsel shall be at the expense of such Indemnified Person), and the Company, its directors, any such officers and any person controlling the Company shall have the rights and duties given to the Indemnified Person by Section 6(b) hereof.

(d) If the indemnification provided for in this Section 6 is unavailable to an indemnified party in respect of any losses, claims, damages, liabilities, expenses or judgments referred to therein, then each indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, liabilities, expenses and judgments (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and each Indemnified Person on the other hand pursuant to the Purchase Agreement or from the offering for resale of the Transfer Restricted Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and each such Indemnified Person in

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connection with the statements or omissions that resulted in such losses, claims, damages, liabilities, expenses or judgments, as well as any other relevant equitable considerations. The relative fault of the Company and each such Indemnified Person shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Company or such Indemnified Person and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company, the Holders and the Purchasers agree that it would not be just and equitable if contribution pursuant to this Section 6(d) were determined by pro rata allocation (even if the Indemnified Person were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities, expenses or judgments referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 6, no Indemnified Person shall be required to contribute any amount in excess of the amount by which the total net profit received by it in connection with the sale of the Transfer Restricted Securities pursuant to this Agreement exceeds the amount of any damages which such Indemnified Person has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Indemnified Persons' obligations to contribute pursuant to this Section 6(d) are several in proportion to the respective amount of Transfer Restricted Securities included in and sold pursuant to any such Registration Statement by each Indemnified Person and not joint.

7. Rules 144 and 144A

The Company shall to file the reports required to be filed by it under the Securities Act and the Exchange Act in a timely manner and, if at any time it is not required to file such reports but in the past had been required to or did file such reports, it will, upon the request of any Holder, make available

other information as required by, and so long as necessary to permit sales of, its Transfer Restricted Securities pursuant to Rule 144 and Rule 144A. Notwithstanding the foregoing, nothing in this Section 7 shall be deemed to require the Company to register any of its securities pursuant to the Exchange Act.

8. Underwritten Registrations

If any of the Transfer Restricted Securities covered by any Shelf Registration Statement are to be sold in an underwritten offering, the investment banker or investment bankers and manager or managers that will administer the offering will be investment bankers of recognized national standing selected by the Holders of a majority in aggregate principal amount of such

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Transfer Restricted Securities included in such offering, subject to the consent of the Company (which will not be unreasonably withheld or delayed).

No person may participate in any underwritten registration hereunder unless such person (i) agrees to sell such person's Transfer Restricted Securities on the basis reasonably provided in any underwriting arrangements approved by the persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities underwriting agreements, lock-up agreements and other documents reasonably required under the terms of such underwriting arrangements.

9. Miscellaneous

(a) Remedies. In the event of a breach by the Company or by a Holder

of any of their respective obligations under this Agreement, each Holder or the Company, in addition to being entitled to exercise all rights granted by law, including, without limitation, recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company and each Holder agree that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agree that, in the event of any action for specific performance in respect of such breach, they shall waive the defense that a remedy at law would be adequate. This Section 9(a) shall not apply to Section 3.

(b) No Inconsistent Agreements. The Company shall not enter into any

agreement with respect to its securities that is inconsistent with the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. The Company is not currently a party to any agreement granting any registration rights with respect to any of its securities to any person that conflicts with the Company's obligations hereunder or gives any other party the right to include any securities in any Registration Statement filed pursuant hereto, except for such rights and conflicts as have been irrevocably waived. Without limiting the generality of the foregoing, without the written consent of the Holders of a majority in aggregate principal amount of the Transfer Restricted Securities, the Company shall not grant to any person the right to request it to register any of its securities under the Securities Act unless the rights so granted are subject in all respect to the prior rights of the Holders set forth herein, and are not otherwise in conflict or inconsistent with the provisions of this Agreement.

(c) No Adverse Action Affecting the Transfer Restricted Securities.

The Company will not take any action with respect to the Transfer Restricted Securities that would adversely affect the ability of any of the Holders to include such Transfer Restricted Securities in a registration undertaken pursuant to this Agreement.

