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FORM 10-Q

E TRADE FINANCIAL CORP - ETFC

Filed: August 14, 2000 (period: June 30, 2000)

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

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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 June 30, 2000

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 of incorporation or organization)	(I.R.S. Employer Identification Number)

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 August 10, 2000, the number of shares outstanding of the registrant's common stock was 299,908,164.

E*TRADE Group, Inc.
Form 10-Q Quarterly Report
For the Quarter Ended June 30, 2000

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

E*TRADE(R) and the E*TRADE logo are registered trademarks of E*TRADE Securities, Inc. All other products, trademarks or service marks mentioned in this document or any document incorporated by reference herein are trademarks or service marks of E*TRADE Group, Inc., its subsidiaries, or other companies with which they are associated or with which they have a business relationship.

FORWARD-LOOKING STATEMENTS

Certain statements in this report, 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/A as filed with the SEC on April 17, 2000, 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 consolidated financial statements and notes thereto contained in

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that filing.

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 June 30,		Nine Months Ended June 30,	
	2000	1999	2000	1999
Revenue:				
Transaction revenues	$ 180,194	$106,067	$ 587,102	$ 256,911
Interest income	257,193	104,129	657,065	245,696
Global and institutional	33,906	26,937	108,989	84,351
Other	24,863	8,606	60,786	27,245
Gross revenues	496,156	245,739	1,413,942	614,203
Interest expense	(164,841)	(58,652)	(405,762)	(145,154)
Provision for loan losses	(974)	(665)	(2,767)	(1,435)
Net revenues	330,341	186,422	1,005,413	467,614
Cost of services	124,489	82,237	366,470	198,967
Operating expenses:				
Selling and marketing	115,081	99,784	422,245	235,667
Technology development	32,526	20,659	111,033	50,481
General and administrative	50,179	24,574	142,482	69,654
Amortization of goodwill and other intangibles	6,716	565	13,900	1,934
Merger-related expenses	1,133	3,652	31,519	3,652
Total operating expenses	205,635	149,234	721,179	361,388
Total cost of services and operating expenses	330,124	231,471	1,087,649	560,355
Operating income (loss)	217	(45,049)	(82,236)	(92,741)
Non-operating income (expense):				
Gain on sale of investments	24,416	8,439	66,647	41,806
Unrealized gain (loss) on venture fund	(3,462)	--	7,363	--
Corporate interest--net and other	(8,178)	3,158	(15,478)	13,291
Total non-operating income	12,776	11,597	58,532	55,097
Pre-tax income (loss)	12,993	(33,452)	(23,704)	(37,644)
Income tax expense (benefit)	7,888	(12,230)	(1,732)	(15,659)
Minority interest in subsidiary	(585)	539	318	1,671
Income (loss) before cumulative effect of accounting change and extraordinary loss	5,690	(21,761)	(22,290)	(23,656)
Cumulative effect of accounting change, net of tax	--	--	--	(469)
Extraordinary loss on early extinguishment of subordinated debt, net of tax	--	(1,985)	--	(1,985)

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Net income (loss)	5,690	(23,746)	(22,290)	(26,110)
Preferred stock dividends	--	60	--	180
Income (loss) applicable to common stock	$ 5,690	$(23,806)	$ (22,290)	$ (26,290)
Income (loss) per share before cumulative effect of accounting change and extraordinary loss:				
Basic	$ 0.02	$ (0.08)	$ (0.08)	$ (0.09)
Diluted	$ 0.02	$ (0.08)	$ (0.08)	$ (0.09)
Income (loss) per share:				
Basic	$ 0.02	$ (0.09)	$ (0.08)	$ (0.10)
Diluted	$ 0.02	$ (0.09)	$ (0.08)	$ (0.10)
Shares used in computation of income (loss) per share before cumulative effect of accounting change and extraordinary loss and income (loss) per share:				
Basic	294,015	271,276	275,337	265,434
Diluted	309,346	271,276	275,337	265,434

See notes to condensed consolidated financial statements.

E*TRADE GROUP, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(in thousands, except share amounts)

	June 30, 2000	September 30, 1999
	(Unaudited)	
ASSETS		
Cash and equivalents	$ 178,894	$ 124,801
Cash and investments required to be segregated under Federal or other regulations	86,414	104,500
Brokerage receivables--net	5,657,869	2,912,581
Mortgage-backed securities	3,345,760	1,426,053
Loans receivable--net	3,535,825	2,154,509
Investments	966,646	830,329
Property and equipment--net	263,692	178,854
Goodwill and other intangibles	471,895	17,211
Other assets	385,602	159,386
Total assets	$14,892,597	$7,908,224
LIABILITIES AND SHAREOWNERS' EQUITY		
Liabilities:		
Brokerage payables	$ 5,044,173	$2,824,212
Banking deposits	3,987,954	2,162,682
Borrowings by bank subsidiary	2,858,000	1,267,474
Accounts payable, accrued and other liabilities	462,253	203,971
Convertible subordinated notes	650,000	--
Total liabilities	13,002,380	6,458,339
Company-obligated mandatorily redeemable preferred capital securities of E*TRADE Financial Corporation		

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	June 30, 2000	September 30, 1999
subsidiary trusts holding solely junior subordinated debentures of and other mandatorily redeemable preferred securities	30,631	30,584
Shareowners' equity:		
Common stock, $.01 par: shares authorized, 600,000,000; shares issued and outstanding: June 30, 2000, 298,283,829; September 30, 1999, 275,145,791	2,983	2,751
Additional paid-in capital	1,746,753	1,269,167
Unearned ESOP shares	(1,697)	(2,122)
Shareowners' notes receivable	(18,743)	--
Accumulated deficit	(30,654)	(8,364)
Accumulated other comprehensive income	160,944	157,869
Total shareowners' equity	1,859,586	1,419,301
Total liabilities and shareowners' equity	$14,892,597	$7,908,224

See notes to condensed consolidated financial statements.

E*TRADE GROUP, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(Unaudited)

	Nine Months Ended June 30,	
	2000	1999
Net cash used in operating activities, net of effects from acquisitions	$ (374,834)	$ (34,677)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of available-for-sale securities	(6,754,919)	(4,749,045)
Proceeds from sales, maturities of and principal payments on available-for-sale securities	4,704,934	4,419,793
Net increase in loans held for investment	(1,394,055)	(733,742)
Increase in restricted deposits	(71,445)	--
Cash used in business acquisitions, net of cash acquired	(31,770)	--
Purchases of property and equipment, net of capital lease and property and equipment acquired	(134,342)	(82,893)
Other	15,714	15,667
Net cash used in investing activities	(3,665,883)	(1,130,220)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Net increase in banking deposits	1,825,273	566,849
Advances from the Federal Home Loan Bank of Atlanta	2,168,000	1,989,510
Payments on advances from the Federal Home Loan Bank of Atlanta	(1,295,000)	(1,777,510)
Net increase in securities sold under agreements to repurchase	717,526	104,626
Net proceeds from convertible subordinated notes	631,312	--
Proceeds from issuance of common stock	17,921	401,827
Proceeds from associate stock transactions	28,594	15,805
Proceeds from bank loans and lines of credit, net of transaction costs	177,455	--
Payments on bank loans and lines of credit	(151,843)	--
Issuance of shareowners' notes receivable	(18,607)	--
Net decrease in other borrowed funds	--	(29,792)

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Other	(5,821)	(5,711)
Net cash provided by financing activities	4,094,810	1,265,604
INCREASE IN CASH AND EQUIVALENTS	54,093	100,707
CASH AND EQUIVALENTS--Beginning of period	124,801	71,317
CASH AND EQUIVALENTS--End of period	$ 178,894	$ 172,024
SUPPLEMENTAL DISCLOSURES:		
Non-cash investing and financing activities:		
Unrealized gain on available-for-sale securities	$ 8,029	$ 404,502
Tax benefit on exercise of stock options	$ 27,498	$ 39,436
Assets acquired under capital lease obligations	$ 32,752	$ --
Purchase acquisitions, net of cash acquired:		
Common stock issued and stock options assumed	$ 411,411	$ --
Cash paid, less acquired (including acquisition costs)	$ 31,770	$ --
Liabilities assumed	$ 19,586	$ --
Carrying value of joint-venture investment	$ 5,343	$ --
Fair value of assets recorded (including goodwill of $447,691)	$ 468,110	$ --

See notes to condensed consolidated financial statements.

E*TRADE GROUP, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. BASIS OF PRESENTATION

The accompanying unaudited interim condensed consolidated financial statements include E*TRADE Group, Inc., a financial services holding company, and its subsidiaries (collectively, the "Company"), including E*TRADE Securities, Inc. ("E*TRADE Securities"), a securities broker-dealer, E*TRADE Financial Corporation ("ETFC"), formerly Telebanc Financial Corporation, a provider of banking and related financial services, and TIR (Holdings) Limited ("TIR"), a provider of global securities brokerage and other related services to institutional clients. The primary business of ETFC consists of the activities conducted by E*TRADE Bank, Inc. (the "Bank" or "E*TRADE Bank"), formerly known as Telebank, and E*TRADE Capital Markets, Inc. ("ETCM"), formerly Telebanc Capital Markets. E*TRADE Bank is a federally chartered savings bank that provides deposit accounts insured by the Federal Deposit Insurance Corporation ("FDIC") to customers nationwide. ETCM is a funds manager and registered broker-dealer.

These interim condensed 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 accounting principles generally accepted in the United States of America. All significant intercompany accounts and transactions have been eliminated. These interim condensed 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 on Form 10-K/A for the fiscal year ended September 30, 1999.

The condensed consolidated financial statements of the Company have been prepared to give retroactive effect to the acquisition of ETFC on January 12, 2000, which was accounted for as a pooling of interests (see Note 23 to the Company's Annual Report on Form 10-K/A for the fiscal year ended September 30, 1999).

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NOTE 2. BROKERAGE RECEIVABLES--NET AND PAYABLES

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

	June 30, 2000	September 30, 1999
Receivable from customers and non-customers (less allowance for doubtful accounts of $6,440 at June 30, 2000 and $975 at September 30, 1999)	$4,791,836	$2,559,283
Receivable from brokers, dealers and clearing organizations:		
Net settlement and deposits with clearing organizations	116,662	20,066
Deposits paid for securities borrowed	730,245	306,326
Securities failed to deliver	4,950	7,508
Other	14,176	19,398
Total brokerage receivables--net	$5,657,869	$2,912,581
Payable to customers and non-customers	$1,483,961	$ 946,760
Payable to brokers, dealers and clearing organizations:		
Deposits received for securities loaned	3,505,736	1,806,590
Securities failed to receive	5,398	7,235
Other	49,078	63,627
Total brokerage payables	$5,044,173	$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 customers to finance their purchases of securities on margin. At June 30, 2000 and September 30, 1999, credit extended to customers and non-customers with respect to margin accounts was $4,752.5 million and $2,452.1 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 in 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.

NOTE 3. INVESTMENTS

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

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

	June 30, 2000	September 30, 1999
Trading securities	$ 5,090	$ 38,269
Available-for-sale investment securities	825,384	685,555
Equity method investments:		
Venture capital funds	66,697	36,270
Other equity method investments	54,370	57,402
Other investments	15,105	12,833

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Total investments	$966,646	$830,329

E*OFFERING

Included in other equity method investments is a 23.6% investment in E*OFFERING Corp. ("E*OFFERING"), a full service, Internet-based investment bank. On May 15, 2000, Wit Capital Group, Inc., renamed Wit SoundView Group, Inc. ("Wit"), entered into a definitive agreement to acquire E*OFFERING. Under the terms of the agreement, E*TRADE shareholders will receive approximately 10,532,000 shares of Wit. Concurrently with this agreement, E*TRADE and Wit entered into a strategic alliance pursuant to which Wit will be the exclusive source of IPOs, follow-on offerings, and other investment banking products to E*TRADE for a three year term, and E*TRADE will acquire Wit's retail brokerage business. As part of the consideration for the exclusivity rights, Wit has agreed to issue to E*TRADE approximately 4,026,000 shares of common stock which are subject to a three-year prohibition on transfer. In addition, Wit has agreed to issue to E*TRADE a warrant to purchase up to 2,000,000 shares of Wit common stock for $10.25 per share, contingent upon maintaining the exclusivity rights for years four and five of the strategic alliance. In connection with the strategic alliance, E*TRADE also agreed to purchase 2,000,000 shares of Wit common stock for $10.25 per share. The transactions contemplated by the strategic alliance are contingent upon each other and on the closing of the merger of E*OFFERING into Wit, which is subject to approval by Wit's shareholders. The agreement is expected to close at the end of the current calendar year.

Publicly-Traded Equity Securities

Included in available-for-sale securities are investments in several companies that are publicly-traded and carried at fair value. During the nine months ended June 30, 2000, the Company sold shares of its publicly-traded investments generating proceeds of $66.0 million, resulting in a pre-tax gain of $65.4 million. Unrealized gains

related to these investments were $314.1 million and $282.3 million at June 30, 2000 and September 30, 1999, respectively. There were no unrealized losses related to these investments at June 30, 2000 and September 30, 1999.

Venture Capital Funds

The Company made a $50.3 million capital commitment to the E*TRADE eCommerce Fund II, L.P. ("Fund II") as of June 16, 2000. It is anticipated that Fund II will have total committed capital of between $200-$250 million, with all capital in excess of the E*TRADE contributions being raised from third parties. Fund II invests in early to mid-stage companies offering e-commerce related services, products or infrastructure. Through Fund II, the Company is able to leverage its own investment capital, expand the scope of its strategic investments (beyond financial services) and keep it in a position to capitalize on leading-edge technologies. Fund II is managed by its General Partner, E*TRADE Ventures II, LLC ("General Partner II"). Christos M. Cotsakos, the Chairman of the Board of Directors and Chief Executive Officer of the Company, and Thomas Bevilacqua, the Company's Chief Strategic Investment Officer, are the managing members of General Partner II. The Company is a non-managing member of General Partner II. General Partner II receives an annual management fee of approximately 1.75% of the total committed capital. The management fee is used to offset the costs and expenses of the Company's corporate development/strategic group. In addition, to the extent that Fund II generates profits, 25% are allocated to General Partner II as a carried interest. As a member of General Partner II, the Company is entitled to receive 32% of such amount provided that up to one-fifth of the Company's interest can be allocated by the managing members to Company personnel.

The Company made a $25 million contribution to the E*TRADE eCommerce Fund, L.P. (the "Fund") on October 1, 1999. The Fund has committed capital of approximately $100 million, $75 million of which was raised from third party investors. The Fund invests in early to mid-stage Internet companies focused on e-commerce, infrastructure tools, communication and services. The Company received a general and limited partnership interest of approximately 28% in

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the Fund. Through the Fund, the Company is able to leverage its own investment capital, expand the scope of its strategic investments (beyond financial services) and keep it in a position to capitalize on leading-edge technologies. The Fund is managed by its General Partner, E*TRADE Ventures I, LLC (the "General Partner"). Christos M. Cotsakos, the Chairman of the Board of Directors and Chief Executive Officer of the Company, and Thomas Bevilacqua, the Company's Chief Strategic Investment Officer, are the managing members of the General Partner. The Company is a non-managing member of the General Partner. The General Partner receives an annual management fee of approximately 1.75% of the total committed capital. The management fee is paid in its entirety to the Company and is used to offset the costs and expenses of its corporate development/strategic group. In addition, to the extent that the Fund generates profits, 20% are allocated to the General Partner as a carried interest. As a member of the General Partner, the Company is entitled to receive 50% of such amount provided that up to one-fifth of the Company's interest can be allocated by the managing members to Company personnel. The Company also has limited partnership interests in two other unrelated venture capital funds.

NOTE 4. RELATED PARTY TRANSACTIONS

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

NOTE 5. SUBORDINATED NOTES AND OTHER BORROWINGS

On February 7, 2000, the Company completed a Rule 144A offering of $500 million convertible subordinated notes due February 2007. On March 17, 2000, the initial purchasers exercised an option to purchase

an additional $150 million of notes. The notes are convertible, at the option of the holder, into a total of 27,542,373 shares of the Company's common stock at a conversion price of $23.60 per share. The notes bear interest at 6%, payable semiannually, and are non-callable for three years and may then be called by the Company at a premium, which declines over time. The holders have the right to require redemption at a premium in the event of a change in control or other defined redemption event. The Company used $145.0 million of the net proceeds to repay the outstanding balance on a line of credit in February 2000. Debt issuance costs of $19.1 million are included in other assets and are being amortized to corporate interest expense over the term of the notes. Had these securities been issued at the beginning of the fiscal year and the proceeds used to reduce the borrowings under the line of credit, income per share would have been reduced to loss per share of $0.01 for the three months ended June 30, 2000 and loss per share would have been increased to $0.17 per share for the nine months ended June 30, 2000, compared to income per share of $0.02 and loss per share of $0.08 recorded in the three and nine months ended June 30, 2000, respectively, due to the additional interest expense and amortization of issuance costs associated with the notes.

In December 1999, the Company obtained a $150 million line of credit agreement with a syndicate of banks. The line of credit, which had an expiration date of March 31, 2000, was dissolved by the Company in February 2000 following the Company's issuance of convertible subordinated notes and repayment of the $145.0 million outstanding balance.

In November 1999, the Company obtained a $50 million line of credit under an agreement with a bank that expires in November 2000. The line of credit is collateralized by investment securities that are owned by the Company. Borrowings under the line of credit bear interest at 0.35% above LIBOR. The agreement requires the Company to meet certain financial covenants. As of June 30, 2000, the Company was in compliance with all such covenants and had $30.8 million outstanding under this line of credit.

NOTE 6. SHAREOWNERS' NOTES RECEIVABLE

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During the third quarter of fiscal year 2000, the Company made full recourse loans to several of its executive officers in the aggregate principal and interest amount of $18.7 million. The proceeds of these loans were used to fund the purchase of shares of E*TRADE common stock through the exercise and hold of stock options. The loans accrue interest at the rate of 7.75% per annum. The principal amount and accrued interest on the shareowners' notes receivable are due through July 2001.

NOTE 7. COMPREHENSIVE INCOME

On October 1, 1998, the Company adopted SFAS 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 income (loss) to comprehensive income (loss) is as follows (in thousands):

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2000	1999	2000	1999
Net income (loss)................	$ 5,690	$(23,746)	$(22,290)	$(26,110)
Changes in other comprehensive income (loss):				
Unrealized gain (loss) on available-for-sale securities, net of tax....................	(109,696)	25,234	1,616	239,246
Cumulative translation adjustments...................	3,004	(880)	1,459	(265)
Total comprehensive income (loss).....................	$(101,002)	$ 608	$(19,215)	$212,871

NOTE 8. INCOME (LOSS) PER SHARE

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

	Three Months ended June 30,			Nine Months Ended June 30,	
	2000		1999	2000	1999
	Basic income per share	Diluted income per share	Basic and diluted loss per share	Basic and diluted loss per share	Basic and diluted loss per share
Numerator:					
Income (loss) before cumulative effect of accounting change and extraordinary loss...	$ 5,690	$ 5,690	$(21,761)	$(22,290)	$ (23,656)
Premium on redemption of trust preferred securities (a)......	--	--	(381)	--	--
Adjusted income (loss) before cumulative effect of accounting change and					

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extraordinary loss...	5,690	5,690	(22,142)	(22,290)	(23,656)
Cumulative effect of accounting change, net of tax..........	--	--	--	--	(469)
Extraordinary loss on early extinguishment of subordinated debt, net of tax..........	--	--	(1,985)	--	(1,985)
Adjusted net income (loss)..............	5,690	5,690	(24,127)	(22,290)	(26, 110)
Less: preferred stock dividends...........	--	--	60	--	180
Adjusted income (loss) applicable to common stock...............	$ 5,690	$ 5,690	$(24,187)	$(22,290)	$(26, 290)
Denominator:					
Weighted average shares outstanding...	294,015	294,015	271,276	275,337	265,434
Dilutive effect of options issued to associates..........	--	14,502	--	--	--
Dilutive effect of warrants outstanding.........	--	829	--	--	--
	294,015	309,346	271,276	275,337	265,434

(a) This charge represents costs incurred to purchase certain of the Company's trust preferred securities on the open market. The costs were charged against additional paid-in capital but increase the net loss for earnings per share purposes (see Note 15 to the Company's Annual Report on Form 10-K/A).

Because the Company reported a net loss in the nine months ended June 30, 2000 and in the three and nine months ended June 30, 1999, the calculation of diluted loss per share for these periods does not include common stock equivalents as they are anti-dilutive and would result in a reduction of loss per share. If the Company had reported net income in the nine months ended June 30, 2000 and in the three and nine months ended June 30, 1999, there would have been approximately 17,263,000, 21,029,000 and 19,003,000 additional shares for options outstanding, respectively, and approximately 875,000, 1,129,000, and 1,278,000 additional shares for warrants outstanding, respectively, in the calculation of diluted loss per share. Excluded from the calculation of diluted income (loss) per share for all periods presented are approximately 27,542,000 shares of common stock issuable under convertible subordinated notes as the effect of applying the treasury stock method on an as-if-converted basis would be anti-dilutive in the calculation of diluted income (loss) per share.

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

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2000	1999	2000	1999
Options excluded from computation of diluted income (loss) per share.....................	13,303	145	8,451	182
Exercise price ranges:				

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High	$58.75	$58.75	$58.75	$58.75
Low	$19.72	$48.25	$24.63	$25.56

NOTE 9. REGULATORY REQUIREMENTS

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

	June 30, 2000	September 30, 1999
Net capital	$451,153	$162,729
Percentage of aggregate debit balances	9.1%	6.2%
Required net capital	$ 99,155	$ 52,206
Excess net capital	$351,998	$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 and the Company's international affiliates are also subject to net capital requirements. These companies are located in the United States, Australia, Hong Kong, the Philippines and Europe. The companies outside the United States have various and differing capital requirements, all of which were met at June 30, 2000 and September 30, 1999.

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

The table below summarizes the minimum and excess net capital requirements for the Company's United States based broker subsidiaries (in thousands):

	June 30, 2000			September 30, 1999		
	Required Net Capital	Net Capital	Excess Net Capital	Required Net Capital	Net Capital	Excess Net Capital
TIR Securities, Inc.	$250	$ 1,714	$ 1,464	$ 82	$ 2,289	$ 2,207
TIR Investor Select, Inc.	$ 5	$ 423	$ 418	$ 5	$ 254	$ 249
Marquette Securities, Inc.	$250	$ 502	$ 252	$250	$ 445	$ 195
E*TRADE Capital Markets, Inc.	$252	$20,086	$19,834	$190	$17,310	$17,120

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

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

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

E*TRADE Bank's required and actual capital amounts and ratios are presented in the table below (dollars in thousands):

	Actual		Required For Capital Adequacy Purposes		Required To Be Well Capitalized Under Prompt Corrective Action Provisions	
	Amount	Ratio	Amount	Ratio	Amount	Ratio
As of June 30, 2000:						
Core capital (to adjusted tangible assets)..........	$475,258	6.42%	>$296,024	>4.0%	>$370,030	> 5.0%
Tangible capital (to tangible assets)..........	$475,258	6.42%	>$111,248	>1.5%	N/A	N/A
Tier I capital (to risk weighted assets)..........	$475,258	16.17%	N/A	N/A	>$178,747	> 6.0%
Total capital (to risk weighted assets)..........	$484,598	16.48%	>$238,329	>8.0%	>$297,911	>10.0%
As of September 30, 1999:						
Core capital (to adjusted tangible assets)..........	$440,469	11.20%	>$157,320	>4.0%	>$196,651	> 5.0%
Tangible capital (to tangible assets)..........	$440,469	11.20%	>$ 58,995	>1.5%	N/A	N/A
Tier I capital (to risk weighted assets)..........	$440,469	25.97%	N/A	N/A	>$101,768	> 6.0%
Total capital (to risk weighted assets)..........	$447,170	26.36%	>$135,691	>8.0%	>$169,614	>10.0%

NOTE 10. COMMITMENTS, CONTINGENCIES AND OTHER REGULATORY MATTERS

As of June 30, 2000, the Bank had commitments to purchase $26.9 million in fixed rate and $632.9 million in variable rate loans and certificates of deposit scheduled to mature in less than one year approximating $2,112.5 million. In the normal course of business, the Bank makes various commitments to extend credit and incur contingent liabilities that are not reflected in the balance sheets.

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 timely execute and confirm online transactions;

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- Damages arising from alleged problems in accessing brokerage accounts and placing orders;

- Damages arising from system interruptions; 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 NASDR or the SEC by dissatisfied customers are investigated by the NASDR 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 and banking industries are 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 11. ACQUISITIONS

On June 14, 2000, the Company entered into a definitive agreement to acquire VERSUS Technologies, Inc. ("VERSUS"), a Canadian-based provider of electronic securities trading services for institutional and retail investors and owner of the E*TRADE Canada license, in which the Company has an existing $1.5 million investment at June 30, 2000. Through the acquisition of VERSUS, the Company will increase its retail and institutional client base and be able to incorporate the technology underlying the VERSUS Network, a scalable proprietary electronic trading platform, into its global cross border trading platform, enabling institutions and investment dealers worldwide to route orders globally through its trading networks. In connection with this transaction, the Company agreed to acquire all of the outstanding shares of VERSUS stock in exchange for E*TRADE common stock valued at approximately $174.0 million, with VERSUS to become a wholly-owned subsidiary of the Company. The acquisition of VERSUS is subject to the satisfaction of certain conditions and is expected to close by the end of fiscal year 2000. The acquisition is expected to be accounted for as a pooling of interests.

On January 12, 2000, the Company completed the acquisition of ETFC. ETFC is the holding company for E*TRADE Bank, an Internet-based bank. Under the terms of the agreement, ETFC shareowners received 1.05 shares of E*TRADE common stock for each share of ETFC common stock representing a total of approximately 35,600,000 shares of the Company's common stock. The Company also assumed all outstanding ETFC options, which were converted to options to purchase approximately 5,494,000 shares of the Company's common stock. The acquisition was accounted for as a pooling of interests and, accordingly, all prior financial data of the Company has been restated to include the historical operations of ETFC. There were no significant intercompany transactions requiring elimination for any prior periods presented. The Company has incurred $0.2 million and $27.1 million of merger-related expenses in the three and nine months ended June 30, 2000, respectively, related to the acquisition of ETFC. The information below reflects the operations of E*TRADE

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and ETFC through the date of acquisition (in thousands):

	Net Revenues	Income (Loss) Before Cumulative Effect of Accounting Change and Extraordinary Loss	Net Income (Loss)
Nine months ended June 30, 2000			
E*TRADE Group............................	$ 981,990	$(22,713)	$(22,713)
ETFC through December 31, 1999...........	23,423	423	423
Combined.................................	$1,005,413	$(22,290)	(22,290)
Nine months ended June 30, 1999			
E*TRADE Group............................	$ 432,365	$(27,719)	$(27,719)
ETFC.....................................	35,249	4,063	1,609
Combined.................................	$ 467,614	$(23,656)	$(26,110)

On May 5, 2000, the Company completed the acquisition of Card Capture Services, Inc. ("CCS"), the largest independent network of centrally-managed automated teller machines in the United States, for an aggregate purchase price of $94.0 million. The aggregate purchase price is comprised of: approximately 4,247,000 shares of common stock valued at $87.4 million issued in exchange for 100% of the outstanding shares of CCS, the assumption of employee stock options, and incentive payments to management; cash paid of $5.1 million; and acquisition costs of $1.5 million. The acquisition was accounted for using the purchase method of accounting, and the results of CCS's operations have been combined with those of the Company since the date of acquisition. The purchase price allocation at June 30, 2000 is preliminary and has been allocated based on the estimated fair value of net tangible and intangible assets acquired. At June 30, 2000, the Company allocated $17.3 million to acquired assets and assumed liabilities of $13.6 million. The purchase price exceeded the fair value of the assets acquired by $90.3 million, which was primarily recorded as goodwill to be amortized over fifteen years, pending the completion of an independent valuation of CCS net assets. Merger-related expenses related to the acquisition of CCS were not significant through June 30, 2000. Additional costs associated with the CCS merger are expected to be incurred throughout fiscal 2000.

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 $362.0 million. The purchase price was comprised 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 $357.4 million, which was recorded as goodwill to be amortized over 20 years. Merger-related expenses related to foreign acquisitions were not significant.

The pro forma information below assumes that the acquisitions of the Company's foreign affiliates and CCS occurred at the beginning of fiscal 1999 and includes the effect of amortization of goodwill from that date (in thousands, except per share amounts):

	Nine Months ended June 30,

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	2000	1999
Net revenues	$1,026,320	$512,205
Net loss	$ (29,960)	$(46,710)
Basic and diluted loss per share	$ (0.10)	$ (0.17)

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

NOTE 12. SEGMENT INFORMATION

The Company provides securities brokerage and related investment and financial services. Following the acquisitions of TIR in fiscal 1999 and ETFC in fiscal 2000 (see Note 11), the Company classified the operations of E*TRADE's historical business, TIR and ETFC as separate reportable segments due to the relatively short operating history of the combined operations of E*TRADE's historical business with TIR and ETFC and due to ETFC's online banking services which represent a new line of business. With the acquisition of three foreign affiliates in the quarter ended December 31, 1999, their results have been combined with TIR to constitute the International segment. With the acquisition of CCS in the quarter ended June 30, 2000, the operations of CCS have been combined with ETFC to comprise the Banking segment. This is the manner in which management currently evaluates the Company's 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 condensed consolidated financial statements.

	E*TRADE Group	International	Banking	Total
		(in thousands)		
Three months ended June 30, 2000:				
Interest income--net of interest expense	$ 59,192	$ 765	$ 32,395	$ 92,352
Non-interest revenue--net of provision for loan losses	195,753	36,043	6,193	237,989
Net revenues	$ 254,945	$ 36,808	$ 38,588	$ 330,341
Operating income (loss)	$ 1,419	$ (4,567)	$ 3,365	$ 217
Pre-tax income (loss)	$ 14,699	$ (4,518)	$ 2,812	$ 12,993
Three months ended June 30, 1999:				
Interest income--net of interest expense	$ 30,001	$ 273	$ 15,203	$ 45,477
Non-interest revenue--net of provision for loan losses	117,181	24,997	(1,233)	140,945
Net revenues	$ 147,182	$ 25,270	$ 13,970	$ 186,422
Operating income (loss)	$ (47,259)	$ 1,563	$ 647	$ (45,049)
Pre-tax income (loss)	$ (39,247)	$ 1,037	$ 4,758	$ (33,452)
Nine months ended June 30, 2000:				
Interest income--net of interest expense	$ 166,976	$ 1,296	$ 83,031	$ 251,303
Non-interest revenue--net of provision for loan losses	634,799	111,599	7,712	754,110
Net revenues	$ 801,775	$112,895	$ 90,743	$ 1,005,413

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Operating loss	$ (78,945)	$ (384)	$ (2,907)	$ (82,236)
Pre-tax loss	$ (19,286)	$ (970)	$ (3,448)	$ (23,704)
Nine months ended June 30, 1999:				
Interest income--net of interest expense	$ 68,718	$ 670	$ 31,154	$ 100,542
Non-interest revenue--net of provision for loan losses	282,254	80,723	4,095	367,072
Net revenues	$ 350,972	$ 81,393	$ 35,249	$ 467,614
Operating income (loss)	$ (104,653)	$ 5,939	$ 5,973	$ (92,741)
Pre-tax income (loss)	$ (53,309)	$ 5,386	$ 10,279	$ (37,644)
As of June 30, 2000:				
Segment assets	$7,185,102	$274,902	$7,432,593	$14,892,597
As of September 30, 1999:				
Segment assets	$3,771,370	$155,610	$3,981,244	$ 7,908,224

No one single customer accounted for greater than 10% of total revenues in the three or nine months ended June 30, 2000 or 1999.

NOTE 13. Recent Accounting Pronouncements

In December 1999, the Securities and Exchange Commission ("SEC") staff issued Staff Accounting Bulletin No. 101 Revenue Recognition in Financial Statements ("SAB 101"). SAB 101 states that all registrants are expected to apply the accounting and disclosures described in it. The SEC staff, however, will not object if registrants that have not applied SAB 101 do not restate prior financial statements provided they report a change in accounting principle in accordance with Accounting Principles Board Opinion No. 20 Accounting Changes, by cumulative catch-up adjustment no later than the second quarter of the fiscal year beginning after December 15, 1999. The Company is currently evaluating the impact, if any, of SAB 101 on its revenue recognition policy and its consolidated financial statements.

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 E*TRADE Group, Inc. should be read in conjunction with the condensed consolidated financial statements and notes thereto included elsewhere in this Form 10-Q. This discussion contains forward-looking statements, including statements regarding our Company's strategy, financial performance and revenue sources, which involve risks and uncertainties. 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 data)

The following table sets forth the components of revenue and the percentage change for the three and nine months ended June 30, 2000 and 1999:

	Three Months Ended June 30,			Nine Months Ended June 30,		
	2000	1999	Percentage Change	2000	1999	Percent Change

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Transaction revenues:						
Commission	$ 161.5	$ 95.0	70%	$ 524.0	$ 227.9	130%
Order Flow	18.7	11.1	68%	63.1	29.0	118%
Total transaction revenues	180.2	106.1	70%	587.1	256.9	129%
Interest income:						
Brokerage-related activities	121.6	54.1	125%	329.1	119.0	177%
Banking-related activities	135.6	50.0	171%	328.0	126.7	159%
Total interest income	257.2	104.1	147%	657.1	245.7	167%
Global and institutional	33.9	26.9	26%	109.0	84.4	29%
Other	24.9	8.6	189%	60.8	27.2	123%
Gross revenues	496.2	245.7	102%	1,414.0	614.2	130%
Interest expense:						
Brokerage-related activities	61.6	24.1	156%	160.8	49.6	224%
Banking-related activities	103.2	34.6	198%	245.0	95.6	156%
Total interest expense	164.8	58.7	181%	405.8	145.2	180%
Provision for loan losses	1.0	0.7	46%	2.8	1.4	93%
Net revenues	$ 330.3	$ 186.4	77%	$ 1,005.4	$ 467.6	115%

(Percentages may not recalculate and balances may not add due to rounding.)

Net Revenues

Net revenues increased to $330.3 million in the third quarter of fiscal 2000, up 77% from $186.4 million in the equivalent period of fiscal 1999. Net revenues increased to $1,005.4 million for the nine months ended June 30, 2000, up 115% from $467.6 million in the equivalent period of fiscal 1999. The increase in net revenue is mainly due to the growth in our diversified and global revenue streams, improvements in our cross-selling ability across business lines, and sustained growth in customer trading volumes, net new active bank and brokerage customer accounts and customer assets.

Transaction Revenues

Transaction revenues increased to $180.2 million in the third quarter of fiscal 2000, up 70% from $106.1 million in the equivalent period in fiscal 1999. Transaction revenues increased to $587.1 million for the nine months ended June 30, 2000, up 129% from $256.9 million for the equivalent period in fiscal 1999. Transaction revenues consist of commission revenues and payments for order flow. Growth in transaction revenues reflects the overall high level of trading volume in U.S. financial markets for the nine months ended June 30, 2000. Further, sustained growth in new customer accounts coupled with our Power E*TRADE program, which extends special initiatives to participating, highly active customers who remained active this quarter, despite declining volumes in the market, and the implementation of our Customer Relationship Management ("CRM") technology, which has enabled us to identify and attract higher quality accounts, contributed to the growth in transaction revenues during the third quarter in fiscal 2000 despite a historic decline in overall market trading volumes during that quarter.

Commission revenues for the third quarter of fiscal 2000 increased to $161.5 million, up 70% from $95.0 million in the same period a year ago. Commission revenues for the nine months ended June 30, 2000 increased to $524.0 million, up 130% from $227.9 million in the same period a year ago.

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Domestic brokerage transactions for the third quarter of fiscal 2000 totaled 10.5 million, or an average of 166,528 transactions per day. This is an increase of 107% over the average daily domestic brokerage transaction volume of 80,635 for the same period in the prior year. Domestic brokerage transactions for the nine months ended June 30, 2000 totaled 33.2 million, or an average of 174,757 transactions per day. This is an increase of 171% over the average daily domestic brokerage transaction volume of 64,444 for the same period in the prior year. Commissions per trade decreased from $18.51 and $18.59 in the three and nine months ended June 30, 1999, respectively, to $17.33 and $17.70 for the three and nine months ended June 30, 2000, respectively. 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 Power E*TRADE program, a component of which provides reduced commissions for active traders. Further, market conditions in the third quarter of fiscal 2000 coupled with our efforts to diversify revenue streams during this period have resulted in a reduction in transaction revenues as a percentage of gross revenues to 36% from 43% in the third quarter of fiscal 1999. Commission revenues as a percentage of gross revenues are expected to decrease as we continue to execute on cross-selling initiatives across business lines, leveraging our diversified business model.

Payments for order flow increased to $18.7 million for the third quarter of fiscal 2000, up 68% from $11.1 million for the same period a year ago. Order flow revenue increased to $63.1 million for the nine months ended June 30, 2000, up 118% from $29.0 million for the same period in the prior year. As a percentage of transaction revenues, payments for order flow were 10% for the three months ended June 30, 2000 and 1999. As a percentage of transaction revenues, payments for order flow were 11% for the nine months ended June 30, 2000 and 1999. 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.

Interest Income and Expense

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

Brokerage interest income increased to $121.6 million in the third quarter of fiscal 2000, up 125% from $54.1 million in the same period a year ago. Brokerage interest income increased to $329.1 million for the nine months ended June 30, 2000, up 177% from $119.0 million in the same period in fiscal 1999. These increases

primarily reflect the overall increase in average customer margin balances, which increased 119% to $5,048.4 million in the third quarter of fiscal 2000, from $2,306.9 million in the same period a year ago, and average customer money market fund balances, which increased 133% to $7,224.1 million in the third quarter of fiscal 2000, from $3,098.3 million in the same period a year ago. Brokerage interest expense increased to $61.6 million in the third quarter of fiscal 2000, up 156% from $24.1 million in the comparable prior year period. Brokerage interest expense increased to $160.8 million for the nine months ended June 30, 2000, up 224% from $49.6 million in the comparable prior year period. This increase is due to an overall increase in average customer credit balances, which increased 113% to $1,426.0 million in the third quarter of fiscal 2000, from $670.7 million in the same period a year ago, and average stock loan balances, which increased 95% to $3,715.1 million in the third quarter of fiscal 2000, from $1,910.0 million in the same period a year ago.

Banking interest income increased to $135.6 million in the third quarter of fiscal 2000, up 171% from $50.0 million for the same period a year ago.

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Banking interest income increased to $328.0 million for the nine months ended June 30, 2000, up 159% from $126.7 million for the same period a year ago. These increases reflect an increase in the average interest-earning asset balances coupled with an increase in the average interest yield. Average interest-earning assets increased 140% to $6,907.2 million during the third quarter of fiscal 2000, from $2,875.0 million in the same period a year ago. The average yield increased to 7.86% in the third quarter of fiscal 2000 from 6.93% in the same period a year ago. Average interest-earning assets increased 135% to $5,702.9 million during the nine months ended June 30, 2000, from $2,429.3 million in the same period a year ago. The average yield increased to 7.67% in the nine months ended June 30, 2000 from 7.00% in the same period a year ago. Interest expense from banking activities increased to $103.2 million in the third quarter of fiscal 2000, up 198% from $34.6 million for the same period a year ago. Interest expense from banking activities increased to $245.0 million in the nine months ended June 30, 2000, up 156% from $95.6 million for the same period a year ago. These increases reflect an increase in the average interest-bearing liabilities coupled with an increase in the average cost of the borrowings. Average interest-bearing liabilities increased 165% to $6,552.8 million during the third quarter of fiscal 2000, from $2,470.6 million in the same period a year ago. The average cost increased to 6.33% in the third quarter of fiscal 2000 from 5.62% in the same period a year ago. Average interest-bearing liabilities increased 140% to $5,357.0 million during the nine months ended June 30, 2000, from $2,229.0 million in the same period a year ago. The average cost increased to 6.11% in the nine months ended June 30, 2000 from 5.73% in the same period a year ago.

The following tables present average balance data and income and expense data for our banking subsidiary's operations and the related interest yields and rates for the three and nine months ended June 30, 2000 and 1999. The tables also present information for the periods indicated with respect to net interest margin, an indicator of an institution's profitability, which is calculated by dividing net interest income by interest-earning banking assets. Another indicator of profitability is net interest spread, which is the difference between the weighted average yield earned on interest-earning assets and weighted average rate paid on interest-bearing liabilities. Interest includes the incremental tax benefit of tax exempt income.

	Three Months Ended June 30, 2000			Three Months Ended June 30, 1999		
	Average Balance	Interest Income/ Expense	Average Annualized Yield/Cost	Average Balance	Interest Income/ Expense	Average Annualized Yield/Cost
	(Dollars in thousands) (unaudited)					
Interest-earning banking assets:						
Loans receivable, net..................	$ 3,374,777	$ 68,620	8.13%	$ 1,306,819	$ 24,755	7.58%
Interest-bearing deposits............	45,721	737	6.48	31,339	370	4.73
Mortgage-backed and related available-for-sale securities..	3,187,770	60,992	7.65	1,277,246	20,578	6.44
Available-for-sale investment securities...........	223,459	3,873	7.13	213,934	3,285	6.35
Investment in FHLB stock................	69,414	1,341	7.77	24,403	456	7.50
Trading securities....	6,077	78	5.11	21,257	388	7.31
Total interest-earning banking assets............	6,907,218	$135,641	7.86%	2,874,998	$ 49,832	6.93%
Non-interest-earning banking assets.........	288,330			109,208		
Total banking assets............	$ 7,195,548			$ 2,984,206		

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Interest-bearing banking liabilities:						
Retail deposits.......	$ 3,491,184	$ 53,547	6.12%	$ 1,416,953	$ 19,909	5.64%
Brokered callable certificates of deposit.............	91,730	1,478	6.46	67,093	1,110	6.63
FHLB advances.........	1,354,077	21,694	6.34	467,434	6,351	5.38
Other borrowings......	1,615,762	26,472	6.48	499,026	6,668	5.29
Subordinated debt, net..................	--	--	--	20,062	591	11.77
Total interest-bearing banking liabilities........	6,552,753	$103,191	6.33%	2,470,568	$ 34,629	5.62%
Non-interest bearing banking liabilities....	161,966			61,426		
Total banking liabilities........	6,714,719			2,531,994		
Total banking shareowner's equity............	480,829			452,212		
Total banking liabilities and shareowner's equity....	$ 7,195,548			$ 2,984,206		
Excess of interest-earning banking assets over interest-bearing banking liabilities/net interest income........	$ 354,465	$ 32,450		$ 404,430	$ 15,203	
Net interest spread.....			1.53%			1.31%
Net interest margin (net yield on interest-earning banking assets)................			1.88%			2.12%
Ratio of interest-earning banking assets to interest-bearing banking liabilities....			105.41%			116.37%
Return on average total banking assets.........			0.07%*			0.17%
Return on average net banking assets.........			0.07%*			0.25%
Equity to total banking assets.................			6.68%*			15.15%

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* Ratios calculated by excluding ESOP and merger related costs of $0.2 million and $0.5 million, respectively in the three months ended June 30, 2000 and 1999, respectively.

	Nine Months Ended June 30, 2000			Nine Months Ended June 30, 1999		
	Average Balance	Interest Income/ Expense	Average Annualized Yield/Cost	Average Balance	Interest Income/ Expense	Average Annualized Yield/Cost
	(Dollars in thousands) (unaudited)					
Interest-earning banking assets:						
Loans receivable, net..................	$2,828,210	$ 168,439	7.94%	$1,054,103	$ 60,636	7.67%
Interest-bearing deposits..............	65,540	2,768	5.64	26,673	891	4.46

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Mortgage-backed and related available- for-sale securities	2,535,820	142,366	7.49	1,083,575	53,108	6.54
Available-for-sale investment securities	201,858	10,391	6.94	219,044	10,163	6.31
Investment in FHLB stock	53,502	3,109	7.76	21,913	1,229	7.49
Trading securities	17,956	926	6.88	23,945	1,299	7.24
Total interest-earning banking assets	5,702,886	$ 327,999	7.67%	2,429,253	$127,326	7.00%
Non-interest-earning banking assets	231,192			97,265		
Total banking assets	$5,934,078			$2,526,518		
Interest-bearing banking liabilities:						
Retail deposits	$2,900,118	$ 130,101	5.98	$1,234,211	$ 52,869	5.98%
Brokered callable certificates of deposit	87,551	4,266	6.49	67,070	3,330	6.61
FHLB advances	1,048,832	48,913	6.13	406,848	16,542	5.34
Other borrowings	1,286,937	61,633	6.29	498,098	20,448	5.39
Subordinated debt, net	33,536	--	--	22,732	2,358	13.83
Total interest-bearing banking liabilities	5,356,974	$ 244,913	6.11%	2,228,959	$ 95,547	5.73%
Non-interest bearing banking liabilities:	81,843			67,727		
Total banking liabilities	5,438,817			2,296,686		
Total banking shareowner's equity	495,261			229,832		
Total banking liabilities and shareowner's equity	$5,934,078			$2,526,518		
Excess of interest-earning banking assets over interest-bearing banking liabilities/net interest income	$ 345,912	$ 83,086		$ 200,294	$ 31,779	
Net interest spread			1.56%			1.27%
Net interest margin (net yield on interest-earning banking assets)			1.94%			1.74%
Ratio of interest-earning banking assets to interest-bearing banking liabilities			106.46%			108.99%
Return on average total banking assets			0.16%*			0.14%
Return on average net banking assets			0.17%*			0.15%
Equity to total banking assets			8.35%*			9.10%

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* Ratios calculated by excluding ESOP and merger related costs of $17.1 million and $1.1 million, respectively, in the nine months ended June 30, 2000 and 1999, respectively.

Global and Institutional

Global and institutional revenues increased to $33.9 million in the third quarter of fiscal 2000, up 26% from $26.9 million in the same period a year ago. For the nine months ended June 30, 2000, global and institutional revenues increased to $109.0 million from $84.4 million, up 29% from the same period in fiscal 1999. Global and institutional revenues are comprised of revenues from TIR's operations, as well as licensing fees, royalties and brokerage-related transaction revenue from our international affiliates. TIR's net revenues increased to $33.3 million in the third quarter of fiscal 2000, up 32% from $25.3 million for the same period a year ago. These increases are primarily attributable to strong market conditions in Asia and Europe during the nine months ended June 30, 2000, partially offset by historic market volatility during the three months ended June 30, 2000, which resulted in an 18% decline in global and institutional revenues from $41.4 million in the second quarter of fiscal 2000. TIR's revenues are largely comprised of commissions from institutional trade executions; for the third quarter of fiscal 2000, approximately 69.5% of TIR's transactions were from outside the U.S., and approximately 72.4% were from cross-border transactions.

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Other Revenues

Other revenues increased to $24.9 million in the third quarter of fiscal 2000, up 189% from $8.6 million for the comparable period in fiscal 1999. Other revenues increased to $60.8 million for the nine months ended June 30, 2000, up 123% from $27.2 million for the comparable period in fiscal 1999. Other revenues increased primarily due to growth in E*TRADE Business Solutions revenue, mutual funds revenue, revenues from fees charged for advertising on our Web site, investment banking revenue, and brokerage and banking-related fees for services. Further, with the acquisition of CCS on May 5, 2000, accounted for under the purchase method, other revenues in the three and nine month periods ended June 30, 2000 include both net ATM transaction fees and the gross proceeds from the sale of ATM machines.

Provision for Loan Losses

The Company recorded a provision for loan losses of $1.0 million in the third quarter of fiscal 2000, up 46% from $0.7 million for the comparable period in fiscal 1999. For the nine months ended June 30, 2000, the provision for loan losses increased to $2.8 million from $1.4 million, up 93% from the same period in fiscal 1999. The provision for loan losses recorded reflects increases in our allowance for loan losses based upon management's review and assessment of the risk in our loan portfolio, as well as the level of charge-offs as a portion of our allowance for loan losses. The increase in the provision for loan losses in the third quarter of fiscal 2000 primarily reflects the growth in the Company's loan portfolio. As of June 30, 2000, the total loan loss allowance was $9.7 million, or 0.27% of total loans outstanding. The total loan loss allowance as of September 30, 1999 was $7.1 million, or 0.33% of total loans outstanding. As of June 30, 2000, the general loan loss allowance was $9.3 million, or 93% of total non-performing assets of $10.0 million. As of September 30, 1999, the general loan loss allowance was $6.7 million, or 79% of total non-performing assets of $8.5 million.

Cost of Services

Total cost of services increased to $124.5 million for the third quarter of fiscal 2000, up 51% from $82.2 million in the comparable period in fiscal 1999. Total cost of services increased to $366.5 million for the nine months ended June 30, 2000, up 84% from $199.0 million in the comparable period in fiscal 1999. Cost of services includes expenses related to our brokerage 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 our brokerage and banking subsidiaries, a related increase in customer service inquiries, and operations and maintenance costs associated with our technology centers in Rancho Cordova, California and Alpharetta, Georgia. Cost of services as a percentage of net revenues was 38% in the third quarter of fiscal 2000 and 44% in the comparable period in fiscal 1999. Cost of services as a percentage of net revenues was 36% for the nine months ended June 30, 2000, compared to 43% in the comparable period in fiscal 1999. The improvement in cost of services as a percentage of net revenue is reflective of increased trading volumes and the diversification of revenue streams.

Operating Expenses

Selling and marketing expenses increased to $115.1 million in the third quarter of fiscal 2000, up 15% from $99.8 million in the comparable period in fiscal 1999. Selling and marketing expenses increased to $422.2 million for the nine months ended June 30, 2000, up 79% from $235.7 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 directed at building brand name recognition, growing the customer base and market share, and maintaining customer retention rates. Selling and marketing expenditures in the three and nine months ended June 30, 2000 reflect expenditures which resulted from our sponsorship of Super Bowl XXXIV. International marketing and banking expenditures are expected to increase as we expand our advertising efforts for these segments; however, overall marketing expenditure levels are not expected to continue to grow at the same rate in the fourth quarter of fiscal 2000 as in the first two quarters of the year.

Technology development expenses increased to $32.5 million in the third

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quarter of fiscal 2000, up 57% from $20.7 million in the comparable period in fiscal 1999. Technology development expenses increased to $111.0 million for the nine months ended June 30, 2000, up 120% from $50.5 million in the comparable period in fiscal 1999. The increased level of expense was incurred to enhance our existing product offerings, including maintenance of our Web site and development of our CRM technology prior to achievement of technological feasibility, reflecting our continuing commitment to invest in new products and technologies. Technology development expenses in the third quarter of fiscal 2000 decreased by $9.6 million or 23% from the second quarter of fiscal 2000 primarily due to an increase in capitalizable development costs for certain internally developed software which reached technological feasibility at the end of the second quarter of fiscal 2000, as well as a reduction in the use of outside consultants as we refocused our efforts on fewer, but more beneficial projects. Capitalized costs will be amortized to technology development expense over the expected life of the developed applications.

General and administrative expenses increased to $50.2 million in the third quarter of fiscal 2000, up 104% from $24.6 million in the comparable period in fiscal 1999. General and administrative expenses increased to $142.5 million for the nine months ended June 30, 2000, up 105% from $69.7 million in the comparable period in fiscal 1999. These increases were the result of personnel additions and the development of administrative functions resulting from our overall growth.

Amortization of goodwill and other intangibles was $6.7 million in the third quarter of fiscal 2000, an increase of $6.2 million from $0.6 million in the comparable period in fiscal 1999. Amortization of goodwill and other intangibles increased to $13.9 million for the nine months ended June 30, 2000, an increase of $12.0 million from $1.9 million in the comparable period in fiscal 1999. These increases primarily consist of amortization of goodwill related to the acquisition of three of our foreign affiliates and CCS during fiscal 2000. Goodwill is amortized over 15 to 20 years.

Merger-related expenses of $1.1 million were recognized in the third quarter of fiscal 2000, compared to $3.7 million of merger-related expenses recognized in the third quarter of fiscal 1999. Merger-related expenses of $31.5 million were recognized in the nine months ended June 30, 2000, compared to $3.7 million of merger-related expenses recognized in the comparable period of fiscal 1999. Merger-related expenses primarily relate to transaction costs associated with the E*TRADE Financial Corporation acquisition. Additional costs associated with mergers and acquisitions are expected to be incurred throughout fiscal 2000.