(d) No Piggyback on Registrations. After the date hereof, the

Company shall not grant to any of its security holders (other than the Holders in such capacity) the right to include any of its securities in any Shelf Registration Statement.

(e) Amendments and Waivers. The provisions of this Agreement,

including the provisions of this sentence, may not be amended, modified or
supplemented, and waivers or consents

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to departures from the provisions hereof, may not be given, without the written
consent of the Holders of a majority in aggregate principal amount of the
Transfer Restricted Securities; provided, however, that, for the purposes of

this Agreement, Transfer Restricted Securities that are owned, directly or
indirectly, by either the Company or an Affiliate of the Company are not deemed
outstanding. Notwithstanding the foregoing, a waiver or consent to depart from
the provisions hereof with respect to a matter that relates exclusively to the
rights of Holders whose Transfer Restricted Securities are being sold pursuant
to an underwritten offering and that does not directly or indirectly affect the
rights of other Holders may be given by Holders of a majority in aggregate
principal amount of the Transfer Restricted Securities being sold by such
Holders pursuant to such an underwritten offering; provided, however, that the

provisions of this sentence may not be amended, modified or supplemented except
in accordance with the provisions of the immediately preceding sentence.

(f) Notices. All notices and other communications provided for

herein shall be made in writing by hand-delivery, next day air courier,
certified first-class mail, return receipt requested or telecopy:

(i) if to a Holder, to the address of such Holder as it appears
in the Note or Common Stock register of the Company, as
applicable;

(ii) if to the Company, to:

E*TRADE Group, Inc.
4500 Bohannon Drive
Menlo Park, California 94025
Attn: Chief Financial Officer
Telecopy No.: (650) 842-2552

with a copy to:

Brobeck Phleger & Harrison LLP
Two Embarcadero Place
2200 Geng Road
Palo Alto, California 94303
Attn: Curtis L. Mo, Esq.
Telecopy No.: (650) 496-2885

(iii) if to the Special Counsel, to:

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304-1050
Attn: John A. Fore, Esq.
Telecopy No.: (650) 493-6811

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or such other Special Counsel at such other address and telecopy number as a
majority in aggregate principal amount of the Transfer Restricted Securities
shall have given notice to the Company as contemplated by Section 5(b) hereof.

Except as otherwise provided in this Agreement, all such
communications shall be deemed to have been duly given, when delivered by hand,
if personally delivered; one Business Day after being timely delivered to a
next-day air courier, five Business Days after being deposited in the mail,
postage prepaid, if mailed; and when receipt is acknowledged by the recipient's
telecopier machine, if telecopied.

(g) Successors and Assigns. This Agreement shall inure to the

benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each existing and future Holder. The Company may not assign its rights or obligations hereunder without the prior written consent of the Holders of a majority in aggregate principal amount of the Transfer Restricted Securities, other than by operation of law pursuant to a merger or consolidation to which the Company is a party. In the event the Notes constituting Transfer Restricted Securities become convertible into common stock of another person pursuant to Section 15.6 of the Indenture, the Company shall cause such person to assume the Company's obligations hereunder.

(h) Counterparts. This Agreement may be executed in any number of

counterparts by the parties hereto, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

(i) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED

IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

(j) Severability. The remedies provided herein are cumulative and

not exclusive of any remedies provided by law. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(k) Headings. The headings in this Agreement are for convenience of

reference only and shall not limit or otherwise affect the meaning hereof. All references made in this Agreement to "Section" and "paragraph" refer to such Section or paragraph of this Agreement, unless expressly stated otherwise.

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(l) Attorneys' Fees. In any action or proceeding brought to enforce

any provision of this Agreement, or where any provision hereof is validly asserted as a defense, the prevailing party, as determined by the court, shall be entitled to recover its reasonable attorneys' fees in addition to any other available remedy.

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IN WITNESS WHEREOF, the parties have caused this Registration Rights Agreement to be duly executed as of the date first written above.

E*TRADE GROUP, INC.