Non-operating Income (Expense)

Corporate interest expense-net was $6.0 million for the quarter ended June 30, 2000, compared with $4.2 million in corporate interest income-net in the comparable period in fiscal 1999. Corporate interest expense-net was $8.4 million for the nine month period ended June 30, 2000, compared with $14.8 million in corporate interest income-net in the comparable period in fiscal 1999. Corporate interest expense-net increased primarily as a result of a decrease in average corporate investment balances coupled with an increase in interest

expense resulting from the issuance of $650 million in convertible subordinated notes during the three months ended March 31, 2000.

In the third quarter of fiscal 2000, we continued to liquidate portions of our investment portfolio and recognized realized gains of $24.4 million, compared with $8.4 million in recognized realized gains in the third quarter of fiscal 1999. The gain on sale of investments for the nine month period ended June 30, 2000 was $66.6 million, compared with $41.8 million in recognized realized gains for the equivalent period in fiscal 1999.

We recorded an unrealized loss of $3.5 million during the third quarter of fiscal 2000 on our participation in the E*TRADE eCommerce Fund L.P., representing market declines on public investments held by the fund. We recorded an unrealized gain of $7.4 million in the nine months ended June 30, 2000. This fund was formed in the first quarter of fiscal 2000.

Equity in losses of investments included in other non-operating income

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(expense) was $1.4 million in the third quarter of fiscal 2000, which resulted from our minority ownership in investments which are accounted for under the equity method, compared to $0.9 million in the comparable period in fiscal 1999. Equity in losses of investments was $6.0 million for the nine month period ended June 30, 2000, compared to $1.9 million in the equivalent period in fiscal 1999. These investments include E*TRADE Japan and Archipelago. We expect 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 to reflect our proportionate share of those losses. Included in equity in losses of investments is our proportionate share of the operating losses in E*OFFERING. The pending acquisition of E*OFFERING by Wit Capital Group, Inc., renamed Wit Soundview Group, Inc., announced May 15, 2000, is not expected to have a material effect on equity in losses of investments.

Income Tax Expense (Benefit)

Income tax expense (benefit) represents the expense for federal and state income taxes at an effective tax rate of 61% for the third quarter of fiscal 2000 and the benefit for federal and state income taxes at an effective tax rate of 37% for the comparable period in fiscal 1999. Income tax benefit represents the benefit for federal and state income taxes at an effective tax rate of 7% for the nine months ended June 30, 2000 and 42% for the comparable period in fiscal 1999. The rate for the three and nine months ended June 30, 2000 reflects the impact of non-deductible merger-related expenses and amortization of goodwill arising from acquisitions.

Minority Interest in Subsidiaries

Minority interest in the net loss of subsidiaries was $0.6 million in the third quarter of fiscal 2000 compared to $0.5 million in minority interest in the net income of subsidiaries in the third quarter of fiscal 1999. Minority interest in the net income of subsidiaries was $0.3 million and $1.7 million in the nine months ended June 30, 2000 and 1999, respectively. Minority interest in the net loss of subsidiaries results primarily from ETFC's interest payments to subsidiary trusts which have issued Company-obligated mandatorily redeemable capital securities and which hold junior subordinated debentures of ETFC. Also included in minority interest in subsidiaries for the three months ended June 30, 2000 is the net income (loss) attributed to minority interests in E*TRADE Nordic and E*TRADE Germany.

Cumulative Effect of Change in Accounting Principle

The cumulative effect of change in accounting principle was $0.5 million in the nine months ended June 30, 1999, resulting from the implementation by ETFC of Statement of Position 98-5, Reporting on the Cost of Start-Up Activities, which requires that the cost of start-up activities be expensed as incurred rather than capitalized, with initial application reported as the cumulative effect of a change in accounting principle.

Extraordinary Loss on Early Extinguishment of Debt

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

Liquidity and Capital Resources

We have financing facilities totaling $425.0 million to meet the needs of E*TRADE Securities. These facilities, if used, would be collateralized by customer securities. There were no borrowings outstanding under these lines on June 30, 2000. We also have a short term line of credit for up to $50 million, collateralized by marketable securities owned by us, of which $30.8 million was outstanding as of June 30, 2000. In addition, we have entered into numerous agreements with other broker-dealers to provide financing under our stock loan program.

On February 7, 2000, we completed a Rule 144A offering of $500 million convertible subordinated notes due February 2007. The notes are convertible, at the option of the holder, into a total of 21,186,441 shares of our common stock at a conversion price of $23.60 per share. The notes bear interest at

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6%, payable semiannually, and are non-callable for three years and may then be called by us at a premium, which declines over time. The holders have the right to require redemption at a premium in the event of a change in control or other defined redemption event. On March 17, 2000, the initial purchasers exercised an option to purchase an additional $150 million of notes, which are convertible into 6,355,932 shares of common stock. We used $145.0 million of the $631.3 million in net proceeds to pay the outstanding balance on a $150 million line of credit, which was subsequently dissolved, in February 2000. We expect to use the remaining net proceeds for general corporate purposes, including the future growth of the business. Debt issuance costs of $19.1 million are included in other assets and are being amortized to corporate interest expense over the term of the notes. Had these securities been issued at the beginning of the fiscal year, and the proceeds used to repay the outstanding balance on the $150 million line of credit agreement, income per share would have decreased to loss per share of $0.01 for the three months ended June 30, 2000 and loss per share would have increased to $0.17 for the nine months ended June 30, 2000, respectively, compared to income per share of $0.02 and loss per share of $0.08 recorded in the three and nine months ended June 30, 2000, respectively, due to the additional net interest expense and issuance costs associated with the securities.

We currently anticipate that our available cash resources, credit facilities, and liquid portfolio of equity securities, along with the convertible subordinated debt offering described above, will be sufficient to meet our presently anticipated working capital and capital expenditure requirements for at least the next 12 months. However, we may need to raise additional funds in order to support more rapid expansion, develop new or enhanced services and products, respond to competitive pressures, acquire complementary businesses or technologies or take advantage of unanticipated opportunities. Our future liquidity and capital requirements will depend upon numerous factors, including costs and timing of expansion of technology development efforts and the success of such efforts, the success of our existing and new service offerings and competing technological and market developments. Our forecast of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement that involves risks and uncertainties, and actual results could vary. The factors described earlier in this paragraph will impact our future capital requirements and the adequacy of our available funds. If additional funds are raised through the issuance of equity securities, the percentage ownership of the shareowners in our company will be reduced, shareowners may experience additional dilution in net book value per share or such equity securities may have rights, preferences or privileges senior to those of the holders of our common stock. There can be no assurance that additional financing will be available when needed on terms favorable to our company, if at all.

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

Cash used in operating activities, net of effects from acquisitions, was $374.8 million for the nine months ended June 30, 2000 compared to $34.7 million in the equivalent period in fiscal 1999. Cash used in operating activities, net of effects from acquisitions, primarily reflects the increase in brokerage-related assets in excess of liabilities of $570.2 million and an increase in other assets and intangibles of $170.8 million offset by a decrease in segregated cash balances of $67.3 million and an increase in accounts payable, accrued and other liabilities of

$255.0 million. Cash used in operating activities in the prior year period primarily reflects an increase in brokerage-related assets in excess of liabilities of $112.8 million offset by proceeds from the sales and maturities of loans, net of purchases, of $46.7 million, proceeds from the sales and maturities of trading assets, net of purchases, of $23.5 million, and an increase in interest credited to customer deposits of $45.0 million.

Cash used in investing activities was $3,665.9 million for the nine months ended June 30, 2000 and $1,130.2 million in the equivalent period in fiscal 1999. For the nine months ended June 30, 2000, cash used in investing activities was the result of the excess of purchases of investments over the

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net sale/maturity of investments of $2,050.0 million, purchases of $134.3 million of property and equipment, a decrease in loans held for investment of $1,394.1 million, an increase in restricted deposits of $71.4 million, and $31.8 million paid for the acquisition of three foreign affiliates and CCS. This compares to cash used in investing activities in the equivalent period of fiscal 1999 where the Company had an excess of purchases of investments over the net sale/maturity of investments of $329.3 million, purchases of $82.9 million of property and equipment, and an increase in loans held for investment of $733.7 million.

Cash provided by financing activities was $4,094.8 million for the nine months ended June 30, 2000, compared with $1,265.6 million in the equivalent period in fiscal 1999. Cash provided by financing activities for the nine months ended June 30, 2000 primarily resulted from $3,415.8 million in increased banking deposits, net advances from the Federal Home Loan Bank of Atlanta, and increases in securities sold under agreements to repurchase and the issuance of $631.3 million in convertible subordinated debt, net of issuance costs. Cash provided by financing activities in the comparable period of fiscal 1999 primarily resulted from $883.5 million in increased banking deposits, net advances from the Federal Home Loan Bank of Atlanta and increases in securities sold under agreements to repurchase and proceeds from issuance of common stock and associate stock transactions of $417.6 million.

Recent Accounting Pronouncements

In December 1999, the Securities and Exchange Commission ("SEC") staff issued Staff Accounting Bulletin No. 101 Revenue Recognition in Financial Statements ("SAB 101"). SAB 101 states that all registrants are expected to apply the accounting and disclosures described in it. The SEC staff, however, will not object if registrants that have not applied SAB 101 do not restate prior financial statements provided they report a change in accounting principle in accordance with Accounting Principles Board Opinion No. 20 Accounting Changes, by cumulative catch-up adjustment no later than the second quarter of the fiscal year beginning after December 15, 1999. We are currently evaluating the impact, if any, of SAB 101 on our revenue recognition policy and our consolidated financial statements.

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 us 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 and elsewhere in this filing. 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.

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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 failures on February 3, 4, and 5, 1999, March 19, 1999, July 19, 1999, August 10, 1999, September 27, 1999, January 25, 2000, March 2, 2000 and May 3, 2000. We could experience future system failures and degradations, including instances 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:

- a 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, financial condition and operating results and we have adverse publicity in the past in the financial press and elsewhere 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 disruptions caused by unauthorized access. The open nature of the Internet makes protecting against these threats more difficult. 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. In addition, we must guard against damage by insiders with access to the system. Although we intend to continue to implement security technology and establish operational procedures to prevent break-ins, damage and failures, these security measures may or may be unable to prevent future attacks from disrupting operations. Our insurance coverage in certain circumstances may be insufficient to cover losses that may result from such events.

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

A significant barrier to online commerce is the need for 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.

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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 financial 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;
- 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:

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. American Express;

. America Online, Inc.;

. Ameritrade, Inc.;

. Bank of America;

. Charles Schwab & Co., Inc.;

. Citigroup, Inc.;

. Datek Online Holdings Corporation;

. DLJdirect;

. Fidelity Brokerage Services, Inc.;

. Fleet Boston Financial;

. Intuit Inc.;

. Merrill Lynch, Pierce, Fenner & Smith Incorporated;

. Microsoft Money;

. National Discount Brokers;

. Net.B@nk, Inc.;

. PaineWebber Incorporated;

. Salomon Smith Barney, Inc.;

. TD Waterhouse Securities, Inc.;

. Wells Fargo & Company;

. WingspanBank.com; and

. X.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

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business. Commercial banks generally are expanding their securities and financial services activities. While we cannot predict the type and extent of competitive services that commercial banks and other financial institutions ultimately may offer, we may be adversely affected by such competition. To the extent our competitors are able to attract and retain customers, our business or ability to grow could be adversely affected. 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 or licensed representatives in the future. In particular, we depend heavily on our chief executive officer and other members of senior management, the loss of any of whom could seriously harm our business. We also expect to expend resources 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 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 not only lead to 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.

Due to our status as a savings and loan holding company, our ability to engage in some media activities may be restricted. See "Risk Factors--Due to

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our recent merger with Telebanc (now E*TRADE Financial Corporation), 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 E*TRADE Financial Corporation."

If we lose the services of key members of our management, in particular, our Chief Executive Officer and our Chief Financial Officer and President, we may not be able to effectively execute our business plan and our trading price may suffer

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

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

The securities 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;
- execution of customers' orders;
- use and safekeeping of customers' funds and securities;
- capital structure;

- record keeping;
- advertising;
- conduct of directors, officers and employees; and
- supervision.

Because we are a self-clearing broker-dealer, we have to comply with many 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 with these rules depends largely on the establishment and maintenance of a qualified compliance system.

Similarly, E*TRADE and ETFC, as savings and loan holding companies, and E*TRADE Bank, as a federally chartered savings bank and subsidiary of ETFC, are subject to extensive regulation, supervision and examination by the Office of Thrift Supervision ("OTS") and, in the case of E*TRADE Bank, 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.

In November 1999, the Gramm-Leach-Bliley Act was enacted into law. This act reduces the legal barriers between banking, securities and insurance companies, and will make it easier for bank holding companies to compete directly with our securities business, as well as for our competitors in the securities business to diversify their revenues and attract additional customers through entry into the banking and insurance businesses. The Gramm-Leach-Bliley Act may have a material impact on the competitive landscape that we face.

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

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

We have initiated an aggressive marketing campaign designed to bring brand name recognition to E*TRADE and E*TRADE Bank. All marketing activities by E*TRADE Securities are regulated by the NASDR, and all marketing materials must be reviewed by an E*TRADE Securities Series 24 licensed principal prior to release. The NASDR has in the past asked us to revise certain marketing materials. We are currently the subject of formal NASDR and SEC investigations into our advertising practices. At the same time, we have voluntarily agreed to prefile all advertising ten (10) days prior to first use for the NASDR's review and comment. This prefiling requirement began June 12, 2000 and will expire on September 12, 2000. The NASDR can impose certain penalties for violations of its advertising regulations, including:

- censures or fines;

- suspension of all advertising;

- the issuance of cease-and-desist orders; or

- the suspension or expulsion of a broker-dealer or any of its officers or employees.

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 have entered into a letter of intent with Ernst & Young LLP to jointly establish a new company that will provide financial advice for on-line investors.

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

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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.

As required by the Gramm-Leach-Bliley Act, the SEC and OTS have recently adopted regulations on financial privacy, to take effect in July 2000, that will require E*TRADE Securities and E*TRADE Bank to notify consumers about the circumstances in which they may share consumers' personal information with unaffiliated third parties and to give consumers the right to prohibit such information sharing in specified circumstances. Although E*TRADE Securities and E*TRADE Bank already provide such opt-out rights in our privacy policies, the regulations will require us to modify the text and the form of presentation of our privacy policies and to incur additional expense to ensure ongoing compliance with the regulations.

In addition, several recent reports have focused attention on the online brokerage industry. For example, the New York Attorney General carried out an investigation of the online brokerage industry and issued a report in November 1999, citing consumer complaints about delays and technical difficulties conducting online stock trading. SEC Commissioner Laura Unger also issued a report in November 1999 on issues raised by online brokerage, including suitability and marketing issues. Most recently, the United States General Accounting Office issued a report to certain Congressional Requestors citing a need for better investor protection information on brokers' Web sites. Increased attention focused upon these issues could adversely affect the growth of the online financial services industry, which could, in turn, decrease the demand for our services or could otherwise have a material adverse effect on our business, financial condition and operating results.

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

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

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

	Required Net Capital	Net Capital	Excess Net Capital
E*TRADE Securities, Inc.	$99,155	$451,153	$351,998
TIR Securities, Inc.	$ 250	$ 1,714	$ 1,464
TIR Investor Select, Inc.	$ 5	$ 423	$ 418
Marquette Securities, Inc.	$ 250	$ 502	$ 252
E*TRADE Capital Markets, Inc.	$ 252	$ 20,086	$ 19,834

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

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

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

	Actual		Required To Be Well Capitalized Under Prompt Corrective Action Provisions	
	Amount	Ratio	Amount	Ratio
Core Capital (to adjusted tangible assets.................................	$475,258	6.42%	$370,030	> 5.0%
Tier 1 Capital (to risk weighted assets)..	$475,258	16.17%	$178,747	> 6.0%
Total Capital (to risk weighted assets)...	$484,598	16.48%	$297,911	>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. Significant downturns in the U.S. Securities markets occurred in October 1987 and October 1989. A significant downturn in the U.S. securities markets most recently began in March of 2000, as a result of which the volume of trading has decreased industry-wide and many broker-dealers, including E*TRADE, have suffered financial losses. 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.

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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 E*TRADE Financial Corporation's profitability

The results of operations for ETFC 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 ETFC 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 ETFC's financial assets. Fixed-rate investments, mortgage-backed and related securities and mortgage loans generally decline in value as interest rates rise.

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 meet 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. Our status as a regulated savings and loan holding company resulting from the

acquisition of Telebanc Financial Corporation (now ETFC) could also lead to delays in or prevent the development, introduction and marketing of new 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 newly 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

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

In addition, there have been large 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 and our brand. Effective trademark protection may not be available for our trademarks. Although we have registered the trademark "E*TRADE" in the United States and certain other countries, and have certain other registered trademarks, there can be no assurance that we will be able to secure significant protection for these trademarks. Our competitors or others may adopt product or service names similar to "E*TRADE," thereby impeding our ability to build brand identity and possibly leading to customer confusion. Our inability to adequately protect the name "E*TRADE" could have a material adverse effect on our business, financial condition and operating results. Despite any precautions we take, a third party may be able to copy or otherwise obtain and use our software or other proprietary information without authorization or to develop similar software independently. Policing unauthorized use of our technology is made especially difficult by the global nature of the Internet and difficulty in controlling the ultimate destination or security of software or other data transmitted on it. The laws of other countries may afford us little or no

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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 diversion 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 receive in the future, notices of claims of infringement of other parties' proprietary rights. There can be no assurance that claims for infringement or invalidity--or any indemnification claims based on such claims--will not be asserted or prosecuted against us. Any such claims, with or without merit, could be time consuming and costly to defend or litigate, divert our attention and resources or require us to enter into royalty or licensing agreements. There can be no assurance that such licenses would be available on reasonable terms, if at all, and the assertion or prosecution of any such claims could have a material adverse effect on our business, financial condition and operating results.

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 Telebanc (now E*TRADE Financial Corporation), we face numerous new risks, including possible failure to successfully integrate and assimilate E*TRADE Financial Corporation's operations with our own

On January 12, 2000, we acquired Telebanc Financial Corporation (now ETFC). ETFC 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 ETFC products and services with our own and we may not be able to integrate successfully the employees of ETFC into our organization. These difficulties may be exacerbated by the geographical distance between our various locations and ETFC's Virginia location. If we fail to successfully integrate ETFC's operations with our own, our operating results and business could be adversely affected.

E*TRADE Bank holds a loan portfolio consisting primarily of one- to four-family residential loans. A critical component of the banking industry is the ability to accurately assess credit risk and establish corresponding loan loss reserves. This is a new industry for us and accordingly, we are dependent upon ETFC's management and employees to advise us in this area. Our status as a regulated savings and loan holding company resulting from the acquisition of ETFC could also lead to delays or prevent the development, introduction and marketing of new services and products.

Due to our recent merger with Telebanc (now E*TRADE Financial Corporation), we

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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 E*TRADE Financial Corporation.

Upon the completion of our acquisition of Telebanc (now ETFC) and its subsidiary, Telebank (subsequently renamed E*TRADE Bank), on January 12, 2000, 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. Under financial modernization legislation recently enacted into law, our activities are restricted to activities that are financial in nature and certain real estate-related activities. We may also make merchant banking investments in companies whose activities are not financial in nature, if those investments are engaged in for the purpose of appreciation and ultimate resale of the investment, and we do not manage or operate the company. Such merchant banking investments may be subject to maximum holding periods and special capital requirements.

We believe that all of our existing activities and investments are permissible under the new legislation, but the OTS has not yet issued regulations or otherwise interpreted the new statute. Even if all of our existing activities and investments are permissible, under the new legislation we will be constrained in pursuing future new activities that are not financial in nature. We are also limited in our ability to invest in other savings and loan holding companies, and all transactions between us and E*TRADE Bank must be conducted on an arms' length basis.

In addition to regulation of us and ETFC as savings and loan holding companies, federal savings banks such as E*TRADE Bank are subject to extensive regulation of their activities and investments, their capitalization, their risk management policies and procedures, and their relationship with affiliated companies. In addition, as a condition to approving our acquisition of ETFC, the OTS imposed various notice and other requirements, primarily a requirement that E*TRADE Bank obtain prior approval from the OTS of any future material changes to E*TRADE Bank's business plan. 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 E*TRADE Bank following the merger.

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, and ETFC has had only limited

experience providing banking services to customers outside the United States. There can be no assurance that our international licensees or subsidiaries will be able to market our branded services and products successfully in international markets. In addition, there are certain risks inherent in doing business in international markets, particularly in the heavily regulated brokerage and banking industries, such as:

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

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. 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 Telebanc (now ETFC), TIR, Card Capture Services, Electronic Investing Corporation, and several of our European licensees. Additionally, we signed a definitive agreement to acquire our Canadian licensee. 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 be able to develop any new relationships of this type in the future. We also make investments, either directly or through affiliated private investment funds, in equity securities of other companies without acquiring control of those companies. There may be no public market for the securities of the companies we invest in. In order for us to realize a return on our investment, such companies must be sold or successfully complete a public offering of their securities. There can be no assurance that such companies will be acquired or complete a public offering or that such an acquisition or public offering will allow us to sell our securities at a profit, or at all.

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 our sale of 6% convertible subordinated notes in February 2000, we have incurred $650 million of additional indebtedness, increasing our

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ratio of debt to equity (expressed as a percentage) to approximately 38% as of June 30, 2000. 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 NASDR or other regulatory agencies, courts or governmental units. Loss of any or all of these revenues could have a material adverse effect on our business, financial condition and operating results.

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

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

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

these minority investments has fluctuated in the past, and substantial appreciation in some of these investments may, from time to time, cause the value of our investment securities to exceed 40% of our total assets. These factors may result in us being treated as an "investment company" under the 1940 Act.

We believe we are primarily engaged in a business other than investing, reinvesting, owning, holding, or trading securities for our account and, therefore, are not an investment company within the meaning of the 1940 Act. However, in the event that 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 intended. These sales may be at depressed prices and we may never realize anticipated benefits from, or may incur losses on, these investments. Some investments may not be sold due to normal contractual or legal restrictions or the inability to locate a suitable buyer. Moreover, we may incur tax liabilities if we sell these assets. We may also be unable to purchase additional investment securities that may be important to our operating strategy. If we decide to acquire non-investment security assets, we may not be able to identify and acquire suitable assets, and will likely realize a lower return on any such investments.

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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.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

For quantitative and qualitative disclosures about market risk, we have evaluated such risk for our brokerage, international, corporate and banking related operations separately. The following discussion about our market risk disclosures includes forward-looking statements. Actual results could differ materially from those projected in the forward-looking statements as a result of certain factors, including those set forth in the section entitled "Risk Factors" and elsewhere in this filing. Reference is made to Part II, Item 7A, Quantitative and Qualitative Disclosures About Market Risk, in our Annual Report on Form 10-K/A for the year ended September 30, 1999.

Brokerage, International, and Corporate Operations

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

Interest Rate Sensitivity

During the quarter ended June 30, 2000, we had a variable rate bank line of credit. As of June 30, 2000, we had $30.8 million outstanding under this line. The line of credit and the monthly interest payment are subject to interest rate risk. If market interest rates were to increase immediately and uniformly by one percent at June 30, 2000, the interest payments would increase by an immaterial amount.

Foreign Currency Exchange Risk

A portion of our operations consist of brokerage and investment services outside of the United States. As a result, our results of operations could be adversely affected by factors such as changes in foreign currency

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

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

Equity Price Risk

We have investments in publicly-traded equity securities which, in

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conjunction with cash provided from operations and financing arrangements, are utilized to meet forecasted liquidity needs. The fair value of these securities at June 30, 2000 was $350.7 million. As a result of significant market volatility during the three months ended June 30, 2000, the fair value of our equity portfolio was subjected to significant fluctuations. As the Company accounts for these securities as available-for-sale, unrealized gains and losses resulting from changes in the fair value of these securities are reflected as a change in shareowners' equity, and not reflected in the determination of operating results until the securities are sold. Depreciation in the market value of our portfolio impacts our financing strategies which could result in higher interest expense if alternative financing strategies are used. At June 30, 2000, unrealized gains on these securities were $314.1 million.

Financial Instruments

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

Banking Operations

We manage our banking related interest rate risk through the use of financial derivatives such as interest rate cap, swap and floor agreements. We use these instruments to ensure that the market value of equity and net interest income are protected from the impact of changes in interest rates. We have experienced no material changes in market risk pertaining to our banking operations during the quarter ended June 30, 2000.

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. On January 25, 2000, the court ordered plaintiffs to submit all claims seeking monetary relief to arbitration and stayed all other claims pending the outcome of arbitration. A motion to modify that order was denied on July 13, 2000. We are unable to predict the ultimate outcome of this proceeding.

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

On March 1, 1999, a putative class action was filed in the Court of Common Pleas, Cuyahoga County, Ohio, by Truc Q. Hoang. The Hoang complaint seeks damages and injunctive relief arising out of, among other things, plaintiff's alleged problems accessing her account and placing orders. Plaintiff alleges causes of action for breach of contract, breach of fiduciary duty, unjust enrichment, fraud, unfair and deceptive trade practices, negligence/intentional tort and injunctive relief. On September 1, 1999, the

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Court of Common Pleas denied our motion to compel arbitration and we appealed. By a Journal Entry and Opinion, dated March 16, 2000, the Court of Appeals reversed the Court of Common Pleas' decision and remanded this case to the Court of Common Pleas on the grounds that the Court of Common Pleas' resolution of our motion to compel arbitration could not be determined until it first determined whether this case should be certified as a class action. On June 16, 2000, we filed a "Motion to Dismiss for Lack of Subject Matter Jurisdiction" to which we anticipate plaintiff will be responding in the near future. We are unable to predict, however, the ultimate outcome of this proceeding.

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

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

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

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

From time to time, we have been threatened with, or named as a defendant in, lawsuits, securities arbitrations before the NASDR, and administrative claims. Compliance and trading problems that are reported to the NASDR or the SEC by dissatisfied customers are investigated by the NASDR 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 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-

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tax charge against earnings.

In March 2000, we paid a fine of $20,000 to the NASDR for failing to promptly respond to NASDR requests for information related to customer complaints on twelve instances between April 1999 and June 1999.

In April 2000, we paid a fine of $20,000 to the NASDR for failure to report our short interest positions to the NASDR for the months of June 1996 through September 1998.

We maintain insurance in such amounts and with such coverages, deductibles and policy limits as management believes are reasonable and prudent. The principal risks that we insure against are comprehensive general liability, commercial property, residential 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 but cannot guarantee that we will be able to, or elect to, purchase or maintain such coverages in the future.

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--None.

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.

*10.5 E*TRADE Ventures I, LLC, Limited Liability Company Operating Agreement.

*10.6 E*TRADE eCommerce Fund, L.P., Amended and Restated Limited Partnership Agreement.

**10.7 E*TRADE eCommerce Fund II, L.P., Limited Partnership Agreement.

*10.8 E*TRADE Group, Inc. Note Secured by Deed of Trust dated March 17, 2000, by and between the Company and Theodore J. Theophilos.

*10.9 E*TRADE Group, Inc. Amendment to Note Secured by Deed of Trust, dated May 5, 1999, by and between the Company and Theodore J. Theophilos.

**10.10 Employment agreement, dated May 24, 2000, by and between the Company and Jerry Gramaglia.

**10.11 Form of Note Secured by Stock Pledge Agreement by and between the Company and Christos M. Cotsakos, Jerry Gramaglia, Connie M.

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Dotson, Pamela Kramer, Michael Sievert and Leonard C. Purkis.

**10.12 Form of Stock Pledge Agreement by and between the Company and Christos M. Cotsakos, Jerry Gramaglia, Connie M. Dotson, Pamela Kramer, Michael Sievert and Leonard C. Purkis.

**10.13 E*TRADE Group, Inc. Note Secured by Deed of Trust dated May, 2000, by and between the Company and Chuck W. Thomson.

**27.1 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.

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* Previously filed.

** Filed herewith.

(b) Reports on Form 8-K

On July 18, 2000, the Company filed a Current Report on Form 8-K to report the announcement of an agreement to acquire VERSUS Technologies, Inc., a Canadian based provider of electronic securities. In connection with this transaction, the Company agreed to acquire all of the outstanding ordinary shares of

VERSUS in exchange for an aggregate of $174 million worth of the Company's common stock, with VERSUS to become a wholly-owned subsidiary of the Company. The acquisition is subject to the satisfaction of certain conditions and is intended to be accounted for as a pooling of interests.

On June 20, 2000, the company filed a Current Report on Form 8-K to report the strategic alliance between E*TRADE Group, Inc. and Wit Capital Group, Inc., now known as Wit Soundview Group, Inc., ("Wit"). In connection with the strategic alliance, E*TRADE Securities, Inc. agreed to acquire from Wit substantially all of the retail brokerage accounts maintained by Wit's subsidiary, Wit Capital Corporation. The transactions contemplated by the strategic alliance are contingent on the closing of the merger of E*OFFERING Corp. into Wit's subsidiary, Wit Soundview Corporation.

On April 17, 2000, the Company filed a Current Report on Form 8-K to report the first period of consolidated results of E*TRADE and E*TRADE Financial Corporation ("ETFC"). The acquisition of ETFC was completed on January 12, 2000 and was accounted for as a pooling of interests.

On January 27, 2000, the Company filed a Current Report on Form 8-K to report the final closing of its merger with E*TRADE Financial Corporation.

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: August 14, 2000

/s/ Christos M. Cotsakos

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

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/s/ Leonard C. Purkis

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

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Exhibit 10.7
Execution Version

E*Trade eCommerce Fund II, L.P.
A Delaware Limited Partnership

LIMITED PARTNERSHIP AGREEMENT

June 16, 2000

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E*Trade eCommerce Fund II, L.P.
A Delaware limited partnership

LIMITED PARTNERSHIP AGREEMENT

E*Trade Ventures II, LLC, a Delaware limited liability company (the "General Partner"), as general partner, and each of the individuals, corporations and other entities whose names are set forth under the heading "Limited Partners" on Exhibit A attached hereto, as limited partners (the "Limited Partners" and, together with the General Partner, the "Partners"), hereby enter into this Limited Partnership Agreement effective as of June 16, 2000;

The Partners, in consideration of their mutual covenants contained herein, agree to carry on a limited partnership pursuant to the terms of this Agreement and the Delaware Revised Uniform Limited Partnership Act (the "Delaware Act").

Article I
NAME, PURPOSE AND
PRINCIPAL OFFICE OF PARTNERSHIP; DEFINITIONS

1.1. Partnership Name. The name of the Partnership is "E*Trade eCommerce Fund II, L.P." The affairs of the Partnership shall be conducted under such name or such other name as the General Partner may, in its discretion, determine. The General Partner will provide prompt written notice to the Limited Partners of any change in the name of the Partnership. E*Trade Group, Inc. hereby grants the Partnership, at no cost, the right to use the "E*Trade" name for the term of the Partnership.

1.2. Partnership Purpose; Powers.

(a) Purpose. The purpose of the Partnership is to (i) seek capital appreciation through the acquisition, holding, sale, distribution or other disposition of investments in Portfolio Companies and (ii) engage in any other lawful activities determined by the General Partner to be necessary or advisable in connection with the foregoing.

(b) Powers. Subject to all of the terms and provisions hereof, the Partnership shall have all powers necessary, suitable or convenient for the accomplishment of the purposes of the Partnership, including, without limitation, the following:

(1) to purchase, sell, invest and dispose of Securities of every kind, including, without limitation, capital stock, limited partnership interests, bonds, notes, debentures, securities convertible into other securities, trust receipts and other obligations, instruments or

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evidences of indebtedness, as well as in rights, warrants and options to purchase securities;

(2) to make and perform all contracts and engage in all activities and transactions necessary or advisable to carry out the purposes of the Partnership, including, without limitation, the purchase, sale, transfer, pledge and exercise of all rights, privileges and incidents of ownership or possession with respect to any Partnership asset or liability; and to guarantee or become a surety for the debts of others; and

(3) otherwise to have all the powers available to it as a limited partnership under the Delaware Act.

1.3. Registered Office and Agent. The initial address of the Partnership's registered office in Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, and its initial agent at such address for service of process is The Corporation Trust Company. The General Partner shall provide prompt written notice to the Limited Partners of any change of the Partnership's registered offices.

1.4. Principal Office. The principal office of the Partnership shall initially be located at 4500 Bohannon Drive, Menlo Park, California 94025. The General Partner may change the location of the principal office of the Partnership at any time upon prompt written notice to the Limited Partners indicating the new location of such principal office.

1.5. Definitions. As used in this Agreement, the following terms shall have the following meanings:

Adjusted Capital Balance. As of any date, the balance of the General Partner's Capital Account as of such date computed without regard to any such balance created as a result of any interest as a Limited Partner held by the General Partner.

Affiliate. With respect to any Partner, any person controlling, controlled by, or under direct or indirect common control by such Partner.

After-Tax Distribution Amount shall have the meaning set forth in Paragraph 8.2.

Agreement. This Amended and Restated Limited Partnership Agreement of E*Trade eCommerce Fund II, L.P., a Delaware limited partnership, as it may be amended in accordance with the terms hereof.

Bankruptcy. A person or entity shall be deemed bankrupt if such person:

(1) makes an assignment for the benefit of creditors;

(2) files a voluntary petition in bankruptcy;

(3) is adjudicated as bankrupt or insolvent or has entered against such person an order for relief in any bankruptcy or insolvency proceeding;

(4) files a petition or answer seeking for himself or itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(5) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or it in any proceeding of this nature; or

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(6) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator or of all or any substantial part of his or its properties.

<u>BHC Partner</u> shall have the meaning set forth in Paragraph 7.5(c).

<u>Book Value</u>. The Book Value with respect to any asset shall be the asset's adjusted basis for federal income tax purposes, except as follows:

(1) The initial Book Value of any property other than money contributed by a Partner to the Partnership shall be the fair market value of such asset at the time of contribution, as determined by the contributing Partner and the Partnership.

(2) In the discretion of the General Partner, the Book Values of all Partnership assets may be adjusted to equal their respective fair market values, as determined by the General Partner consistent with the principles of Paragraph 9.2, and the amount of such adjustment shall be treated as Capital Transaction Gain or Loss and allocated to the Capital Accounts of the Partners pursuant to Paragraph 4.3, as of the following times: (A) the acquisition of an additional interest in the Partnership by any new or existing Partner (other than pursuant to Paragraph 7.6(b)) in exchange for more than a de minimis Capital Contribution; and (B) the distribution by the Partnership to a Partner of more than a de minimis amount of Partnership assets in connection with an adjustment of such Partner's Partnership Percentage.

(3) The Book Values of all Partnership assets shall be adjusted to equal their respective fair market values, as determined by the General Partner consistent with the principles of Paragraph 9.2, and the amount of such adjustment shall be treated as Capital Transaction Gain or Loss and allocated to the Capital Accounts of the Partners pursuant to Paragraph 4.3, as of the following times: (A) the date the Partnership is liquidated within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g); and (B) the termination of the Partnership pursuant to the provisions of this Agreement.

(4) The Book Values of Partnership assets shall be increased or decreased to the extent required under Treasury Regulation Section 1.704-1(b)(2)(iv)(m) in the event that the adjusted tax basis of Partnership assets is adjusted pursuant to Code Section 732, 734 or 743.

(5) The Book Value of a Partnership asset shall be adjusted by the depreciation, amortization or other cost recovery deductions, if any, taken into account by the Partnership with respect to such asset in computing Net Income or Loss.

<u>Capital Commitment</u> shall have the meaning set forth in Paragraph 3.1.

<u>Capital Transaction Gain or Loss</u>. An amount computed for any relevant period, as of the last day thereof, that is equal to the total of (i) the aggregate amount recognized on the

Sale or Exchange of Securities or other assets held by the Partnership during such period less the sum of (A) the Book Value of such Securities or other assets as of the date of such Sale or Exchange, plus (B) the Partnership's expenses associated with the Sale or Exchange of such Securities or other assets; (ii) the Partnership's distributive share of income, gain, loss, deduction or credit (or item thereof) derived from its interest in partnerships, limited liability companies and other pass-through entities to the extent such amounts would be Capital Transaction Gain or Loss if realized directly by the Partnership; (iii) dividend income of the Partnership during such period with respect to Securities of Portfolio Companies, whether derived from actual or constructive distributions of cash or property; (iv) interest (and original issue discount) income of the Partnership during such period from Securities of Portfolio Companies; (v) the aggregate adjustment to the Book Value of Partnership assets during such period computed under subparagraphs (2), (3) and (4) of the definition "Book Value"; and (vi) any other amount specifically

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designated as Capital Transaction Gain or Loss in this Agreement, including (without limitation) such amounts so designated pursuant to Paragraph 6.4(f).

Capital Contributions means a Partner's capital contributions theretofore made to the Partnership at any point in time. For purposes of Paragraph 6.4(b), the General Partner's Capital Contributions shall include solely its Capital Contributions made with respect to its interest as General Partner.

Certificate of Limited Partnership. The Certificate of Limited Partnership of E*Trade eCommerce Fund II, L.P., a Delaware limited partnership, filed with the Secretary of State of Delaware, as it may be amended in accordance with the terms hereof.

Code. The Internal Revenue Code of 1986, as amended from time to time (and any corresponding provisions of succeeding law).

Defaulting Partner shall have the meaning set forth in Paragraph 3.5(a).

Delaware Act means the Delaware Revised Uniform Limited Partnership Act.

DOL Regulations shall have the meaning set forth in Paragraph 3.2.

Drawdown shall have the meaning set forth in Paragraph 3.2.

Drawdown Date shall have the meaning set forth in Paragraph 3.2.

Drawdown Notice shall have the meaning set forth in Paragraph 3.2.

E*Trade. E*Trade Group, Inc. a Delaware corporation.

ERISA. The Employment Retirement Income Security Act of 1974, as amended from time to time.

ERISA Partner. An "employee benefit plan" (or an entity deemed to hold "plan assets" of any "employee benefit plan") within the meaning, and subject to the provisions, of ERISA.

Excess Distribution Amount shall have the meaning set forth in Paragraph 8.2.

Excess Negative Balance shall have the meaning set forth in Paragraph 11.2(e).

Fair Value Capital Accounts means the Partners' Capital Accounts computed in accordance with Article IV, but treating each security and each other asset owned by the Partnership as if, on the date as of which such computation is being made, such security or other asset had been sold at its fair market value (determined in accordance with Paragraph 9.2) and any resulting Capital Transaction Gain or Loss had been allocated to the Partners' Capital Accounts in accordance with Article IV.

Fair Value Test means that, with respect to each Limited Partner and any proposed Partnership distribution, the sum of (i) the amount of the cumulative distributions which such Limited Partner has received from the

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Partnership, plus (ii) the amount of such Limited Partner's Fair Value Capital Account, in each case after giving effect to the proposed distribution, is equal to at least one hundred percent (100%) of such Limited Partner's Capital Contributions.

Final Closing Date shall have the meaning set forth in Paragraph 7.6(b).

Fiscal Quarter. The Fiscal Quarters of the Partnership shall begin on January l, April 1, July 1, and October 1, and end on March 31, June 30, September 30, and December 31, respectively, except that the Partnership's first Fiscal Quarter shall begin on the date of this Agreement and end on the next regular quarter end.

Fiscal Year. The Partnership's first Fiscal Year shall begin on the date of this Agreement and end on December 31, 2000. Thereafter, the Partnership's Fiscal Year shall commence on January 1 of each year and end on December 31 of such year or, if earlier, the date the Partnership terminated during such year. The General Partner at any time may, in its discretion, elect a different Fiscal Year. The General Partner shall provide prompt written notice to the Limited Partners of any such election to change the Fiscal Year.

Follow-On Investment. An investment in the Securities of any existing Portfolio Company in which the Partnership has previously made an investment.

Foreign Entity shall have the meaning set forth in Paragraph 7.2(i).

Foreign Partner shall have the meaning set forth in Paragraph 10.21.

Foundation Partner shall have the meaning set forth in Paragraph 10.20.

General Partner. E*Trade Ventures II, LLC.

General Partner Distributions shall have the meaning set forth in Paragraph 8.2(d).

Holding Company Act. The Bank Holding Company Act of 1956, as amended.

Insulated Limited Partner shall have the meaning set forth in Paragraph 7.5(b).

Interim Period. If a Partnership interest is transferred, the General Partner converts to a Limited Partner, the Partnership Percentage of any Partner changes, a Partner withdraws or a new Partner is admitted to the Partnership other than on the first day of any Fiscal Year, if the General Partner shall so elect, the date of such event or election shall commence an Interim Period. An Interim Period shall end on the last day of the Fiscal Year in which the Interim Period began or on the day immediately preceding the beginning of a new Interim Period, whichever is earlier.

Investment Period. The period beginning as of the date of this Agreement and ending December 31, 2005.

Limited Liability Entity Opinion shall have the meaning set forth in Paragraph 7.2(i).

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Limited Partners. Each of the persons listed under the heading "Limited Partners" on Exhibit A attached hereto and each other person duly admitted to the Partnership as a limited partner subsequent to the date hereof.

Majority in Interest of the Limited Partners. Limited Partners having Capital Contributions the sum of which is at least a majority of the aggregate Capital Contributions of the Limited Partners. For purposes of Paragraph 2.2(c), interests held by the General Partner, E*Trade and their Affiliates as Limited Partners shall be non-voting interests and such parties shall be treated as not having made any Capital Contributions as Limited Partners.

Management Fee shall have the meaning set forth in Paragraph 5.1.

Marketable Securities. Securities that are (i) actively traded on a national securities exchange or through the National Association of Securities Dealers, Inc. Automated Quotation System and the aggregate total of all such Securities then held by the Partnership would, if distributed in kind to the Limited Partners, be freely transferable pursuant to SEC Rule 144 (without regard to any volume limitations thereunder), an effective registration under the Securities Act or an exemption therefrom, (ii) direct obligations of, or obligations guaranteed as to principal and interest by, the United States, or (iii) certificates of deposit maturing within one (1) year or less issued by an institution insured by the Federal Deposit Insurance Corporation, or similar securities.

Media Company. An entity that, directly or indirectly, owns, controls or operates or has an attributable interest in (i) a U.S. broadcast radio or television station or a U.S. cable television system, (ii) a "daily newspaper" (as such term is defined in Section 73.3555 of the Federal Communication Commission's ("FCC") rules and regulations), (iii) any U.S. communications facility operated pursuant to a license granted by the FCC and subject to the provisions of Section 310(b) of the Communications Act of 1934, as amended, or (iv) any other business that is subject to FCC regulations under which the ownership of the Partnership in such entity may be attributed to a Limited Partner or under which the ownership of a Limited Partner in another business may be subject to limitation or restriction as a result of the ownership of the Partnership in such entity.

Net Capital Gain. With respect to a Partner, the aggregate amount of net taxable income and net taxable gain allocated to such Partner for federal income tax purposes under this Agreement to the extent such allocations of taxable income and gain are effected as a result of the allocation to the Capital Account of such Partner under this Agreement of corresponding items of Capital Transaction Gain (net of items of Capital Transaction Loss). In calculating Net Capital Gain for any year, capital losses of the Partnership in prior years shall be deemed to be carried over and to offset Net Capital Gain in later years.

Net Income and Net Loss. Except as otherwise specifically provided in this Agreement, the net book income or loss of the Partnership for any relevant period computed without taking into account items comprising Capital Transaction Gain or Loss. The net book income or loss of the Partnership shall be computed in accordance with Federal income tax principles, as adjusted pursuant to the following provisions, under the method of accounting elected by the Partnership for federal income tax purposes. The net book income or loss of the Partnership shall be computed, inter alia, by:

(1) including as income or deductions, as appropriate, any tax-exempt income and related expenses that are neither properly included in the computation of taxable income nor capitalized for federal income tax purposes;

(2) including as a deduction when paid or incurred (depending on the Partnership's method of accounting) any amounts utilized

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to organize the Partnership or to promote the sale of (or to sell) an interest in the Partnership, except that amounts for which an election is properly made by the Partnership under Section 709(b) of the Code shall be accounted for as provided therein;

(3) including as a deduction any losses incurred by the Partnership in connection with the sale or exchange of property notwithstanding that such losses may be disallowed to the Partnership for federal income tax purposes under the related party rules of Code Section 267(a)(1) or 707(b); and

(4) calculating the gain or loss on disposition of Partnership assets and the depreciation, amortization or other cost recovery deductions, if any, with respect to Partnership assets by reference to their Book Value rather than their adjusted tax basis.

Nonmarketable Securities. All Securities other than Marketable Securities.

Non-Voting Interests shall have the meaning set forth in Paragraph 7.5(c).

One-Third in Interest of the Limited Partners. Limited Partners having Capital Contributions the sum of which is at least one third of the aggregate Capital Contributions of the Limited Partners. For this purpose, the interests held by the General Partner, E*Trade and their Affiliates as Limited Partners shall be non-voting interests and such parties shall be treated as not having made any Capital Contributions as Limited Partners.

Operating Expenses shall have the meaning set forth in Paragraph 4.6.

Original Partners. Each of the persons listed as of the date hereof as Limited Partners on Exhibit A attached hereto, and any transferee of all or any portion of such Limited Partner's interest in the Partnership.

Parallel Funds shall have the meaning prescribed in Paragraph 7.8(b).

Partners. The General Partner and the Limited Partners.

Partnership. E*Trade eCommerce Fund II, L.P., the partnership formed pursuant to this Agreement.

Partnership Percentage. The Partnership Percentage for each Partner shall be determined by dividing the amount of each Partner's Capital Contributions by the sum of the Capital Contributions of all of the Partners. The sum of the Partners' Partnership Percentages shall be one hundred percent (100%). The aggregate Partnership Percentage of the Limited Partners as a group shall be the sum of the Partnership Percentages of each of the Limited Partners as limited partners.

Payout means the time when each Limited Partner has received cumulative distributions from the Partnership in an amount equal to its Capital Commitment, as adjusted pursuant to any provision of this Agreement (less any portion thereof which such Limited Partner has failed to pay the Partnership when due or subsequently pursuant to Paragraph 3.5). In the event a distribution of cash or Securities causes the Partnership to reach and exceed Payout, the portion of the amount distributed which was necessary to reach Payout will be deemed to have been distributed before Payout, and any remaining amount will be deemed to have been distributed after Payout.

Portfolio Company. Any company in which the Partnership makes an

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investment.

Principals shall have the meaning set forth in Paragraph 7.8.

Public Plan Partner shall have the meaning set forth in Paragraph 10.19.

Reallocated Loss shall have the meaning set forth in Paragraph 4.4.

Sale or Exchange. A sale, exchange, liquidation or similar transaction, event, or condition with respect to any assets (except realizations of purchase discounts on commercial paper, certificates of deposit, or other money-market instruments) of the Partnership of the type that would cause any realized gain or loss to be recognized for income tax purposes under the Code (as determined without giving effect to the related party rules of Code Sections 267(a)(1) and 707(b)).

Securities. Securities of every kind and nature and rights and options with respect thereto, including stock, notes, bonds, debentures, evidences of indebtedness and other business interests of every type, including interests in partnerships, joint ventures, proprietorships and other business entities.

Securities Act. The Securities Act of 1933, as amended.

Shortfall Amount shall have the meaning set forth in Paragraph 3.5(d).

Tax Distribution shall have the meaning set forth in Paragraph 6.3.

Tax-Exempt Limited Partner shall have the meaning set forth in Paragraph 10.18.

Termination Date shall have the meaning set forth in Paragraph 2.3.

TMP shall have the meaning set forth in Paragraph 10.16.

Total Committed Capital shall have the meaning set forth in Paragraph 3.1.

Total General Partner Net Gain or Loss shall have the meaning set forth in Paragraph 8.2(c).

Treasury Regulations. The Income Tax Regulations promulgated under the Code, as such Regulations may be amended from time to time (including corresponding provisions of succeeding Regulations).

Two-Thirds in Interest of the Limited Partners. Limited Partners having Capital Contributions the sum of which is at least sixty-six and two-thirds percent (66-2/3%) of the aggregate Capital Contributions of the Partners. For purposes of Paragraphs 2.2(a), 2.2(b), 2.2(d), 2.3, 7.7(a), 8.1(a) and 10.16, interests held by the General Partner, E*Trade and their Affiliates as Limited Partners shall be non-voting interests and such parties shall be treated as not having made any Capital Contributions as Limited Partners.

Two-Thirds Invested shall have the meaning set forth in Paragraph 7.8(b).

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Zero Balance Amount means, with respect to any Partner and at any time, the amount of such Partner's Capital Commitment which such Partner has not paid to the Partnership in cash on or before such time, and in addition, solely with respect to the General Partner: the aggregate amount of distributions received by the General Partner from the Partnership, but only to the extent that such distributions exceed the aggregate amount of distributions the General Partner would have received if it had made its Capital Contribution as a Limited Partner and did not hold an interest as a General Partner.

Article II
TERM AND TERMINATION OF THE PARTNERSHIP

2.1. Term of Partnership. The Partnership shall continue until the tenth (10th) anniversary of the Final Closing Date unless sooner terminated as provided in Paragraph 2.2 or by operation of law or extended as provided in Paragraph 2.3.

2.2. Termination. The Partnership shall terminate prior to the tenth (10th) anniversary of the Final Closing Date:

(a) Ninety (90) days after the Bankruptcy or dissolution of the General Partner unless within thirty (30) days after such event Two-Thirds in Interest of the Limited Partners consent in writing to a continuation of the Partnership and the appointment of a successor general partner;

(b) One hundred twenty (120) days after the commencement of any proceeding against the General Partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within ninety (90) days after the appointment without its consent or acquiescence of a trustee, receiver or liquidator of the General Partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated, unless Two-Thirds in Interest of the Limited Partners consent in writing to a continuation of the Partnership and the appointment of a successor general partner;

(c) Ninety (90) days after either Christos M. Cotsakos or Thomas A. Bevilacqua ceases to be actively involved in the management of the Partnership for any reason unless within such period a Majority in Interest of the Limited Partners elect to continue the Partnership, with such additional personnel being involved in the management of the Partnership as shall be acceptable to the General Partner and a Majority in Interest of the Limited Partners;

(d) Upon the vote of Two-Thirds in Interest of the Limited Partners after a final determination of a court of competent jurisdiction that the General Partner intentionally or willfully breached any material provision of this Agreement or that the General Partner was grossly negligent in the performance of its duties hereunder; or

(e) Upon the consent of the General Partner and One-Third in Interest of the Limited Partners.

2.3. Extension of Term. The term of the Partnership may be extended for up to one (1) year after the tenth (10th) anniversary of the Final Closing Date in the discretion of the General Partner. The General Partner shall deliver written notice of any such extension to the Limited Partners. The term of the Partnership may be extended thereafter only with the consent of the General Partner and Two-Thirds in Interest of the Limited Partners. Any such extension shall be subject to the earlier termination of the Partnership as provided in Paragraph 2.2. The last day of the term of the Partnership, as such may be extended as provided herein, is referred to herein as the "Termination Date."

2.4. Events Affecting a Member of the General Partner. The death,

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temporary or permanent incapacity, insanity, incompetency, Bankruptcy, expulsion, retirement, withdrawal or removal of any member of the General Partner or the admission of additional members to the General Partner shall not dissolve the Partnership.

2.5. Events Affecting a Limited Partner of the Partnership. The death, temporary or permanent incapacity, insanity, incompetency, Bankruptcy, liquidation, dissolution, reorganization, merger, sale of substantially all the stock or assets of, or other change in the ownership or nature of a Limited Partner shall not terminate the Partnership.

Article III
CAPITAL CONTRIBUTIONS

3.1. Capital Commitment of the Limited Partners. Set forth opposite the name of each Limited Partner listed on Exhibit A attached hereto is such Limited Partner's capital commitment to the Partnership. (The capital commitment of each Partner (as it may be subsequently adjusted pursuant to the terms hereof) is referred to herein as the Partner's "Capital Commitment" and the total Capital Commitments of the Partners shall be referred to herein as the "Total Committed Capital.") Each Limited Partner's Capital Commitment represents the aggregate amount of capital that such Limited Partner has agreed to contribute to the Partnership in accordance with the terms hereof. No Limited Partner shall be obligated to contribute capital to the Partnership in an aggregate amount in excess of its Capital Commitment. If the Partnership is required to qualify as a "venture capital operating company" in order to avoid treatment of the Partnership assets as "plan assets" (within the meaning of the DOL Regulations) of any Limited Partner that is an ERISA Partner, the Capital Contribution of any ERISA Partner shall be made pursuant to the terms of an escrow agreement in form mutually satisfactory to the General Partner and such ERISA Partner.