By: _____

Name: _____

Title: _____

The foregoing Registration Rights Agreement is hereby confirmed and agreed to as of the date first written above:

FLEETBOSTON ROBERTSON STEPHENS INC.
HAMBRECHT & QUIST LLC
GOLDMAN, SACHS & CO.

By: FLEETBOSTON ROBERTSON STEPHENS INC.

By: _____
Authorized Signatory

<ARTICLE> BD

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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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FOR IMMEDIATE RELEASE

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E*TRADE GROUP, INC. TO SELL \$500 MILLION IN CONVERTIBLE SUBORDINATED NOTES

MENLO PARK, Calif., January 25, 2000 - E*TRADE Group, Inc. (Nasdaq: EGRP) today announced its intention to raise approximately \$500 million, subject to market and other conditions, through a Rule 144A offering of convertible subordinated notes. The notes will be convertible, at the option of the holder, into shares of E*TRADE's common stock and will be non-callable for three years.

E*TRADE expects to use approximately \$150,000,000 of the net proceeds to refinance outstanding senior secured indebtedness and the remaining net proceeds for general corporate purposes, including financing the future growth of the business.

This announcement is neither an offer to sell nor a solicitation of an offer to buy any of these securities.

The notes will not be registered under the Securities Act of 1933 and may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements under such act.

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Important Notice

E*TRADE is a registered trademark of the company. All other trademarks are properties of their respective owners. The statements contained in this news release that are forward-looking are based on current expectations that are subject to a number of uncertainties and risks, and actual results may differ materially. The uncertainties and risks include, but are not limited to, changes in market activity, market acceptance of the Destination E*TRADE web site, anticipated increases in the rate of new customer acquisition, the conversion of new visitors to the site to customers, seasonality, the development of new products and services, the enhancement of existing products and services, competitive pressures (including price competition), system failures, economic and political conditions, changes in consumer behavior and the introduction of competing products having technological and/or other advantages. Further information about these risks and uncertainties can be found in the information included in the annual report filed by the company with the SEC on Form 10-K (including information under the caption "Risk Factors") and quarterly reports on Form 10-Q.

FOR IMMEDIATE RELEASE

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Susan Wolfrom
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E*TRADE GROUP, INC. ANNOUNCES OFFERING OF
CONVERTIBLE SUBORDINATED NOTES

MENLO PARK, Calif., February 2, 2000 - E*TRADE Group, Inc. (Nasdaq: EGRP) today announced that it is raising approximately \$500 million through a private offering of 6% convertible subordinated notes due 2007. The offering is expected to close on February 7, 2000. The notes are convertible, at the option of the holder, into shares of E*TRADE's common stock at a conversion price of \$23.60 per share, representing a conversion premium of 18% over the February 1, 2000 closing price, and will be non-callable for three years. E*TRADE has granted the initial purchasers an option to purchase up to an additional \$150 million of notes.

E*TRADE expects to use \$150,000,000 of the net proceeds to refinance outstanding senior secured indebtedness and the remaining net proceeds for general corporate purposes, including financing the future growth of the business.

The notes have been sold to qualified institutional buyers in a private placement under Rule 144A under the Securities Act of 1933. This announcement is neither an offer to sell nor a solicitation of an offer to buy any of these securities.

The notes and the common stock issuable upon conversion have not been registered under the Securities Act of 1933 and may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements under such Act.

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Important Notice

E*TRADE is a registered trademark of the company. All other trademarks are properties of their respective owners. The statements contained in this news release that are forward-looking are based on current expectations that are subject to a number of uncertainties and risks, and actual results may differ materially. The uncertainties and risks include, but are not limited to, changes in market activity, market acceptance of the Destination E*TRADE web site, anticipated increases in the rate of new customer acquisition, the conversion of new visitors to the site to customers, seasonality, the development of new products and services, the enhancement of existing products and services, competitive pressures (including price competition), system failures, economic and political conditions, changes in consumer behavior and the introduction of competing products having technological and/or other advantages. Further information about these risks and uncertainties can be found in the information included in the annual report filed by the company with the SEC on Form 10-K (including information under the caption "Risk Factors") and quarterly reports on Form 10-Q.