3.2. Capital Contributions by the Limited Partners

(a) The Limited Partners shall make their Capital Contributions to the Partnership, payable by wire transfer or check, in installments (each such payment being referred to as a "Drawdown"). Such Capital Contributions shall be made upon no less than fourteen (14) days' prior written notice from the General Partner (a "Drawdown Notice"), in such amounts as may be determined in the sole discretion of the General Partner and at such time, subject to the fourteen (14) day notice period, as the General Partner shall specify in the Drawdown Notice (the "Drawdown Date"). All Drawdowns shall be in U.S. dollars. No Limited Partner shall have the right to make partial payments of a required Capital Contribution. Each Drawdown Notice shall be given to each Limited Partner of the Partnership. The additional capital required of the respective Limited Partners upon any Drawdown shall be based on the relative amounts of the unpaid balances of their respective Capital Commitments.

(b) After the expiration of the Investment Period, the General Partner shall not be authorized to call (and the Partners shall not be obligated to make) any Capital Contributions to fund investments which the Partnership is not contractually obligated to make at such time other than for:

(1) Investments reasonably expected to close within ninety (90) days after the expiration of the Investment Period;

(2) Investments as to which, prior to the expiration of the Investment Period, the Partnership and the prospective company or entity in which such investment is to be made have a letter of intent or a definitive agreement setting forth the material terms and conditions of such investment;

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(3) Investments in partnerships, limited liability companies and other pass-through entities pursuant to capital commitments made during the Investment Period; or

(4) Follow-On Investments (including Follow-On Investments with respect to investments in which the initial investment by the Partnership is made pursuant to clause (1), (2) or (3) of this Paragraph 3.2(b)).

3.3. Capital Commitment of the General Partner. The General Partner's Capital Commitment shall be an aggregate amount of one million dollars ($1,000,000).

3.4. Capital Contributions of the General Partner. On any date on which a Limited Partner makes a contribution to the capital of the Partnership, the General Partner shall contribute to the Partnership such amount as may be necessary to cause the percentage of the General Partner's Capital Commitment actually contributed to the Partnership to be the same as the percentage of the Capital Commitments of the Limited Partners actually contributed to the Partnership as of such date. Such contribution may be made, at the General Partner's discretion, in the form of a promissory note.

3.5. Defaulting Partners

(a) If a Partner fails to pay any amount which it is required to pay to the Partnership on or before the date when such amount is due and payable, such Partner shall be deemed to be in default hereunder (a "Defaulting Partner"), and written notice of default shall be given to such Limited Partner by the General Partner by certified or registered mail. The Partnership shall be entitled to enforce the obligations of each Partner to make the contributions to capital required in this Agreement and shall have all remedies available at law or in equity in the event any such contribution is not so made. In the event of any legal proceedings relating to a default by a Defaulting Partner, such Defaulting Partner shall pay all costs and expenses incurred by the Partnership, including attorneys' fees, if the Partnership shall prevail. Further, such Defaulting Partner shall be obligated to pay the Partnership interest with respect to the amount of any Capital Contribution not made when required by this Article, with such interest commencing on the Drawdown Date for such contribution and ending on the date such contribution is made to the Partnership. Such interest shall be calculated on the basis of the then current reference rate announced by Wells Fargo Bank, N.A., or by any other U.S. commercial bank with capital in excess of five hundred million dollars ($500,000,000) selected by the General Partner, plus five percent (5%) per annum, but not in excess of the amount allowable by law.

(b) In addition to the remedies provided under Paragraph 3.5(a), if the Defaulting Partner does not cure a default in the payment of a required contribution within ten (10) business days of the receipt of the notice specified in Paragraph 3.5(a), the General Partner (in its sole discretion) may, as liquidated and agreed current damages to the non-defaulting Partners for such default (it being agreed that it would be difficult to fix the actual damages to such Partners), cause and treat the Defaulting Partner's Capital Account to be reduced by an amount equal to fifty percent (50%), which amount shall thereupon become unrestricted assets of the Partnership and shall be allocated pro rata to and among the respective Capital Accounts of the non-defaulting Partners in such proportion as the Capital Account of each such non-

defaulting Partner then bears to the sum of the Capital Accounts of all non-defaulting Partners. The Defaulting Partner's remaining fifty percent (50%) interest in its Capital Account shall automatically be converted into a general unsecured obligation of the Partnership, which obligation shall not bear any interest and shall be due six (6) months after the Termination Date of the Partnership. Upon the expiration of the ten (10) day period after the mailing of the notice of default and the election by the General Partner to exercise its remedy under this subparagraph (b), a Defaulting Partner shall automatically cease to be a Partner under this Agreement and shall have no further interest,

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right or claim in or against the Partnership, including any right or obligation to make subsequent Capital Contributions when called.

(c) Notwithstanding the foregoing, if, at any time before a Capital Contribution required by Paragraph 3.2 becomes due, (i) a Partner obtains and delivers to the Partnership an opinion of counsel (which opinion shall be reasonably acceptable to the General Partner) to the effect that the payment by such Partner of any portion of any remaining Capital Contributions required by this Agreement will be unlawful or that there is a material likelihood that such payment will be unlawful or (ii) in the case of a Limited Partner that is an ERISA Partner, a Public Plan Partner or a Foundation Partner, such Partner obtains and delivers to the Partnership an opinion of counsel (which opinion shall be reasonably acceptable to the General Partner) to the effect set forth in Paragraph 10.17 or 10.20, as the case may be), then (A) such Partner shall have no further right or obligation to pay the pertinent portion of such Capital Contribution (depending on whether the Partner is withdrawing from or simply reducing its interest in the Partnership), (B) such Partner's Capital Commitment specified on Exhibit A shall be reduced by an amount equal to such Capital Contribution, and (C) such Partner shall not, by reason of his or her failure to make such Capital Contribution, be deemed or treated as a Defaulting Partner for purposes of this Paragraph 3.5.

(d) The General Partner may seek to fund the amount of any Capital Contribution that a Defaulting Partner has failed to contribute or that is not contributed pursuant to Paragraph 3.5(c) (the "<u>Shortfall Amount</u>") as follows:

(1) The General Partner may in its discretion determine to increase the amount of the Capital Contributions required from each Partner to fund such Shortfall Amount ratably in accordance with the Partners' relative unpaid Capital Commitments (not to exceed any Partner's remaining Capital Commitment).

(2) Alternatively, the General Partner may offer the Partners who have made Capital Contributions the opportunity to make additional Capital Contributions to fund such Shortfall Amount. If any such Partner declines to invest in all or any portion of its share of the Shortfall Amount, such uncommitted amount will be offered to any other Partner who has invested its share of the Shortfall Amount and concurrently advised the General Partner of its willingness to make a Capital Contribution in excess of such share, and the General Partner shall allocate such uncommitted amount among all such other Partner on a basis the General Partner determines in its discretion is, under the circumstances, equitable and practicable.

(3) To the extent any Shortfall Amount has not been fully funded by the Partners, the General Partner may seek to fund the remaining Shortfall

Amount by offering Limited Partner interests to any other person on substantially the same economic terms and conditions as are provided to the Partners.

Article IV
CAPITAL ACCOUNTS AND ALLOCATIONS

4.1. <u>Capital Accounts</u>. A Capital Account shall be maintained on the Partnership's books for each Partner. In the event any interest in the Partnership is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

4.2. <u>Adjustments to Capital Accounts</u>

(a) The Capital Account of each Partner shall be <u>increased</u> by:

(1) the amount of money and the fair market value of any property other than money contributed to the Partnership by such Partner

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(in the case of a contribution of property, net of any liabilities secured by such property that the Partnership is considered to assume or hold subject to for purposes of Section 752 of the Code),

(2) such Partner's share of Capital Transaction Gain and Net Income (or items thereof) allocated to its Capital Account pursuant to this Agreement, and

(3) any other amounts required by Treasury Regulation Section 1.704-1(b), provided the General Partner determines that such increase is consistent with the economic arrangement among the Partners as expressed in this Agreement.

(b) The Capital Account of each Partner shall be decreased by:

(1) the amount of money and the fair market value of any property other than money distributed by the Partnership (determined pursuant to Paragraph 9.2 hereof as of the date of distribution) to such Partner pursuant to the provisions of this Agreement (net of any liabilities secured by such property that such Partner is considered to assume or hold subject to for purposes of Section 752 of the Code),

(2) such Partner's share of Capital Transaction Loss and Net Loss (or items thereof) allocated to its Capital Account pursuant to this Agreement, and

(3) any other amounts required by Treasury Regulation Section 1.704-1(b), provided the General Partner determines that such decrease is consistent with the economic arrangement among the Partners as expressed in this Agreement.

4.3. Allocation of Capital Transaction Gain or Loss

(a) Allocation of Capital Transaction Gain. Capital Transaction Gain of the Partnership for each Fiscal Year or Interim Period shall be allocated as follows:

(1) Twenty-five percent (25%) of the Partnership's Capital Transaction Gain shall be allocated to the General Partner.

(2) The remaining seventy-five percent (75%) of the Partnership's Capital Transaction Gain shall be allocated to all Partners as a group.

(3) Notwithstanding the foregoing, if one or more Limited Partners have been allocated a Reallocated Loss pursuant to Paragraph 4.5, then Partnership Capital Transaction Gain that would otherwise be allocated entirely to the General Partner pursuant to Paragraph 4.3(a)(1) shall instead be allocated first to the Limited Partners (in proportion to the amount of Reallocated Loss previously allocated to them) until the Limited Partners have been allocated an aggregate amount of Capital Transaction Gain equal to the previously allocated Reallocated Loss that has not been restored by prior allocations pursuant to this subparagraph and then any such remaining Capital Transaction Gain shall be allocated to the General Partner.

(b) Allocation of Capital Transaction Loss. Capital Transaction Loss of the Partnership for each Fiscal Year or Interim Period shall be allocated as follows:

(1) Twenty-five percent (25%) of the Partnership's Capital Transaction Loss shall be allocated to the General Partner.

(2) The remaining seventy-five percent (75%) of such Capital Transaction Loss shall be allocated to all Partners as a group.

4.4. Allocation of Net Income or Loss. Net Income or Loss of the

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Partnership for each Fiscal Year or Interim Period shall be allocated to all Partners as a group.

4.5. Reallocation of Losses. If for any Fiscal Year or Interim Period after the Partnership's Capital Transaction Gain or Loss and Net Income or Loss has been allocated pursuant to Paragraphs 4.3 and 4.4 the closing Adjusted Capital Balance of the General Partner has been reduced to less than zero by more than the amount necessary to properly reflect the General Partner's obligation to recontribute amounts to the Partnership pursuant to Paragraph 8.2 upon termination of the Partnership, then an amount of Capital Transaction Loss and, to the extent necessary, Net Loss (the "Reallocated Loss") for such Fiscal Year or Interim Period shall be reallocated from the General Partner to the Limited Partners as a group so that the General Partner's closing Adjusted Capital Balance is not reduced below zero by more than the amount necessary to properly reflect the General Partner's obligation to recontribute amounts to the Partnership pursuant to Paragraph 8.2 upon termination of the Partnership. A Reallocated Loss may be restored only from future Capital Transaction Gain.

4.6. Allocation Among Partners as a Group. Except as otherwise specifically provided in this Agreement, all Capital Transaction Gain or Loss and Net Income and Loss (and

items thereof) allocated to the Partners (or a group of Partners) as a group for any period shall be allocated among such Partners in proportion to their respective Partnership Percentages as of the end of such period. In making such allocations, any changes in Partnership Percentages as a result of changes in the Capital Commitments of the Partners, any exclusion of any Partners from particular investments, any contributions of Partners to fund any Shortfall Amount and similar matters shall be taken into account.

4.7. Special Allocation Among Late-Entering Limited Partners of Organization and Operating Expenses. The following items of Net Income or Loss are collectively referred to herein as "Operating Expenses":

(a) The Management Fee and other payments and reimbursements of expenses paid pursuant to Article V other than amounts capitalized as part of the cost of Securities or other assets for federal income tax purposes; and

(b) All expenditures of the Partnership classified for federal income tax purposes as organization or syndication expenses.

Notwithstanding Paragraph 4.6, if additional Limited Partners are admitted to the Partnership pursuant to Paragraph 7.6(b) hereof during a particular period, the Operating Expenses for such period allocable to the Limited Partners shall be allocated among the Original Partners and the Limited Partners admitted pursuant to Paragraph 7.6(b) hereof so that, to the extent possible, the cumulative amount of Operating Expenses allocated to each Limited Partner is proportionate to such Limited Partner's Partnership Percentage as compared to the Partnership Percentages of the Limited Partners as a group (taking into account the additional Limited Partners admitted pursuant to Paragraph 7.6(b)).

4.8. Allocations and Distributions Attributable to Removed General Partner. Notwithstanding the foregoing sections of this Article IV, if the initial General Partner ceases to be the General Partner and a successor General Partner is appointed pursuant to Paragraph 2.2, such initial General Partner shall continue to receive the allocations and distributions otherwise attributable to the General Partner pursuant to this Article IV, Article VI and Article VIII both in its capacity as a General Partner and in its capacity as a Limited Partner; provided, however, that on or after the date a successor General Partner is appointed pursuant to Paragraph 2.2, such allocations and distributions attributable to the initial General Partner in its capacity as a General Partner shall be calculated only with respect to investments that were made or as to which the Partnership was committed to invest or had reserved capital to invest at such time. Notwithstanding the foregoing if the General

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Partner is removed as a result of committing an act of fraud or willful misconduct against the interest of the Limited Partners, the General Partner's rights to further allocations pursuant to Paragraphs 4.3(a)(1) and 4.3(b)(1) shall cease upon such removal. The General Partner shall nevertheless continue to be subject to any obligations to the Partnership pursuant to Paragraph 8.2.

Article V
MANAGEMENT FEE; EXPENSES

5.1. Entitlement to Management Fee. As compensation for its services rendered in managing the Partnership, the General Partner shall be entitled to recover a fee calculated as prescribed in this Article V (the "Management Fee"). The Management Fee shall not be considered a distribution of profits or a return of capital for the purpose of any provision of this Agreement, but shall be considered an expense of the Partnership, and shall be deducted from Partnership Net Income or added to Partnership Net Loss in determining the Net Income or Net Loss of the Partnership pursuant to Article IV hereof.

5.2. Payment of Management Fee. The Management Fee shall be at an annual rate of one and three-quarters percent (1.75%) of the Total Committed Capital of the Partnership through the end of the Investment Period. After the end of the Investment Period, the Management Fee shall be at an annual rate of one and three-quarters percent (1.75%) of the total cost of the Portfolio Securities held by the Partnership, with the cost of the Portfolio Securities being redetermined for this purpose on January 1 and July 1 of each Fiscal Year after the end of the Investment Period. The Management Fee shall commence to accrue on the date of this Agreement. Payment of the Management Fee shall be made semi-annually as follows: (i) with respect to the first, short semi-annual period of the Partnership ending June 30, 2000, at any time on or prior to June 30, 2000, in an amount equal to the percentage of the annual Management Fee as reflects the number of days from the date of this Agreement through June 30, 2000, divided by three hundred sixty-five (365) days, and (ii) thereafter semi-annually in advance on the first day of each semi-annual period (commencing in January and July of each year)of the Partnership (or thereafter) in an amount equal to fifty percent (50%) of the annualized Management Fee. Additional Management Fees resulting from an increase in the Total Committed Capital shall be payable promptly after the acceptance of additional Capital Commitments (with such payment being prorated to reflect the remaining term of the then current fiscal period). The Management Fee shall be reduced by the amount of any transaction fees (but not including director options or director fees) received by the General Partner or its members or Affiliates (net of associated expenses) from Portfolio Companies. Such reduction shall be made in each installment of the Management Fee until the entire net amount of the transaction fees have offset the Management Fees.

5.3. Payment of Expenses.

(a) Except as set forth in Paragraph 5.3(b) hereof, the General Partner agrees to incur on behalf of the Partnership and to otherwise assume all expenses attributable to the management and administration of the investment activities of the Partnership. Such expenses include (but are not limited to) consulting fees, compensation and expenses of the employees of the General Partner, including any salaries of members of the General Partner in their capacity as employees of the General Partner, expenses for administrative, bookkeeping, clerical and related support services, insurance, office space and facilities, utilities, telephone and travel insofar as they relate to the investment activities of the Partnership.

(b) The Partnership shall pay, or reimburse the General Partner (or E*Trade if and to the extent it incurs expenses on behalf of the Partnership) for all expenses of

the Partnership (or incurred by the General Partner or E*Trade for or on behalf of the Partnership) which (i) relate to the management and administration of the Partnership itself as a going concern (as opposed to operating expenses incurred in connection with the Partnership's investment activities), or (ii) are

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incurred in the purchase, holding, sale, exchange or other disposition of investments. Such expenses include (without limitation) organizational and offering expenses of the Partnership (including fees and commissions) up to an aggregate of five hundred thousand dollars ($500,000), less any expenses of organizing any Parallel Funds; any taxes which may be assessed against the Partnership; commissions or brokerage fees or similar charges incurred in connection with the purchase and sale of securities (including any merger or transaction fees payable to third parties); interest expense and financing charges for borrowed money; all expenses relating to litigation and threatened litigation involving the Partnership; normal investment banking, legal, custodial, registration, auditing and accounting services provided to the Partnership; and any other expenses associated with the acquisition, holding or disposition of investments. The Partnership also shall pay or reimburse the General Partner (or E*Trade) for all payments to third parties related to the investment activities of the Partnership in developing, negotiating and structuring prospective or potential investments with respect to which the Partnership enters into a purchase agreement, letter of intent or memorandum of understanding, but that are not ultimately made.

5.4. <u>No Salaries to General Partner.</u> The General Partner and its members shall receive no salaries from the Partnership. This paragraph shall not restrict the payment of salaries by the General Partner.

Article VI
WITHDRAWALS BY AND DISTRIBUTIONS TO THE PARTNERS

6.1. <u>Interest.</u> No interest shall be paid to any Partner on account of its interest in the capital of, or on account of its investment in, the Partnership.

6.2. <u>Withdrawals by the Partners.</u> No Partner may withdraw any amount from its Capital Account except as specifically provided in this Agreement.

6.3. <u>Mandatory Cash Distributions.</u> Within ninety (90) days after the end of each Fiscal Year, the of Partnership shall distribute to each Partner cash in an amount equal to the aggregate federal and state income tax liability such Partner would have incurred as a result of such Partner's ownership of an interest in the Partnership, calculated: (i) as if allocations from the Partnership of any Net Capital Gain and any Net Loss were, for such Fiscal Year, the sole source of taxable income and loss for such Partner; (ii) as if such Partner were an individual taxable at the combined maximum marginal rate provided with respect to such Net Capital Gain and Net Loss (taking into account the character of the items of Net Capital Gain and Net Loss for tax purposes) under applicable federal and state income tax laws applicable to individuals residing in California; and (iii) taking into account the deductibility of state taxes in the calculation of federal income taxes (a "<u>Tax Distribution</u>"). Any Tax Distributions to a Partner shall reduce the amounts otherwise distributable to the Partner pursuant to Paragraph 6.4.

6.4. <u>Additional Distributions.</u> The General Partner (i) shall distribute any proceeds from the Sale or Exchange of Securities of Portfolio Companies as soon as practicable following such Sale or Exchange, subject to the retention of such amounts as are necessary to pay Partnership expenses and obligations (including the Management Fee) and/or for permitted reinvestments to the extent provided in Paragraph 7.2(c) and (ii) may in its discretion make distributions of Securities of Portfolio Companies. All distributions under this Paragraph 6.4 shall be made as follows:

(a) At any time prior to achievement of Payout if the Fair Value Test is not satisfied, all such distributions will be made to the Partners as a group in proportion to their respective Partnership Percentages.

(b) At any time prior to achievement of Payout if the Fair Value Test is satisfied, all such distributions will be made, in the General Partner's sole discretion, either (1) to the Partners as a group in proportion to their respective Partnership Percentages, or (2)(i) first, to the General Partner

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until the General Partner has received distributions pursuant to this Paragraph 6.4(b)(2)(i) and Tax Distributions pursuant to Paragraph 6.3 equal to a maximum of twenty-five percent (25%) of the total amount distributed and being distributed to all Partners pursuant to Paragraphs 6.3 and 6.4(a) and this Paragraph 6.4(b), and (ii) the remainder of such distributions will be made to the Partners as a group in proportion to their respective Partnership Percentages; provided, however, that the amount distributable to the General Partner pursuant to Paragraph 6.4(b)(2)(i) will in no event exceed either (x) the cumulative amount of the Capital Transaction Gain net of Capital Transaction Loss allocated to the General Partner under Paragraphs 4.3(a)(1) and 4.3(b)(1) or (y) an amount which would cause the General Partner's Fair Value Capital Account to be reduced below the amount of the General Partner's Capital Contributions or would further reduce an existing balance of such Fair Value Capital Account that is already less than the General Partner's Capital Contributions; provided, further that the General Partner will not cause or permit the Partnership to make any distribution to the General Partner pursuant to Paragraph 6.4(b)(2)(i) unless the Partnership has made (and/or provided through reserves for) distributions to each Partner, with respect to the Fiscal Year in which any proposed distribution under Paragraph 6.4(b)(2)(i) otherwise would occur, in aggregate amounts equal to the Tax Distribution to which each Partner would be entitled pursuant to Paragraph 6.3 with respect to such Fiscal Year if such Fiscal Year ended on the date of the proposed distribution.

(c) After Payout has been achieved, all such distributions will be made to the Partners in proportion to the positive balances in their respective Capital Accounts after such Capital Accounts have been adjusted to reflect all Capital Transaction Gain or Loss (including Capital Transaction Gain or Loss arising in connection with the distribution and Sale or Exchange of Securities) through the date of the distribution.

(d) Each class of Securities to be distributed in kind shall be distributed to the Partners pro rata in proportion to their respective shares of the proposed distribution, except to the extent that a disproportionate distribution of Securities is necessary in order to avoid distributing fractional shares. For purposes of the preceding sentence, each lot of stock or other Securities having a separately identifiable tax basis or holding period will be treated as a separate class of Securities. Notwithstanding anything contained in this Agreement: (i) no distribution (other than a Tax Distribution) will be made to any Partner if, and to the extent that,

such distribution would (x) cause such Partner's Capital Account to be negative by an amount which exceeds such Partner's Zero Balance Amount or (y) further reduce a balance in such Partner's Capital Account that is already negative by an amount which exceeds such Partner's Zero Balance Amount; and (ii) no distribution will be made unless all liabilities of the Partnership to persons other than Partners have been satisfied or, in the good faith judgment of the General Partner, there remains property of the Partnership sufficient to satisfy such liabilities.

(e) Except upon liquidation of the Partnership or with the approval of the General Partner and a Majority in Interest of the Limited Partners, no distribution shall be made other than in cash or Marketable Securities.

(f) Immediately prior to any distribution in kind of Securities (or other Partnership assets) pursuant to any provision of this Agreement (including pursuant to Article VIII), the difference between the fair market value and the Book Value of any Securities (or other Partnership assets) distributed shall be allocated to the Partners as Capital Transaction Gain or Loss pursuant to Article IV.

(g) Securities distributed in kind pursuant to this Paragraph 6.4 shall be subject to such conditions and restrictions as the General Partner determines are legally required.

(h) For purposes of this Agreement, all distributions of Securities shall be deemed to have been made on the date on which the Partnership commences the distribution of the Securities to the Limited Partners, provided that the delivery of the Securities is promptly completed.

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Article VII
MANAGEMENT, DUTIES AND RESTRICTIONS

7.1. Management by General Partner. The General Partner shall have the sole and exclusive right and power to manage, control, and conduct the affairs of the Partnership and to perform any and all acts on behalf of the Partnership that the General Partner deems necessary, advisable or incidental to carry out any or all of the objects and purposes of the Partnership.

7.2. Indebtedness; Restrictions; Reinvestments

(a) The Partnership may borrow money and guarantee the obligations of, and supply letters of credit on behalf of, Portfolio Companies; provided that at no time shall the Partnership guarantee, directly or indirectly, obligations of a General Partner or a Limited Partner; and further provided that the Partnership shall provide a guaranty to a Portfolio Company only if each member of the General Partner with an interest in that Portfolio Company provides a guaranty on the same terms and in an amount proportional to the investment of such member as compared to the Partnership. While outstanding, any guarantee of the obligations of any Portfolio Company shall be considered an investment in such Portfolio Company for purposes of Paragraph 7.2(b). Additionally, except with the approval of a Majority in Interest of the Limited Partners, the Partnership shall not at any point in time be the guarantor (or the obligor on

any letter of credit) of then-current liabilities that, in the aggregate, amount to more than thirty percent (30%) of the Total Committed Capital of the Partnership.

(b) Except with the approval of a Majority in Interest of the Limited Partners, the Partnership shall not invest more than twenty-five percent (25%) of the aggregate amount of the Total Committed Capital (i) in the Securities of any one issuer or its affiliates, (ii) in any other investment pool or partnership, or (iii) in Securities purchased by the Partnership in the over-the-counter market or that are listed on a securities exchange (with the twenty-five percent (25%) test being applied separately with respect to each of the foregoing three categories of investments). The limitations set forth in this Paragraph 7.2(b) shall not apply to any funds of the Partnership which are invested in investments described in Paragraph 7.2(e).

(c) The Partnership shall not reinvest any proceeds realized on the Sale or Exchange of Securities of Portfolio Companies in Securities of other Portfolio Companies except for Follow-On Investments. In no event shall the Partnership make cumulative investments in Securities of Portfolio Companies in excess of the Total Committed Capital.

(d) No Partner shall be permitted to borrow money from the Partnership.

(e) Pending use of funds to make investments in Securities of Portfolio Companies, to make distributions or to pay expenses or obligations of the Partnership in accordance with the terms hereof, the funds of the Partnership shall be invested by the General Partner only in (i) securities issued by, or backed by the full faith and credit of, the United States government, (ii) certificates of deposit issued by commercial banks with capital in excess of five hundred million dollars ($500,000,000), (iii) commercial paper rated A-1 or P-1, or (iv) shares in investment companies generally known as "money market funds" which have assets in excess of two hundred fifty million dollars ($250,000,000).

(f) The Partnership shall not invest in (i) any Securities the purchase of which is opposed by the issuer's board of directors; or (ii) options contracts or futures contracts, or any other security, the value of which is based upon, or derived from, any underlying index, reference rate, other security, commodity or other asset; provided, however, that this restriction shall not be deemed to prohibit the General Partner from (A) hedging Portfolio Company investments so long as such transactions are reasonably related to the amount and type of Securities being hedged and are not undertaken for independent investment purposes, (B) hedging the currency risk of foreign

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Portfolio Company investments, (C) investing in any Security the value of which is based upon, or derived from, any Security already held by the Partnership, and (D) investing in traditional options, warrants and other rights to acquire Securities that would otherwise be permitted Portfolio Company investments under the terms of this Agreement.

(g) The Partnership shall not invest in real estate, oil or gas investments, commodities or in securities bearing unlimited liability.

(h) The Partnership shall not engage in uncovered short sales.

(i) The Partnership shall not make any investment in an issuer which is organized in any jurisdiction outside the United States and Canada (each such issuer being a "Foreign Entity"), unless the Partnership has received, prior to or at the closing of any such investment, a Limited Liability Entity Opinion with respect to the issuer's form of entity. A "Limited Liability Entity Opinion" shall be an opinion of counsel, licensed or otherwise authorized to practice in the jurisdiction in which a particular Foreign Entity is organized, which opinion may be relied upon by the Partnership and does not contain more than reasonable carve-outs by opining counsel, stating (i) that the Partnership shall not be obligated beyond its committed investment in such Foreign Entity for any debt, obligation or liability of an entity of the form of the particular issuer, solely by reason of the Partnership being an investor in such an entity; and (ii) that no Limited Partner of the Partnership shall be obligated for any debt, obligation or liability of an entity of the form of the particular issuer, solely by reason of the Partnership being an investor in such an entity. Once the Partnership has received such an opinion for investments in a particular form of entity in a particular jurisdiction, such opinion shall satisfy the requirements of this paragraph for all investments in other Foreign Entities of the same form as that which is the subject of the opinion. The Partnership shall not invest an aggregate of more than thirty percent (30%) of the Total Committed Capital in Securities of Foreign Entities.

(j) Notwithstanding Paragraph 7.2(b)(ii), the Partnership shall not make any investment in any other investment pool or partnership if a management fee and/or "carried interest" is payable with respect to such investment unless the General Partner waives its Management Fee and/or "carry" with respect to such investment.

7.3. Investment Representation of the Limited Partners. This Agreement is made with each Limited Partner in reliance upon such Limited Partner's representation to the Partnership, which by executing this Agreement the Limited Partner hereby confirms, that such Partner's interest in the Partnership is being acquired for investment, and not with a view to the sale or distribution of any part thereof, and that such Partner has no present intention of selling, granting participation in, or otherwise distributing the same. Each Limited Partner further represents that such Limited Partner does not have any contract, undertaking, agreement, or arrangement with any person to sell or transfer to any third person such Limited Partner's interest in the Partnership.

7.4. Accredited Investor Representation. Each Limited Partner represents that such Partner has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Partnership and that such Partner is an accredited investor, as that term is defined in Regulation D promulgated by the Securities and Exchange Commission.

7.5. No Control by the Limited Partners; Rights of the Limited Partners.

(a) The Limited Partners shall take no part in the control or management of the affairs of the Partnership nor shall a Limited Partner have any authority to act for or on behalf of the Partnership except as is specifically permitted by this Agreement and as is specifically required by the Delaware Act.

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(b) In addition to any other restrictions applicable to Limited Partners set forth in this Agreement and notwithstanding any other provisions thereof, for so long as the Partnership has an investment in a Media Company, any Limited Partner that elects in writing to be insulated from the "multiple ownership attribution" rules and policies of the FCC (an "Insulated Limited Partner") shall not (and if such Limited Partner is not an individual, each officer, director, partner or equivalent non-corporate official of such Limited Partner acting on behalf of or as a representative of such Limited Partner in its capacity as a Limited Partner of the Partnership shall not):

(1) act as an employee of the Partnership if his or her functions, directly or indirectly, relate to the media business of the Partnership or any Media Company in which the Partnership has an investment;

(2) serve, in any material capacity, as an independent contractor or agent with respect to the media business of the Partnership or any Media Company in which the Partnership has an investment;

(3) communicate on matters pertaining to the day-to-day media operations of the Partnership or a Media Company with (i) an officer, director, partner, agent, representative or employee of such Media Company, or (ii) the General Partner;

(4) perform any services for the Partnership materially relating to the media activities of the Partnership or any Media Company in which the Partnership has an investment, except that any Limited Partner may make loans to, or act as a surety for, the Partnership or any such Media Company;

(5) vote on the admission of any new General Partner to the Partnership unless such admission is approved by the General Partner;

(6) become actively involved in the management or operation of the Partnership's media businesses; or

(7) vote for the removal of the General Partner except where the General Partner is subject to Bankruptcy proceedings, is adjudicated incompetent by a court of competent jurisdiction, or is removed for any cause which is determined by an independent party to constitute criminal conduct other such extraordinary conduct with respect to which a prudent investor would require the right to remove the General Partner.

(c) Any interest in the Partnership held by a Limited Partner that is subject to the Holding Company Act (each, a "BHC Partner"), that is determined at the time of admission of that BHC Partner to be in excess of four and ninety-nine one hundredth percent (4.99%) of the interests of the Limited Partners, excluding for purposes of calculating this percentage portions of any other interests that are non-voting interests pursuant to this Paragraph 7.5(b) or any other paragraph of this Agreement (collectively the "Non-Voting Interests"), shall be a Non-Voting Interest (whether or not subsequently transferred in whole or in part to any other person) except as provided in the following sentence. Upon the admission of any additional Limited Partner to or a withdrawal of any Limited Partner from the Partnership, a recalculation

of the interests in the Partnership held by all BHC Partners shall be made, and only that portion of the total interest in the Partnership held by each BHC Partner that is determined as of the date of such admission or withdrawal to be in excess of four and ninety-nine one hundredth percent (4.99%) of the interests of the Limited Partners, excluding Non-Voting Interests as of such date, shall be a Non-Voting Interest. Non-Voting Interests shall not be counted as interests of Limited Partners for purposes of determining under this Agreement whether any vote required has been approved by the requisite percentage in interest of the Limited Partners; provided, that such Non-Voting Interest shall be permitted to vote on any proposal to continue the business of the Partnership but not on the selection of a liquidator pursuant to Paragraph 8.1(a) or a successor general partner. Each BHC Partner hereby further irrevocably waives its corresponding right to vote for a successor general partner under Section 17-801 of the

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Delaware Act with respect to any Non-Voting Interest, which waiver shall be binding upon such BHC Partner and any entity which succeeds to its interest. Except as provided in this Paragraph 7.5(b), a limited partnership interest which is held as a Non-Voting Interest shall be identical in all regards to all other interests held by Limited Partners.

7.6. Admission of Additional Partners.

(a) Subject to Paragraph 7.7 and subparagraph (b) below, no additional person may be admitted to the Partnership, either as a limited or general partner, without the prior written consent of both the General Partner and Two-Thirds in Interest of the Limited Partners.

(b) During the period ending six (6) months after the date of this Agreement (the "Final Closing Date"), the General Partner may admit persons as additional Limited Partners without the consent of any of the then Limited Partners, provided that the Total Committed Capital of the Partnership shall not exceed three hundred million dollars ($300,000,000). Following the admission of any such subsequently admitted Limited Partners pursuant to this Paragraph 7.6(b), such Limited Partners shall be deemed for all purposes of this Agreement (unless expressly provided to the contrary herein) to have been admitted as of the original date of this Agreement. Any Limited Partner admitted pursuant to this Paragraph 7.6(b) shall, upon admission, contribute to the Partnership the same portion of such Limited Partner's Capital Commitment as the previously admitted Limited Partners have contributed with respect to their Capital Commitments. Upon the admission of any additional Limited Partners to the Partnership pursuant to this Paragraph 7.6(b), the assets of the Partnership shall not be revalued except in the discretion of the General Partner.

(c) In addition to the Capital Contribution required under Paragraph 7.6(b), each Limited Partner admitted as an additional Limited Partner pursuant to Paragraph 7.6(b) shall be required to pay to the Partnership interest at the Wells Fargo Bank, N.A. "prime rate" (in effect at the time the additional Limited Partner interest was acquired) based on the amount of the Capital Contribution payable under Paragraph 7.6(b) and the time period(s) from the existing Limited Partners' prior Capital Contributions to the Partnership to the date that the Capital Contribution under Paragraph 7.6(b) is made. Such interest shall accompany the Capital Contribution payable under Paragraph 7.6(b) and shall be immediately distributed pro rata to and among all existing Partners (based on their respective Partnership Percentages immediately prior to the issuance of such additional Limited Partner interests). The payment of such interest

to the Partnership shall not be considered a Capital Contribution and shall not be considered an item of Capital Transaction Gain or Loss or Net Income or Loss allocable pursuant to Article IV; furthermore, the distribution to the existing Partners shall not result in a reduction in their Capital Accounts.

7.7. Assignment or Transfer of Partnership Interests

(a) The General Partner shall not sell, assign, pledge, mortgage or otherwise dispose of or transfer its interest in the Partnership without the prior written consent of Two-Thirds in Interest of the Limited Partners.

(b) No Limited Partner shall sell, assign, pledge, mortgage, or otherwise dispose of or transfer its interest in the Partnership without the prior written consent of the General Partner. Notwithstanding the foregoing, a Limited Partner may sell, assign, pledge, mortgage, or otherwise dispose of or transfer its interest in the Partnership without such consent (i) to any affiliate of the Limited Partner; or (ii) as may be required by any law or regulation; provided, however, that in the case of any permitted transfer, the General Partner receives at least ten (10) days' prior written notice of such transfer; and provided further that no transferee of a Limited Partner's interest may be admitted to the Partnership as a substitute Limited Partner without the consent of the General Partner.

(c) Notwithstanding any other provision of this Agreement, no transfer or other disposition of the interest of a Limited Partner shall be permitted until the General Partner shall have received, or waived receipt of,

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an opinion of counsel to the Partnership reasonably satisfactory to it that the effect of such transfer or disposition would not:

(1) result in a violation of the Securities Act;

(2) require the Partnership to register as an investment company under the Investment Company Act of 1940, as amended;

(3) require the Partnership, the General Partner or any partner of the General Partner to register as an investment adviser under the Investment Advisers Act of 1940, as amended;

(4) result in a termination of the Partnership for tax purposes if the General Partner determines that such termination would result in a material adverse tax consequence to any of the Partners;

(5) increase the number of Limited Partners;

(6) result in the assets of the Partnership being deemed to be "plan assets" (within the meaning of the DOL Regulations) of any ERISA Partner; or

(7) cause the Partnership to be characterized as a "publicly traded partnership" taxable as a corporation (within the meaning set forth in Sections 512 and 7704(b) of the Code) or materially increase the risk that the Partnership will be so characterized.

All costs associated with such opinion shall be borne by the transferring Limited Partner.

7.8. Investment Opportunities; Conflicts of Interest

(a) Christos M. Cotsakos and Thomas A. Bevilacqua (the "Principals") are the current principal members of the General Partner. Subject to Paragraph 7.8(b), the Principals may serve as the general partners, sponsors, principals of the general partners or investment advisers of other venture funds. The Principals shall be free to conduct any and all such activities. The Principals are employed by E*Trade and shall devote significant and substantial time and effort to E*Trade, although it is intended that (so long as is necessary or advisable) substantially all of Mr. Bevilacqua's time and effort and approximately twenty percent (20%) of Mr. Cotsakos' time and effort will pertain to the management of the General Partner's activities.

(b) So long as the Partnership is less than Two-Thirds Invested, neither of the Principals may, directly or indirectly, organize or act as a general partner or managing member of any other entity that is a private equity fund. For purposes of this Agreement, the Partnership shall be deemed to be "Two-Thirds Invested" when at least sixty-six and two-thirds percent (66-2/3%) of the Partners' Capital Commitments (other than any Capital Commitments that have been terminated) have been invested by the Partnership in Portfolio Companies, reserved for investments in such Portfolio Companies based upon the General Partner's good faith estimate of the anticipated capital requirements of each Portfolio Company, or paid or reserved for the payment of reasonably anticipated partnership liabilities and obligations, including payment of the Management Fee. Notwithstanding the foregoing, the Principals may continue to serve as principals with respect to E*Trade eCommerce Fund, L.P. (the "First Fund") and may form one or more funds to invest on a side-by-side basis with the Partnership ("Parallel Funds"). Any such Parallel Funds shall invest on a pari passu basis in each investment made by the Partnership with the portion of the investment made by the Partnership and any Parallel Fund(s) being based on the relative amounts of their committed capital. In addition, the First Fund will coinvest with the Partnership on a pari passu basis until the First Fund is fully invested. In order to facilitate coinvestment by the Partnership, any Parallel Fund(s) and the First Fund, the Partnership may acquire Securities for the purpose of transferring such Securities to a Parallel Fund or the First Fund at cost (plus an interest charge if the General Partner deems appropriate).

(c) Subject to Paragraph 5.2, the General Partner and the members

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of the General Partner shall be permitted to receive fees (director's, consulting, break-up, financial advisory or other), commissions and other compensation (in whatever form, including stock and options) from entities other than the Partnership, including Portfolio Companies.

(d) Except as expressly provided otherwise in this Agreement, the Partners and the members and affiliates of the General Partner may engage in, invest in or possess an interest in, business activities of every kind and description, independently or with others.

(e) The Limited Partners hereby agree that E*Trade and the Principals may have investment opportunities that are not made available to the Partnership, although the intention of the Principals and E*Trade is to refer all investment opportunities to the Partnership, the Parallel Funds and the First Fund so long as such opportunities are within the investment criteria established by the General Partner. In addition, the General Partner may offer the right to participate in investment opportunities of the Partnership to other private investors, groups, partnerships, or corporations. No Limited Partner shall be required to make any investment opportunity available to the Partnership.

(f) The General Partner may enter, on behalf of the Partnership, into contracts, agreements, undertakings and transactions with any Partners, or with any person, firm or corporation having any business, financial or other relationship with any Partner, provided that such transactions with such persons and entities are on terms no less favorable to the Partnership than are generally afforded to unrelated third parties in comparable transactions.

Article VIII
DISSOLUTION AND LIQUIDATION OF THE PARTNERSHIP

8.1. Liquidation Procedures. Upon termination of the Partnership in accordance with Article II:

(a) The affairs of the Partnership shall be wound up and the Partnership shall be dissolved. The General Partner shall serve as the liquidator; provided that in the event of a termination of the Partnership pursuant to Paragraph 2.2(a),(b), or (d) another person or entity may be designated by Two-Thirds in Interest of the Limited Partners to serve as liquidator.

(b) Distributions in dissolution may be made in cash or in kind or partly in cash and partly in kind. Each Security (and each class of Securities, or portion of a class of Securities having a tax basis per share or unit different from other portions of such class) distributed in kind shall be distributed ratably in accordance with the General Partner's and the Limited Partners' Capital Accounts unless such distribution would result or there is a material likelihood that such distribution would result (i) in a violation of a law or regulation applicable to a Limited Partner or a tax penalty to a Limited Partner, in which event, upon receipt by the General Partner of notice to such effect, such Limited Partner may designate a different entity to receive the distribution, or designate, subject to the approval of the General Partner, an alternative distribution procedure or (ii) in a distribution of fractional shares. Each such Security shall be valued at fair market value in accordance with Paragraph 9.2 as of the date of distribution and shall be subject to reasonable conditions and restrictions necessary or advisable in order to preserve the value of the assets distributed, or for legal reasons.

(c) The General Partner (or other liquidator) shall in its sole discretion determine the most advantageous time for the Partnership to sell investments or to make distributions in kind provided that any such sales shall be made as promptly as is consistent with obtaining the fair value thereof.

(d) The proceeds of dissolution shall be applied to payment of liabilities of the Partnership and distributed to the Partners in the following order:

(1) to the creditors of the Partnership in the order of

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priority established by law; and

(2) to the Partners, in respect of the positive balances in their Capital Accounts, after all Capital Transaction Gain or Loss and Net Income or Loss (including amounts arising in connection with a distribution of Securities) has been allocated among the Partners.

In the discretion of the General Partner, a pro rata portion of the distributions that would otherwise be made to the Partners pursuant to this Paragraph 8.1 may be withheld to provide a reasonable reserve for Partnership liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Partnership, provided that such withheld amounts (to the extent not used to pay partnership liabilities) shall be distributed to the Partners as soon as practicable.

(e) If the General Partner's Capital Account has a deficit balance (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), then except as otherwise required pursuant to Paragraph 8.2, the General Partner shall have no obligation at any time to repay or restore to the Partnership all or any part of any distribution made to it from the Partnership or make any contribution to the capital of the Partnership with respect to such deficit. If any Limited Partner has a deficit balance in his Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), then other than required by law or Paragraph 10.14, such Limited Partner shall have no obligation to repay or restore to the Partnership any distribution made to it from the Partnership or make any contribution to the capital of the Partnership with respect to such deficit, and such deficit shall not be considered a debt owed to the Partnership or to any other person for any purpose whatsoever.

8.2. Liability of General Partner to Return Excess Distributions. If after effecting the distributions provided for in this Article VIII the Excess Distribution Amount is greater than zero, then the General Partner shall forthwith contribute to the capital of the Partnership cash or Marketable Securities (with any such contributed Marketable Securities being valued pursuant to Paragraph 9.2 on the date of contribution) in an amount equal to the lesser of (i) the Excess Distribution Amount, or (ii) the After-Tax Distribution Amount. Such contribution shall be distributed to the Partners to the extent of and in proportion to their positive Capital Account balances.

For purposes of this Paragraph 8.2:

(a) The "After-Tax Distribution Amount" shall be equal to the General Partner Distributions less all federal, state and other jurisdictional (including non-United States taxes) actual marginal tax liabilities that the members of the General Partner have incurred by reason of having been members of the General Partner, but only to the extent attributable to

(i) items of taxable income, gain, loss, deduction and credit allocated to the General Partner by the Partnership and (ii) net capital gains realized by the General Partner or by such members (offset by any capital losses realized by the General partner or by such members) upon the sale or exchange of Securities distributed by the Partnership to the General Partner (with such net capital gains being limited to an amount based on the value as of the distribution date of the Securities distributed). The After-Tax Distribution amount shall be increased by all federal, state or other jurisdictional tax benefits actually realized by the General Partner's members in the year of a contribution required by this Paragraph 8.2 as a result of such contribution.

(b) The "Excess Distribution Amount" shall equal the lesser of (i) the amount by which the General Partner Distributions exceed the sum of the Total General Partner Net Gain or Loss plus the aggregate contributions made to the Partnership by the General Partner or (ii) the amount of the General Partner Distributions.

(c) "Total General Partner Net Gain or Loss" shall be calculated as follows:

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(1) First, the Partnership's aggregate Capital Transaction Gain for all accounting periods shall be netted against the Partnership's aggregate Capital Transaction Loss for all accounting periods and the result shall be multiplied by the sum of (x) twenty-five percent (25%) plus (y) seventy-five percent (75%) of the General Partner's Partnership Percentage. The resulting product shall be considered a positive number if such aggregate Capital Transaction Gain exceeded aggregate Capital Transaction Loss and a negative number if such aggregate Capital Transaction Loss exceeded aggregate Capital Transaction Gain;

(2) Second, the Partnership's aggregate Net Income for all accounting periods shall be netted against the Partnership's aggregate Net Loss for all accounting periods and the result shall be multiplied by the General Partner's Partnership Percentage. The result shall be considered a positive number if such aggregate Net Income exceeded such aggregate Net Loss and a negative number if such aggregate Net Loss exceeded such aggregate Net Income;

(3) Third, the amount computed in clause (2) shall be added to the amount computed in clause (1). If the result of such computation is a positive number it shall be considered Total General Partner Net Gain and if the result of such computation is a negative number it shall be considered Total General Partner Net Loss.

(d) "General Partner Distributions" shall equal the sum of all distributions received by the General Partner pursuant to Article VI and this Article VIII.

(e) All in-kind distributions shall be valued as provided in Paragraph 9.2 as of the date of the distribution.

(f) Only allocations and distributions made to the General Partner in its capacity as general partner of the Partnership (including allocations and distributions resulting from the General Partner's Capital Contributions made in such capacity) shall be considered for purposes of the foregoing computations (such distributions shall, however, in no way be construed

so as to include amounts paid or otherwise received by the General Partner pursuant to Article V hereof).

(g) Each of the members of the General Partner shall be severally, but not jointly, liable to the Partnership for any unpaid liability of the General Partner determined pursuant to this Paragraph 8.2, based on their relative distributions received from the General Partner. The General Partner and the Principals represent that the Principals and E*Trade Group, Inc. are currently the only members of the General Partner. The Principals hereby agree to obtain the written agreement of any additional members of the General Partner as to the liability to the Partnership described in the preceding sentence. The guaranty by the members of the General Partner shall be enforceable by the Limited Partners directly against such members.

8.3. Liquidating Trust. In the discretion of the General Partner, any Nonmarketable Securities and other assets that would otherwise be distributed to the Partners pursuant to this Article VIII may be distributed to a trust established for the benefit of the Partners for the purposes of holding and liquidating such Nonmarketable Securities (and any other Partnership assets), collecting amounts owed to the Partnership, and paying any contingent or unforeseen liabilities or obligations of the Partnership. The trustee of such trust shall be the General Partner or other person appointed by a Two-Thirds in Interest of the Limited Partners. During the term of the trust, any Nonmarketable Securities held in the trust shall continue to be held until they become Marketable Securities except to the extent otherwise determined by the General Partner. Subject to the foregoing, the net assets of the trust shall be distributed to the Partners from time to time, in the discretion of the General Partner (or other trustee), in the same proportions as such assets would have been distributed if they had continued to be held (and disposed of) by the Partnership. The term of the trust shall be for no more than two years, subject to two one-year extensions with the approval of Two-Thirds in Interest of the

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Limited Partners.

Article IX
FINANCIAL ACCOUNTING AND REPORTS

9.1. Financial and Tax Accounting and Reports. The General Partner shall cause the Partnership's tax returns and IRS Form 1065, Schedule K-1's, to be prepared and delivered in a timely manner to the Limited Partners. The General Partner shall use its best efforts to cause the Schedule K-1's for each Fiscal Year to be delivered to the Limited Partners within ninety (90) days after the end of the Fiscal Year. The books and records of the Partnership and the General Partner shall be kept in accordance with the provisions of this Agreement and otherwise in accordance with generally accepted accounting principles consistently applied. The Partnership's financial statements for each Fiscal Year shall be prepared in accordance with such principles consistently applied and shall be audited at the end of each Fiscal Year by an independent certified public accounting firm of recognized national standing selected by the General Partner. The General Partner shall transmit to each Limited Partner as soon as practicable after the close of each of the Partnership's Fiscal Years (but in no event later than ninety (90) days after the end of each Fiscal Year), beginning with the Fiscal Year ending December 31, 2000, the audited financial statements of the Partnership accompanied by a report from the General Partner to the Limited Partners, which shall include a status report on investments then held, a valuation of each such investment, and a brief statement on the affairs of the Partnership

during the Fiscal Year then ended. In addition, the General Partner shall, within a reasonable time following the completion of the report referred to above and following reasonable notice to each Partner, hold an annual meeting of the Partners at which the General Partner shall present the affairs of the partnership and provide the Limited Partners with the opportunity to ask questions and discuss the Partnership's affairs.

9.2. Valuation of Securities and Other Assets Owned by the Partnership.

(a) Subject to the specific standards set forth below, the valuation of Securities and other assets and liabilities under this Agreement shall be at fair market value, as determined by the General Partner in its discretion. In determining the value of the interest of any Partner or in any accounting between the Partners, no value shall be placed on the goodwill or the name of the Partnership.

(b) The following criteria shall be used for determining the fair market value of Securities.

(1) Securities not subject to legal or contractual restrictions on free marketability:

(A) If traded on one (1) or more securities exchanges or on NASDAQ, the value of each Security shall be deemed to be the average closing price of such Security (as of the end of the regular trading day) for the five (5) trading days immediately preceding the valuation date as reported in the Wall Street Journal or another nationally recognized publication or service that reports such data for the valuation date.

(B) If actively traded over-the-counter (but not on NASDAQ), the value shall be deemed to be the closing bid price of such Security (as of the end of the regular trading day) for the five (5) trading days immediately preceding the valuation date.

(C) If there is no active public market, the General Partner shall make a determination of the fair market value on the valuation date, taking into consideration the tax basis of the Securities, developments concerning the issuing company subsequent to the acquisition of the Securities, the pricing of other private placements of Securities by the issuer, the price of the Securities of other companies comparable to the issuer, any financial data and projections of the issuing company provided to the General Partner and such other factor or factors as the General Partner may deem relevant.

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(2) In the case of Securities subject to legal or contractual restrictions on free marketability, appropriate adjustments to the value determined under Paragraph 9.2(b)(1) above shall be made to reflect the effect of the restrictions on transfer.

(3) If the General Partner in good faith determines that, because of special circumstances, the valuation methods set forth in this paragraph do not

fairly determine the value of a Security, the General Partner shall make such adjustments or use such alternative valuation method as it deems appropriate.

9.3. Supervision; Inspection of Books. Proper and complete books of account of the affairs of the Partnership shall be kept under the supervision of the General Partner at the principal office of the Partnership. Such books shall be open to inspection by a Limited Partner, at any reasonable time, upon reasonable notice, during normal business hours. A copy of a current list of Partners, with telephone numbers, shall be provided to any Partner upon request. The General Partner shall provide any Limited Partner with information reasonably requested by such Limited Partner for any purpose reasonably related to such Limited Partner's interest as a partner in the Partnership.

9.4. Quarterly Reports. Beginning with the first Fiscal Quarter commencing after the date of this Agreement, the General Partner shall transmit to each Limited Partner within forty-five (45) days after the close of each of the first three (3) Fiscal Quarters of each Fiscal Year, financial statements of the Partnership prepared in accordance with the terms of this Agreement and otherwise in accordance with generally accepted accounting principles from its books without audit and subject to year-end adjustments, a valuation of each of the Partnership's investments, a valuation of the Partnership interest of the Limited Partner (based upon the interest of the Limited Partner in the Partnership's assets), the amount of the Limited Partner's Capital Account, and a list of investments then held with a brief description of each Portfolio Company.

9.5. Confidentiality. Each Limited Partner agrees to maintain the confidentiality of the Partnership's records and affairs, agrees not to provide to any other person copies of any financial statements, tax returns or other records or reports provided or made available to such Limited Partner, and agrees not to disclose to any other person any information contained therein (including, without limitation, information respecting Portfolio Companies), without the express prior written consent of the General Partner; provided, that any Limited Partner may make disclosure and may provide financial statements, tax returns and other records (i) to its accountants, internal and external auditors, legal counsel, financial advisors and other fiduciaries and representatives as long as it instructs such persons to maintain the confidentiality thereof and not to disclose to any other person any information contained therein, (ii) to potential transferees of such Limited Partner's Partnership interest who agree in writing, for the benefit of the Partnership, to maintain the confidentiality thereof, but only after reasonable advance notice to the Partnership, (iii) if, and to the extent, required by law, including judicial or administrative order (provided, that, to the extent possible, the Partnership is given prior notice to enable it to seek a protective order or similar relief), (iv) in order to enforce rights under this Agreement, (v) to any regulatory body having jurisdiction over the Limited Partner and such of its advisors as need to or customarily have access to such information, and (vi) to any of its equity holders, provided that it shall use all commercially reasonable efforts to cause such persons to observe the provisions of this Paragraph 9.5.

Article X
OTHER PROVISIONS

10.1. Execution and Filing of Documents. The General Partner shall

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execute and file a Certificate of Limited Partnership conforming to the requirements of the Delaware Act in the office of the Secretary of State for the State of Delaware and shall execute a fictitious business name statement and file or cause such statement to be filed if required by Delaware law.

10.2. Other Instruments and Acts. The Partners agree to execute any other instruments or perform any other acts that are or may be necessary to effectuate and carry on the partnership created by this Agreement.

10.3. Binding Agreement. This Agreement shall be binding upon the transferees, successors, assigns, and legal representatives of the Partners.

10.4. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware as applied to agreements among Delaware residents made and to be performed entirely within Delaware.

10.5. Notices. Any notice or other communication that a Partner desires to give to another Partner shall be in writing, and shall be deemed effectively given upon personal delivery or upon deposit in any United States mail box, by registered or certified mail, postage prepaid, or upon transmission by telegram, telecopy or electronic mail, addressed to the other Partner at the address of the Partner shown in the Partnership's records (or at such other address as a Partner may designate by fifteen (15) days' advance written notice to the other Partners).

10.6. Power of Attorney. By signing this Agreement, each Limited Partner designates and appoints the General Partner its true and lawful attorney, in its name, place and stead to make, execute, sign, and file such instruments, documents, or certificates that may from time to time be required of the Partnership by the laws of the United States of America, the laws of the State of Delaware, or any other state in which the Partnership shall conduct its investment activities in order to qualify or otherwise enable the Partnership to conduct its affairs in such jurisdictions; provided, however, that in no event shall the General Partner be deemed to have the authority under this Paragraph 10.6 to take any action that would result in any Limited Partner losing the limitation on liability afforded hereunder. Such attorney is not hereby granted any authority on behalf of the Limited Partner to amend this Agreement except that as attorney for each Limited Partner, the General Partner shall have the authority to amend this Agreement and the Certificate of Limited Partnership as may be required to effect:

(a) Admissions of additional partners pursuant to Paragraph 7.6 or 7.7 above; or

(b) Transfers of Limited Partnership interests pursuant to Paragraph 7.7 above.

10.7. Amendment. This Agreement (and any exhibits to this Agreement) may be amended only with the written consent of the General Partner and Majority in Interest of the Limited Partners. No amendment shall, however, (i) increase the Capital Commitment of a

Limited Partner or modify the allocation of Capital Transaction Gain or Loss or Net Income or Loss or the distributions allocable to any Limited Partner without the written consent of such Limited Partner, (ii) increase the Management Fee or alter or waive the terms of Paragraph 8.2 without the unanimous consent of the Limited Partners, (iii) alter or waive the terms of this Paragraph 10.7(a), or (iv) alter or waive the terms of Paragraphs 7.5, 10.14, 10.17, 10.18, 10.19, 10.20, 10.21, 10.22 or 10.23 without the written consent of each affected Limited Partner. Any proposed amendment that would change the requisite percentage of Limited Partner interests required to take any action shall require the approval of such existing requisite percentage. The General Partner shall promptly furnish copies of all amendments to this Agreement and the Partnership's Certificate of Limited Partnership to all Partners.

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10.8. Effective Date. The Limited Partnership Agreement shall be effective on the date set forth in the first paragraph of this Agreement.

10.9. Entire Agreement. This Agreement constitutes the entire agreement of the Partners and supersedes all prior agreements between the Partners with respect to the Partnership.

10.10. Titles; Subtitles. The titles and subtitles used in this Agreement are used for convenience only and shall not be considered in the interpretation of this Agreement.

10.11. Partnership Name. The Partnership shall have the exclusive right to use the Partnership name (and any name under which the Partnership shall elect to conduct its affairs) as long as the Partnership continues.

10.12. Exculpation. Neither the General Partner, nor its members, employees or affiliates shall be liable to a Limited Partner or the Partnership for honest mistakes of judgment, or for action or inaction, taken reasonably and in good faith for a purpose that was reasonably believed to be in the best interests of the Partnership, or for losses due to such mistakes, action, or inaction, or to the negligence or dishonesty of any employee, broker, or other agent of the Partnership or the General Partner, provided that such employee, broker, or agent was selected, engaged or retained and supervised with reasonable care. This Paragraph 10.12 shall not extend to any action which constitutes fraud, willful misconduct or gross negligence. The General Partner may consult with counsel and accountants in respect of Partnership affairs and be fully protected and justified in any action or inaction that is taken in accordance with the advice or opinion of such counsel or accountants, provided that they shall have been selected with reasonable care. Notwithstanding any of the foregoing to the contrary, the provisions of this Paragraph 10.12 and of Paragraph 10.13 hereof shall not be construed so as to relieve (or attempt to relieve) any person of any liability by reason of recklessness or intentional wrongdoing or to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but shall be construed so as to effectuate the provisions of this Paragraph 10.12 and of Paragraph 10.13 to the fullest extent permitted by law.

10.13. Indemnification. The Partnership agrees to indemnify, out of the assets of the Partnership only, the General Partner, the members of the General Partner and their agents, employees and affiliates (and each such person's heirs and legal and personal representatives) to the fullest extent permitted by law and to save and hold them harmless from and in respect of all

(a) reasonable fees, costs, and expenses paid in connection with or resulting from any claims, actions, or demands against the General Partner, the members of the General Partner, the Partnership, or their agents or affiliates to the extent that they arise out of or in any way relate to the Partnership, its properties, business, or affairs and (b) such claims, actions, and demands and any losses or damages resulting from such claims, actions, and demands, including amounts paid in settlement or compromise (if recommended by attorneys for the Partnership) of any such claim, action or demand; provided, however, that this indemnity shall not extend to any action which constitutes fraud, willful misconduct or gross negligence. Any person receiving an advance with respect to expenses shall be required to agree to return such advance to the Partnership in the event it is subsequently determined that such person was not entitled to indemnification hereunder. Any indemnified party shall promptly seek recovery under any other indemnity or any insurance policies by which such indemnified party may be indemnified or covered or from any Portfolio Company in which the Partnership has an investment, as the case may be. To the extent the First Fund, any Parallel Funds or any Affiliates of the General Partner or its members have invested in a Portfolio Company to which an indemnity obligation relates, such indemnity obligation shall be equitably prorated among all such entities and Affiliates. No payment or advance may be made to any person under this Paragraph 10.13 to any person who may have a right to any other indemnity (by insurance or otherwise) unless such person shall have agreed, to the extent of any other recovery, to return such payments or advances to the Partnership.

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10.14. Limitation of Liability of the Limited Partners. No Limited Partner shall be bound by, nor be personally liable for, the expenses, liabilities, or obligations of the Partnership in excess of the balance of such Partner's Capital Commitment to the Partnership.

10.15. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be settled by arbitration in San Francisco, California, in accordance with the rules, then obtaining, of the American Arbitration Association. Any award shall be final, binding and conclusive upon the parties. A judgment upon the award rendered may be entered in any court having jurisdiction thereof.

10.16. Tax Matters Partner. The General Partner shall be the Partnership's Tax Matters Partner ("TMP"). The TMP may be removed by Two-Thirds in Interest of the Limited Partners. Upon the removal, dissolution or Bankruptcy of the TMP, a successor TMP shall be elected by Two-Thirds in Interest of the Limited Partners. The TMP shall employ experienced tax counsel to represent the Partnership in connection with any audit or investigation of the Partnership by the Internal Revenue Service ("IRS") and in connection with all subsequent administrative and judicial proceedings arising out of such audit. The fees and expenses incurred by the TMP in serving as the TMP shall be Partnership expenses pursuant to Paragraph 5.2 and shall be paid by the Partnership. Notwithstanding the foregoing, it shall be the responsibility of the General Partner and of each Limited Partner, at their expense, to employ tax counsel to represent their respective separate interests. If the TMP is required by law or regulation to incur fees and expenses in connection with tax matters not affecting each of the Partners, then the TMP may, in its sole discretion, seek reimbursement from or charge such fees and expenses to the Capital Accounts of those Partners on whose behalf such fees and expenses were incurred. The TMP shall keep the Limited Partners informed of all administrative and judicial proceedings, as required by Section 6223(g) of the Code, and shall furnish a copy of each notice or other communication received by the TMP from the IRS to each Limited Partner, except such notices or

communications as are sent directly to such Partner by the IRS. The relationship of the TMP to the Limited Partners is that of a fiduciary, and the TMP has a fiduciary obligation to perform its duties as TMP in such manner as will serve the best interests of the Partnership and all of the Partnership's partners. To the fullest extent permitted by law, the Partnership agrees to indemnify the TMP and its agents and save and hold them harmless, from and in respect to all (i) reasonable fees, costs and expenses in connection with or resulting from any claim, action, or demand against the TMP, the General Partner or the Partnership that arise out of or in any way relate to the TMP's status as TMP for the Partnership, and (ii) all such claims, actions, and demands and any losses or damages therefrom, including amounts paid in settlement or compromise of any such claim, action, or demand; provided that this indemnity shall not extend to conduct by the TMP determined (i) not to have been undertaken in good faith to promote the best interests of the Partnership or (ii) to have constituted recklessness, fraud, gross negligence or intentional wrongdoing by the TMP.

10.17. ERISA Matters.

(a) The General Partner, on behalf of the Partnership, shall use its reasonable best efforts to ensure that none of the assets of the Partnership shall be deemed to be "plan assets" (within the meaning of the DOL Regulations) of any Limited Partner that is an ERISA Partner.

(b) In the event that either (i) the General Partner shall determine that it has become necessary for any ERISA Partner to withdraw from the Partnership or (ii) any ERISA Partner shall determine that it is necessary for it to withdraw from the Partnership, in either case (A) in order to avoid a violation of, or breach of the fiduciary duties of any person under (other than a breach of the fiduciary duties of any such person based upon the investment strategy or performance of the Partnership) ERISA or the related provisions of the Code, or (B) because the assets of the Partnership are or will be deemed to

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be "plan assets" of such ERISA Partner within the meaning of the DOL Regulations then the General Partner or such ERISA Partner, as the case may be, shall deliver to the other a notice to that effect, accompanied by an opinion of counsel (which opinion shall be reasonably acceptable to such ERISA Partner and the General Partner), confirming the necessity of such withdrawal and explaining in reasonable detail the reasons therefor. In the case of such notice from the ERISA Partner, unless within ninety (90) days after the date on which such notice was given, the General Partner, using reasonably practicable efforts, is able to eliminate the necessity for such withdrawal to the reasonable satisfaction of such ERISA Partner and its counsel, whether by correction of the condition giving rise thereto or amendment of this Agreement or otherwise, such ERISA Partner shall be entitled, at its election, upon written notice to the General Partner, to withdraw from the Partnership on the terms set forth in Paragraph 10.17(c) below. In the case of such notice from the General Partner, such ERISA Partner shall be required to withdraw from the Partnership pursuant to Paragraph 10.17(c) below unless, within 90 days after the date on which notice was given, the General Partner, using reasonably practicable efforts, or the ERISA Partner, using reasonably practicable efforts, as appropriate, shall eliminate the necessity for such withdrawal to the reasonable satisfaction of the General Partner and its counsel, whether by correction of the condition giving rise thereto or an amendment to this Agreement or otherwise. The obligation of the ERISA Partner to make any additional Capital Contributions shall be suspended during the

above referenced ninety (90) day period and shall be terminated if such ERISA Partner withdraws pursuant to Paragraph 10.17(c).

(c) The withdrawing Limited Partner shall be entitled to receive within ninety (90) days after the effective date of such withdrawal an amount equal to the excess, if any, of the positive closing Capital Account balance the Limited Partner would have had if such effective date had constituted a date of termination of the Partnership over the aggregate amount of distributions (with such distributions valued at fair market value pursuant to Paragraph 9.2 as of the date of such distribution) made to such Limited Partner from and after such effective date. The General Partner shall provide the withdrawing Limited Partner with a written explanation of its determination of the Capital Account of such withdrawing Limited Partner as computed pursuant to the preceding sentence within sixty (60) days of the effective date of such withdrawal. The withdrawing Limited Partner shall thereafter have ten (10) business days from the date of receipt of such notice to make known any objections to such determination. Any such objection made shall indicate briefly the reasons for such objection. If within ten (10) business days of the date of receipt of such determination, the withdrawing Limited Partner fails to notify the General Partner of any objection to such determination, such determination shall be final and conclusive. If within the ten (10) day period the withdrawing Limited Partner notifies the General Partner of its objection to such determination, the General Partner and the withdrawing Limited Partner shall attempt to agree upon a mutually acceptable determination. If within ten (10) days of the first-mentioned ten (10) day period a determination satisfactory to the General Partner and the withdrawing Limited Partner shall not have been agreed to, the General Partner shall submit the dispute between the General Partner and the withdrawing Limited Partner to arbitration in accordance with Paragraph 10.15. The fees and expenses of any arbitrators retained in accordance with the provisions hereof shall be borne equally by the Partnership and the withdrawing Limited Partner.

Any distribution or payment to a withdrawing Limited Partner pursuant to this subparagraph (c) may, in the sole discretion of the General Partner, be made in cash, in Securities (in which event the withdrawing Limited Partner shall not, without its express written consent, be distributed more than its pro rata interest in any type, class or portion of the Partnership's Securities, and if such a pro rata distribution would cause in all material likelihood the withdrawing Limited Partner to be in material violation of ERISA or other applicable law then the withdrawing Limited Partner may notify the General Partner of such fact, and upon receipt of such notice the General Partner shall allow the withdrawing Limited Partner to designate a different entity to receive such distribution or designate, subject to the approval of the General Partner, an alternate distribution procedure), in the form of a promissory note, the terms of which shall be mutually agreed upon by the General Partner and the withdrawing Limited Partner, or any combination thereof.

10.18. Unrelated Business Taxable Income. The General Partner shall use

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its best efforts to conduct the affairs of the Partnership in a manner that does not cause any Limited Partner that is generally exempt from tax under Section 501 of the Code, including any Limited Partner that is a partnership if any partner of such partnership is so exempt (a "Tax-Exempt Limited Partner"), to have any "unrelated business taxable income" (as that term is defined in Section 512 of the Code). In the event the Partnership recognizes any unrelated business taxable income, the General Partner shall timely provide all necessary information to each Tax-Exempt

Limited Partner to enable the Tax-Exempt Limited Partner to report such income on its tax returns.

10.19. Public Plan Partner Withdrawals. For purposes of Paragraph 10.17, a Limited Partner that is an employee benefit plan subject to regulation under applicable state laws that are similar in purpose and intent to ERISA, including any Limited Partner that is a partnership if any partner of such partnership is such a plan (a "Public Plan Partner") shall be treated as an ERISA Partner, and all references in Paragraph 10.17 to ERISA shall be deemed to refer to such applicable state laws.

10.20. Foundation Partner Withdrawals.

(a) Each Limited Partner that is a private foundation within the meaning of Section 509 of the Code (a "Foundation Partner") may elect to withdraw from the Partnership, or reduce its interest therein, at the times and in the manner hereinafter provided, if the Foundation Partner shall have delivered to the General Partner (i) an opinion of counsel (which opinion shall be reasonably acceptable to the General Partner) to the effect that there is a material likelihood that such withdrawal or reduction may be necessary in order for the Foundation Partner, or any of its "foundation managers" within the meaning of Section 4946 of the Code, to avoid (x) excise taxes imposed by or under any of Sections 4941 and 4943 through 4946 of the Code or (y) a material violation of, or a material breach of the fiduciary duties of its trustees or governing board under, any federal or state law applicable to private foundations or any rule or regulation adopted thereunder by any agency, commission or authority having jurisdiction, and (ii) a written notice of election to withdraw or reduce such Foundation Partner's interest, specifying, in the case of a reduction, the amount of the reduction.

(b) Unless within sixty (60) days after receipt of the written notice and opinion specified in subparagraph 10.20(a) the General Partner is able to eliminate the necessity for such withdrawal or reduction to the reasonable satisfaction of the General Partner and the Foundation Partner, whether by correction of the condition giving rise to the necessity of the Foundation Partner's withdrawal, by amendment of this Agreement, or otherwise, such Foundation Partner shall be entitled to withdraw from the Partnership or reduce its interest, pursuant to and on the terms set forth in Paragraph 10.17(c) as if such Foundation Partner were an ERISA Partner, except that, notwithstanding the provisions of Paragraph 10.17(c) to the contrary, such Foundation Partner shall be allowed to reduce its interest as well as withdraw, and such Foundation Partner's withdrawal or reduction of interest shall be effective as of the earlier of (i) the last day of the Fiscal Quarter during which the election for withdrawal or reduction of interest is made, or (ii) such date for withdrawal or reduction of interest as may be recommended by counsel in the opinion referred to above in order to avoid the imposition of any penalties imposed by law (but in no event shall such date be later than the ninetieth (90th) day after the event giving rise to the Foundation Partner's right to withdraw). The obligation of the Foundation Partner to make any additional Capital Contributions shall be suspended in whole or in part (depending on whether the Foundation Partner is reducing its interest or withdrawing) during the above-referenced sixty (60) day period and shall be terminated or reduced, as the case may be, if such Foundation Partner withdraws or reduces it interest in the Partnership pursuant hereto.

10.21. Foreign Partners.

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(a) Notwithstanding anything to the contrary contained herein, the General Partner, on behalf of the Partnership, shall use its best efforts to conduct the affairs of the Partnership in a manner that, under laws, regulations, administrative interpretations and judicial decisions in effect from time to time, does not cause any Limited Partner (or a partner of a Limited Partner) that is not a "United States person" (as that term is defined in Section 7701 of the Code) (such Limited Partner being herein referred to as a "Foreign Partner") to recognize net income effectively connected with the "conduct of a trade or business within the United States" for purposes of Sections 871 and 881 of the Code.

(b) The General Partner shall provide notice to each Foreign Partner as soon as the General Partner shall become aware of any investment or other activity of the Partnership that is reasonably likely to result in the Foreign Partner being deemed to be engaged in the "conduct of a trade or business within the United States" for purposes of Sections 871, 872, 875, 881, 882, 884 and 1446 of the Code as a result of the activities or investments of the Partnership. Unless otherwise advised by the Partnership's tax advisors, the General Partner shall cause the Partnership to file tax returns and information returns with the United States Internal Revenue Service and state and local tax authorities on the basis that the Partnership is not engaged in a trade or business for purposes of Section 875 of the Code.

(c) Notwithstanding anything to the contrary contained herein, the Partnership shall not directly acquire any interest in real property located in the United States for purposes of Section 897 of the Code or in a company that is at the time of such investment a "United States real property holding corporation" (as that term is defined in Section 897(c) of the Code).

10.22. Taxation as Partnership. The General Partner, while serving as such, agrees to use its best efforts to avoid taking any action that would cause the Partnership to be classified as other than a partnership or to be taxable as a corporation for federal income tax purposes. In the event the Partnership should ever be taxable as a corporation, any resulting tax imposed on the Partnership shall be treated as a reduction in Net Income or an increase in Net Loss.

10.23. Side Letters. The General Partner will make available to the Partners any and all agreements, understandings or undertakings ("side letters"), if any, which the Partnership or the General Partner has entered into (or hereafter enters into) with any Partner or proposed Partner with respect to the Partnership or such Partner's interest in the Partnership. All current side letters are attached hereto as Exhibit B and any additional side letters shall be added to Exhibit B. To the extent that a right is granted in any side letter which is unrelated to the regulatory or other particular status of the recipient of such side letter, then any other Limited Partner shall be entitled to receive substantially such right as granted by the Partnership in such side letter. To the extent that a right is granted in any side letter which is related to the regulatory or other particular status of the recipient of such side letter, then only a Limited Partner which has a regulatory or other particular status which is the same or substantially similar to the status of the recipient of such side letter shall be entitled to receive substantially such right as granted by the Partnership in such side letter.

10.24. Deliveries of Opinions. In the event that any opinion is required hereunder from a Limited Partner, the General Partner will reasonably cooperate with such Limited Partner's counsel to provide factual information in the possession of the General Partner which information is necessary to allow such counsel to provide the opinion. Any expense related thereto shall be borne by such Limited Partner.

Article XI
MISCELLANEOUS TAX COMPLIANCE PROVISIONS

11.1. Substantial Economic Effect. The provisions of Article IV and the other provisions of this Agreement relating to the maintenance of Capital Accounts and procedures upon liquidation of the Partnership are intended to

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comply generally with the provisions of Treasury Regulation Section 1.704-1, and shall be interpreted and applied in a manner consistent with such Regulations and, to the extent the subject matter thereof is otherwise not addressed by this Agreement, the provisions of Treasury Regulations Section 1.704-1 are hereby incorporated by reference unless the General Partner shall determine that such incorporation will result in economic consequences inconsistent with the economic arrangement among the Partners as expressed in this Agreement. In the event the General Partner shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed or allocated or the manner in which distributions and contributions upon liquidation (or otherwise) of the Partnership (or any Partner's interest therein) are effected in order to comply with such Regulations and other applicable tax laws, or to assure that the Partnership is treated as a partnership for tax purposes, or to achieve the economic arrangement of the Partners as expressed in this Agreement, then notwithstanding Paragraph 10.7 hereof, the General Partner may make such modification, provided that it is not likely to have more than an insignificant detrimental effect on the tax consequences and total amounts distributable to any Limited Partner pursuant to Articles VI and VIII as applied without giving effect to such modification. The General Partner shall also (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes pursuant to this Agreement, in accordance with Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events (such as the incurrence of nonrecourse indebtedness) might otherwise cause the allocations under this Agreement not to comply with Treasury Regulations Section 1.704, provided in each case that the General Partner determines that such adjustments or modifications shall not result in economic consequences inconsistent with the economic arrangement among the Partners as expressed in this Agreement.

11.2. Other Allocations. Notwithstanding the provisions of Article IV, the allocations provided therein shall be subject to the following exceptions:

(a) In the event any Partner's Capital Account has an Unadjusted Excess Negative Balance (as defined in subparagraph (f)) at the end of any Fiscal Year, such Partner will be reallocated items of Capital Transaction Gain and Net Income for such Fiscal Year (and, if necessary, future Fiscal Years) in the amount necessary to eliminate such Unadjusted Excess Negative Balance as quickly as possible.

(b) In the event any Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4) through (d)(6), items of Capital Transaction Gain and Net Income shall be specially allocated to such Partner's Capital Account in an amount and manner sufficient to eliminate, to the extent required by Treasury Regulations Section 1.704-1(b)(2)(ii)(d), the Excess Negative Balance (as defined in subparagraph (e)) in such Partner's Capital Account created by such adjustments, allocations or distributions as quickly as possible. This subparagraph (b) is intended to and shall in all events be interpreted so as to constitute a "qualified income offset" within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

(c) A Partner's Capital Account shall not be allocated any item of Capital Transaction Loss or Net Loss to the extent such allocation would cause such Capital Account to have an Excess Negative Balance (as defined in subparagraph (e)).

(d) Any special allocations pursuant to this Paragraph 11.2 shall be taken into account as soon as possible in computing subsequent allocations, so that over the term of the Partnership the net amount of any items so allocated and the profit, gain, loss, income and expense and all other items allocated to each Partner shall, to the extent possible, be equal to the net amount that would have been allocated to each such Partner if such original allocations pursuant to this Paragraph 11.2 had not occurred.

(e) For purposes of this Paragraph 11.2, "Excess Negative Balance" shall mean the excess of the negative balance in a Partner's Capital

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Account (computed with any adjustments which are required for purposes of Treasury Regulations Section 1.704-1(b)(2)(ii)(d)) over the amount such Partner is obligated to restore to the Partnership (computed under the principles of Treasury Regulations Section 1.704-1(b)(2)(ii)(c)) inclusive of any addition to such restoration obligation pursuant to application of the provisions of Treasury Regulations Sections 1.704-2), or any successor provisions thereto.

(f) For purposes of this Paragraph 11.2 "<u>Unadjusted Excess Negative Balance</u>" shall have the same meaning as Excess Negative Balance, except that the Unadjusted Excess Negative Balance of a Partner shall be computed without effecting the reductions to such Partner's Capital Account which are described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

11.3. <u>Income Tax Allocations.</u>

(a) Except as otherwise provided in this Paragraph 11.3 or as otherwise required by the Code and the rules and Treasury Regulations promulgated thereunder, Partnership income, gain, loss, deduction, or credit for income tax purposes shall be allocated in the same manner the corresponding book items are allocated pursuant to this Agreement.

(b) In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any asset contributed to the capital of the Partnership shall, solely for tax purposes, be allocated between the Partners so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial Book Value.

(c) In the event the Book Value of any Partnership asset is adjusted pursuant to the terms of this Agreement, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder.

(d) In the event that the Partnership is required to recognize income or gain for income tax purposes under Section 684 of the Code (or a similar provision of state or local law) in respect of an in-kind distribution to a Limited Partner, then, solely for such income tax purposes, to the maximum extent permitted by applicable law (as determined by the General Partner in its reasonable discretion), the income or gain shall be allocated entirely to such Limited Partner.

11.4. <u>Withholding.</u> The Partnership shall at all times be entitled to make payments with respect to any Partner in amounts required to discharge any obligation of the Partnership to withhold or make payments to any governmental authority with respect to any federal, state, local or other jurisdictional tax liability of such Partner arising as a result of such Partner's interest in the Partnership. Any such withholding payment shall be charged to the Capital Account of the Partner subject to such withholding and shall reduce the amounts otherwise distributable to such Partner hereunder.

11.5. <u>Section 1045.</u> Each Limited Partner agrees that the Partnership shall not be required to elect the application of Section 1045 of the Code (dealing with rollovers of qualified small business stock) or corresponding provisions of any state income tax law for sales of qualified small business stock (as defined in Section 1202 of the Code) and that any such election shall be in the sole discretion of the General Partner. In addition, each Limited Partner agrees that without the consent of the General Partner the Partnership shall not be required to comply with any tax reporting or accounting requirements (including the adjustment of the tax basis of any assets of the Partner-ship or the interest in the Partnership of any Limited Partner) that may be imposed under Section 1045 of the Code with respect to rollovers of qualified small business stock by the Partnership or by or on behalf of any Limited Partner.

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[Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Partners have executed this Agreement as of the date first above written.

GENERAL PARTNER:

E*TRADE VENTURES II, LLC, a Delaware limited liability company

By /s/ Thomas A. Bevilacqua

Title: Managing Member

LIMITED PARTNERS:

E*TRADE VENTURES II, LLC, a Delaware limited liability company, as their authorized attorney-in-fact

By /s/ Thomas A. Bevilacqua

Title: Managing Member

The undersigned members of E*Trade Ventures II, LLC, hereby specifically acknowledge their obligation pursuant to Paragraphs 7.8 and 8.2(g) of the Agreement.

E*TRADE GROUP, INC.

By /s/ Christos M. Cotsakos

Title: Chairman of the Board of Directors and Chief Executive Officer
----

By /s/ Thomas A. Bevilacqua

Title: Chief Corporate Development and Strategic Investment Officer
----

/s/ Christos M. Cotsakos

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

/s/ Thomas A. Bevilacqua

Thomas A. Bevilacqua
Chief Corporate Development and
Strategic Investment Officer

EXHIBIT A

PARTNERS' CAPITAL COMMITMENTS;
PARTNERSHIP PERCENTAGES

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Name	Capital Commitment	Partnership Percentage* (Rounded)
GENERAL PARTNER:		
E*Trade Ventures II, LLC	$ 1,000,000	0.7%
LIMITED PARTNERS:		
E*Trade Group, Inc.	$ 50,000,000	32.7%
Other Limited Partners (Aggregate)	102,000,000	66.6%
TOTAL	$153,000,000	100%

----

* Actual Percentages are based on the relative amounts of the Partners' Capital Commitments.

EXHIBIT B

SIDE LETTERS

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EXHIBIT 10.10

EMPLOYMENT AGREEMENT

This Agreement is made effective this 1st day of June, 2000 (the "Effective Date"), by and between E*TRADE Group, Inc., a Delaware corporation ("Company"), and Jerry Gramaglia ("Executive").

BACKGROUND

Executive is serving as President and Chief Operating Officer of the Company. The parties desire to enter into a formal employment agreement with respect to the continued employment of Executive by Company, which shall automatically become effective as of the Effective Date.

TERMS AND CONDITIONS

In consideration of the premises and the mutual covenants and agreements set forth below, the parties agree as follows:

1. Termination of Prior Agreements. Subject to the provision of Section 9 herein, any prior agreement shall terminate and be of no further force and effect as of the execution of this Agreement.

2. Employment. Executive agrees to serve as President and Chief Operating Officer of Company for the term of this Agreement, subject to the terms set forth in this Agreement and the provisions of the Bylaws of Company. During his employment, Executive shall devote his effort and attention, on a full-time basis, to the performance of the duties required of him as an executive of Company.

3. Compensation. As compensation for his services during the term of this Agreement, Executive shall receive the amounts and benefits set forth in this Section 3 all effective as of the Effective Date unless otherwise specified:

(a) An annual salary of $425,000 ("Base Salary") prorated for any partial year of employment. As soon as reasonably practicable after the close of Company's current fiscal year and the close of each fiscal year thereafter, the Base Salary shall be subject to review by the Compensation Committee of the Company's Board of Directors for increases in light of the size and performance of Company. The Base Salary, as adjusted in accordance with this subsection (a), shall remain in effect unless and until it is increased in accordance with this subsection (a). Executive's salary shall be payable semimonthly or in accordance with Company's regular payroll practices in effect from time to time for officers of his level in Company.

(b) Participation in E*TRADE's gr2 (Success Sharing) Bonus Plan. The Executive will be eligible to receive an incentive bonus of 80% of his base salary, which may be increased as determined by the Chairman/Chief Executive Officer and the Compensation Committee of the Company.

(c) Participation in the employee benefit plans maintained by Company and in other benefits provided by Company to senior executives, including retirement and 401(k) plans, deferred compensation, medical and dental, annual vacation, paid holidays, sick leave, and similar benefits, which are subject to change from time to time at the reasonable discretion of Company.

(d) Reimbursement for financial counseling not to exceed $10,000 per year and for annual physical examinations for the executive and his wife not to exceed $20,000 per year.

(e) It is acknowledged that Executive has received option grants in accordance with the terms of this contract. Company agrees that there will be no change made in any Stock Option during the term of Executive's employment hereunder which adversely affects Executive's rights as established by the foregoing documents, without the prior written consent of Executive.

(f) Lease of automobile for company use, of a mutually agreeable

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make and model of a value not to exceed $50,000, and reimbursement of reasonable operating expense.

(g) Reimbursement of all reasonable business-related expenses, including without limitation business- travel conducted pursuant to Company's travel policy.

(h) Reimbursement of the reasonable maintenance costs of a comprehensive security and monitoring system installed in the Executive's primary residence.

(i) Executive will be eligible for full relocation benefits as provided by our executive relocation policy.

4. Term. The term of this Agreement and the termination rights are as follows:

(a) This Agreement and Executive's employment under this Agreement shall be effective as of the Effective Date and shall continue for a term ending on May 31, 2004 (the "Initial Term").

(b) This Agreement and Executive's employment may be terminated by either party prior to the end of the Initial Term (or any renewal period) upon 30 days' prior written notice to the other party, provided that, in the event of such termination, Company shall be obligated to make the payments and provide the benefits described in Section 6 below.

5. Executive will be given the option of a fully secured first mortgage loan of up to $10,000,000 for the purchase of a house in the San Francisco area. The terms and conditions of this fully secured and full recourse loan will be set forth in a separate writing.

6. Termination Payments. Upon termination of Executive's employment, Company shall pay to Executive, within three business days after the end of the 30-day notice period provided in Section 4 above, a payment in cash equal to subsection (a) of this Section 6, and shall for the period or at the time specified provide the other benefits described in subsection (b) of this Section 6 if: (i) Executive's employment is terminated by Company, other than for Cause, within three years after any "Change in Control" of Company as defined in subsection (d) of this Section 6, or at the request of or pursuant to an agreement with a third party who has taken steps reasonably calculated to effect a Change in Control, or otherwise in connection with or in anticipation of a Change in Control

(a) Eighteen (18) months of Executive's current Base Salary.

(b) In addition to the amount payable to Executive under subsection (a) of this Section 6, upon termination of Executive for any reason the health care (including medical and dental) and life insurance benefits coverage benefits provided to Executive at his date of termination shall be continued at the same level and in the same manner as if his employment had not terminated (subject to the customary changes in such coverages if Executive reaches age 65 or similar events), together with the benefits described in subsections (d) and (f) of Section 3 beginning on the date of such termination and ending on the later of: (a) the end of the term of this Agreement or (b) the date eighteen (18) months following the date of the Executive's termination, followed by COBRA election rights. Any additional coverages Executive had at termination, including dependent coverage, will also be continued for such period on the same terms. Any costs Executive was paying for such coverages at the time of termination shall continue to be paid by Executive. If the terms of any benefit plan referred to in this section do not permit continued participation by Executive, then Company will arrange for other coverage providing substantially similar benefits at the same contribution level of Executive.

(c) For purposes of this Agreement, the following definitions shall apply:

(i) The "Board" shall mean the Board of Directors of Company.

(ii) The "Incumbent Board" shall mean the members of the Board

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as of the date of this Agreement and any person becoming a member of the Board hereafter whose election, or nomination for election by Company's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of Company).

(iii) "Change in Control" shall mean:

(A) The acquisition (other than from Company) by any person, entity or "group," within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange

Act (excluding, for this purpose, any employee benefit plan of Company or its subsidiaries which acquires beneficial ownership of voting securities of Company) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of either the then outstanding shares of Common Stock or the combined voting power of Company's then outstanding voting securities entitled to vote generally in the election of directors; or

(B) The failure for any reason of individuals who constitute the Incumbent Board to continue to constitute at least a majority of the Board; or

(C) Approval by the stockholders of Company of a reorganization, merger, consolidation, in each case, with respect to which the shares of Company voting stock outstanding immediately prior to such reorganization, merger or consolidation do not constitute or become exchanged for or converted into more than 50% of the combined voting power entitled to vote generally in the election of directors of the reorganized, merged or consolidated company's then outstanding voting securities, or a liquidation or dissolution of Company or of the sale of all or substantially all of the assets of Company.

(iv) "Current Total Annual Compensation" shall be the greater of (i) Executive's Base Salary for the calendar year in which his employment terminates or (ii) such salary for the calendar year prior to the year of such termination.

(v) "Disability" shall mean the total and permanent inability of Executive due to illness, accident or other physical or mental incapacity to perform the usual duties of his employment under this Agreement, as determined by a physician selected by Company and acceptable to Executive or Executive's legal representative (which agreement as to acceptability shall not be unreasonably withheld).

(vi) The "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

(vii) "Cause" shall be defined solely as (i) Executive's defalcation or misappropriation of funds or property of the Company, or the commission of any other illegal act in the course of his employment with Company which, in the reasonable judgment of the Board of Directors, has a material adverse financial effect on the Company or on Executive's ongoing abilities to carry out his duties under this Agreement; (ii) Executive's conviction of a felony or of any crime involving moral turpitude, and 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 either the Board of Directors, or Company's chairman and Chief Executive Officer.

7. Executive agrees that during his employment with E*TRADE

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Executive will not engage in any other employment, business, or business related activity unless Executive receives E*TRADE's prior written approval to hold such outside employment or engage in such business or activity. Such written approval will not be unreasonably withheld if such outside employment, business or activity would not in any way be competitive with the business or proposed business of E*TRADE or otherwise conflict with or adversely affect in any way his performance of his employment obligations to E*TRADE.

Subject to the approval of the Chief People Officer or his replacement, commencing on the date of termination of his employment with E*TRADE and continuing for a period not to exceed twelve (12) months, Executive will not, except as provided below, as an employee, agent, consultant, advisor, independent contractor, general partner, officer, director, stockholder, investor, lender or guarantor of any corporation, partnership or other entity, or in any other capacity directly or indirectly:

i. engage in any activity, in any market where E*TRADE conducts business, in which Executive participate, manage or advise in the design, development, marketing, sale or servicing of any product related to global institutional and retail internet securities trading, clearing services or execution (hereafter referred to as "the Business");

ii. induce, encourage or solicit any individual who was employed by E*TRADE within six (6) months of the date his employment with E*TRADE terminates to leave the Company for any reason or to accept employment with any other company, or to employ, interview or arrange to have business opportunities offered to any such individual; or

iii. permit his name to be used in connection with a business which is competitive or substantially similar to the Business.

Notwithstanding the foregoing, Executive may own, directly or indirectly, solely as an investment, up to one percent (1%) of any class of "publicly traded securities" of any person or entity which owns a business that is competitive or substantially similar to the Business. The term "publicly traded securities" shall mean securities that are traded on a national securities exchange of listed on the National Association of Securities Dealers Automated Quotation System.

If any restriction set forth in this non-competition section is found by a court to be unreasonable, then Executive agrees, and hereby submit, to the reduction and limitation of such prohibition to such area or period as shall be deemed reasonable. Executive acknowledges that the services that Executive will provide to E*TRADE under this Agreement are unique and that irreparable harm will be suffered by E*TRADE in the event of the breach by Executive of any of his obligations under this Agreement, and that E*TRADE will be entitled, in addition to its other rights, to enforce by an injunction or decree of specific performance the obligations set forth in this Agreement. Any claims asserted by Executive against E*TRADE

shall not constitute a defense in any injunction action brought by E*TRADE to obtain specific enforcement of said paragraphs.

Executives agree that if the Company establishes that Executive, or those acting in concert with Executive or on his behalf, materially violate the Non-Competition provision in any way, the Company shall be entitled to recover the reasonable attorneys' fees and litigation expenses incurred, arising out of or relating to the Company's efforts to prevent the breach, to establish that a breach has occurred, to enforce the Non-Competition provisions or to seek to redress a breach, including any appeals if necessary. If the Company fails to establish that Executive, or those acting in concert with Executive or on his behalf, have materially violated any of the Non-Competition provisions in any way, Executive shall be entitled to reimbursement of reasonable attorneys' fees and litigation expenses incurred in his defense.

8. Arbitration. We each agree that any and all disputes between us which arise out of his employment, the termination of his employment, or under the terms of this Agreement shall be resolved through final and binding arbitration. This shall include, without limitation, disputes relating to this

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Agreement, any disputes regarding his employment by E*TRADE or the termination thereof, claims for breach of contract or breach of the covenant of good faith and fair dealing, and any claims of discrimination or other claims under any federal, state or local law or regulation now in existence or hereinafter enacted and as amended from time to time concerning in any way the subject of his employment with E*TRADE or its termination. The only claims not covered by this section are the following: (i) claims for benefits under the unemployment insurance or workers' compensation laws; (ii) claims concerning the validity, infringement or enforceability of any trade secret, patent right, copyright, trademark or any other intellectual property held or sought by E*TRADE, or which E*TRADE could otherwise seek; in each of these instances such disputes or claims shall not be subject to arbitration, but rather, will be resolved pursuant to applicable California law. Binding arbitration will be conducted in Santa Clara County in accordance with the rules and regulations of the American Arbitration Association. The parties will split the cost of the arbitration filing and hearing fees and the cost of the arbitrator; each side will bear its own attorneys' fees, unless otherwise decided by the arbitrator. Executive understand and agree that arbitration shall be instead of any civil litigation, that each side waives its right to a jury trial, and that the arbitrator's decision shall be final and binding to the fullest extent permitted by law and enforceable by any court having jurisdiction thereof.

9. Miscellaneous Provisions. This Agreement, the stock options grant agreements and the previously executed Proprietary Information and Inventions Agreement will be the entire agreement between Executive and E *TRADE relating to his employment and the additional matters provided for herein. This Agreement supersedes and replaces (i) any prior verbal or written agreements between the parties except as provided for herein and (ii) any prior verbal or written agreements between the undersigned Executive and the Company relating to the subject matter hereof. This Agreement may be amended or altered only in a writing signed by Executive and the Company. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Each provision of this Agreement is severable from the others, and if any provision hereof shall be to any extent unenforceable it and the other

provisions shall continue to be enforceable to the full extent allowable, as if such offending provision had not been a part of this Agreement.

10. Assignment; Successors. Any assignment of this Agreement shall be in accordance with the following:

(a) The rights and benefits of Executive under this Agreement, other than accrued and unpaid amounts due hereunder, are personal to him and shall not be assignable by Executive, except with the prior written consent of Company.

(b) Subject to the provisions of subsection (c) of this Section 6, this Agreement shall not be assignable by Company, provided that with the consent of Executive, Company may assign this Agreement to another corporation wholly owned by it either directly or through one or more other corporations, or to any corporate successor of Company or any such corporation.

(c) Any business entity succeeding to substantially all of the business of Company, by purchase, merger, consolidation, sale of assets or otherwise, shall be bound by and shall adopt and assume this Agreement, and Company shall require the assumption of this Agreement by such successor as a condition to such purchase, merger, consolidation, sale of assets or other similar transaction.

11. Notices. Any notice or other communications under this Agreement shall be in writing, signed by the party making the same, and shall be delivered personally or sent by certified or registered mail, postage prepaid, addressed as follows:

If to Executive: Mr. Jerry Gramaglia
c/o E*Trade Group, Inc.
4500 Bohannon Drive
Menlo Park, CA 94025

If to Company: Chief Legal Affairs Officer
c/o E*Trade Group, Inc.
4500 Bohannon Drive

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Menlo Park, CA 94025

or such other address or agent as may hereafter be designated by either party hereto. All such notices shall be deemed given on the date personally delivered or mailed.

12. Full Settlement and Legal Expenses. In no event shall Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Executive under any of the provisions of this Agreement. The prevailing party shall be entitled to recover all legal fees and expenses which such party may reasonably incur as a result of any legal proceeding relating to the validity, enforceability, or breach of, or liability under, any provision of this Agreement or any guarantee of performance (including as a result of any contest by Executive about the amount of any payment pursuant to Section 6 of this

Agreement), plus in each case interest at the applicable Federal Rate provided for in Section 7872(f)(2) of the Code.

13. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, except that any arbitration shall be governed by the Federal Arbitration Act.

14. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provisions in every other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

E*TRADE GROUP, INC.

/s/ Christos M. Cotsakos

By: Christos M. Cotsakos
Chairman & Chief Executive Officer

EXECUTIVE

/s/ Jerry Gramaglia

Jerry Gramaglia

Witnesseth:

/s/ Theodore J. Theophilos

Theodore J. Theophilos

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Exhibit 10.11

This form of Note Secured by Stock Pledge Agreement is identical for all listed executive officers except for the variables set forth below:

Name of Officer	Principal Amount	Date	Number of Shares	Date One Year from Date of Note	Due Date of Note
Christos M. Cotsakos	$14,370,100.97	5/24/2000	1,730,572	5/24/2001	6/24/2001
Jerry Gramaglia	$ 923,625.21	6/2/2000	100,000	6/2/2001	7/2/2001
Michael Sievert	$ 73,161.65	6/2/2000	7,000	6/2/2001	7/2/2001
Connie M. Dotson	$ 1,324,493.78	5/30/2000	157,064	5/30/2001	6/30/2001
Leonard C. Purkis	$ 1,835,048.96	5/30/2000	200,000	5/30/2001	6/30/2001
Pamela Kramer	$ 80,337.86	6/2/2000	7,184	6/2/2001	7/2/2001

E*TRADE GROUP, INC.

NOTE SECURED BY STOCK PLEDGE AGREEMENT

$[Principal Amount]

[Date]
Menlo Park, California

FOR VALUE RECEIVED, [Name of Officer] ("Maker") promises to pay to the order of E*TRADE Group, Inc., a Delaware corporation (the "Corporation"), at its corporate offices at 4500 Bohannon Drive, Menlo Park, California 94025, the principal sum of [Principal Amount], together with all accrued interest thereon, upon the terms and conditions specified below.

1. Purchase Money Indebtedness. The proceeds of this Note shall be applied solely and exclusively to the payment of the purchase price of [Number of Shares] shares of the Corporation's common stock acquired this day by Maker (the "Purchased Shares"), and those Purchased Shares shall be held in pledge by the Corporation as collateral for the payment of this Note.

2. Interest. Interest shall accrue on the unpaid balance outstanding from time to time under this Note at the rate of 7.75% per annum, compounded semi-annually. Accrued and unpaid interest as of [Date One Year from Date of Note] shall become due and payable on [Date One Year from Date of Note]. Additional accrued but unpaid interest from the period [Date One Year from Date of Note] through [Due Date of Note] shall become due and payable on [Due Date of Note].

3. Principal Due Date. Subject to the accelerated payment provisions of Paragraph 5 and 6 of this Note, the principal balance of this Note shall become due and payable in one lump sum on [Due Date of Note].

4. Payment. Payment shall be made in lawful tender of the United States and shall be applied first to the payment of all accrued and unpaid interest and then to the payment of principal. Prepayment of the principal balance of this Note, together with all accrued and unpaid interest on the portion of principal so prepaid, may be made in whole or in part at any time without penalty.

5. Events of Acceleration. The entire unpaid principal balance of

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this Note, together with all accrued and unpaid interest, shall become immediately due and payable prior to the specified due date of this Note upon the occurrence of one or more of the following events:

A. the failure of the Maker to pay any installment of principal or accrued interest under this Note when due and the continuation of such default for more than thirty (30) days; or

B. the expiration of the thirty (30)-day period following the date the Maker ceases for any reason to remain in the employ of the Corporation; or

C. the insolvency of the Maker, the commission of any act of bankruptcy by the Maker, the execution by the Maker of a general assignment for the benefit of creditors, the filing by or against the Maker of any petition in bankruptcy or any petition for relief under the provisions of the Federal bankruptcy act or any other state or Federal law for the relief of debtors and the continuation of such petition without dismissal for a period of thirty (30) days or more, the appointment of a receiver or trustee to take possession of any property or assets of the Maker or the attachment of or execution against any property or assets of the Maker; or

D. an acquisition of the Company (whether by merger, sale of all or substantially all of the Company's assets or sale of more than fifty percent (50%) of the Company's outstanding voting securities) for consideration payable in cash or freely-tradable securities; provided, however, that if the Pooling of Interest Method, as described in Accounting Principles Board Opinion No. 16, is used to account for the acquisition for financial accounting purposes, then acceleration of this Note shall not occur until the end of the sixty (60)-day period immediately following the close of the applicable transfer restriction period required under Accounting Series Release Numbers 130 and 135; or

E. the occurrence of any event of default under the Stock Pledge Agreement securing this Note or any obligation secured thereby.

6. Special Acceleration Event. In the event the Maker sells or otherwise transfers for value one or more shares of the Corporation's common stock purchased with the proceeds of this Note, then any unpaid portion of the principal balance of this Note attributable to the purchase price of those shares shall become immediately due and payable, together with all accrued and unpaid interest on that principal portion.

7. Employment. The Maker shall be deemed to continue in employment with the Corporation for so long as he or she renders services as an employee of the Corporation or one or more of the Corporation's fifty percent (50%) or more owned (directly or indirectly) subsidiaries.

8. Security. Payment of this Note shall be secured by a pledge of the Purchased Shares with the Corporation pursuant to the Stock Pledge Agreement to be executed this date by the Maker. The Maker, however, shall remain personally liable for payment of this Note, and assets of the Maker, in addition to the collateral under the Stock Pledge Agreement, may be applied to the satisfaction of the Maker's obligations hereunder.

9. Collection. If action is instituted to collect this Note, the Maker promises to pay all costs and expenses (including reasonable attorney fees) incurred in connection with such action.

10. Waiver. A waiver of any term of this Note, the Stock Pledge Agreement or of any of the obligations secured thereby must be made in writing and signed by a duly-authorized officer of the Corporation and any such waiver shall be limited to its express terms.

No delay by the Corporation in acting with respect to the terms of this Note or the Stock Pledge Agreement shall constitute a waiver of any breach,

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default, or failure of a condition under this Note, the Stock Pledge Agreement or the obligations secured thereby.

The Maker waives presentment, demand, notice of dishonor, notice of default or delinquency, notice of acceleration, notice of protest and nonpayment, notice of costs, expenses or losses and interest thereon, notice of interest on interest and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights or interests in or to properties securing payment of this Note.

11. Conflicting Agreements. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the loan evidenced by the Note, the terms of this Note shall prevail.

12. Governing Law. This Note shall be construed in accordance with the laws of the State of California without resort to that State's conflict-of-laws rules.

____
[Name of Officer], MAKER

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Exhibit 10.12

This form of Stock Pledge Agreement is identical for all executive officers listed below.

Officer Name:

Christos M. Cotsakos

Jerry Gramaglia

Michael Sievert

Connie M. Dotson

Leonard C. Purkis

Pamela Kramer

E*TRADE GROUP, INC.

STOCK PLEDGE AGREEMENT

AGREEMENT made as of this [Date] by and between E*TRADE Group, Inc., a Delaware corporation (the "Corporation"), and [Officer Name] ("Pledgor").

RECITALS

A. In connection with the purchase this day of [Number of Shares] shares of the Corporation's Common Stock (the "Purchased Shares") from the Corporation, Pledgor has issued that certain promissory note (the "Note") dated [Date of Secured Note] payable to the order of the Corporation in the principal amount of [Principal Amount].

B. Such Note is secured by the Purchased Shares and other collateral upon the terms set forth in this Agreement.

NOW, THEREFORE, it is hereby agreed as follows:

1. Grant of Security Interest. Pledgor hereby grants the Corporation a security interest in, and assigns, transfers to and pledges with the Corporation, the following securities and other property (collectively, the "Collateral"):

(i) the Purchased Shares delivered to and deposited with the Corporation as collateral for the Note;

(ii) any and all new, additional or different securities or other property subsequently distributed with respect to the Purchased Shares which are to be delivered to and deposited with the Corporation pursuant to the requirements of Paragraph 3 of this Agreement;

(iii) any and all other property and money which is delivered to or comes into the possession of the Corporation pursuant to the terms of this Agreement; and

(iv) the proceeds of any sale, exchange or disposition of the property and securities described in subparagraphs (i), (ii) or (iii) above.

2. Warranties. Pledgor hereby warrants that Pledgor is the owner of the Collateral and has the right to pledge the Collateral and that the Collateral is free from all liens, adverse claims and other security interests (other than those created hereby).

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3. <u>Duty to Deliver</u>. Any new, additional or different securities or other property (other than regular cash dividends) which may now or hereafter become distributable with respect to the Collateral by reason of (i) any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the Common Stock as a class without the Corporation's receipt of consideration or (ii) any merger, consolidation or other reorganization affecting the capital structure of the Corporation shall, upon receipt by Pledgor, be promptly delivered to and deposited with the Corporation as part of the Collateral hereunder. Any such securities shall be accompanied by one or more properly-endorsed stock power assignments.

4. <u>Payment of Taxes and Other Charges</u>. Pledgor shall pay, prior to the delinquency date, all taxes, liens, assessments and other charges against the Collateral, and in the event of Pledgor's failure to do so, the Corporation may at its election pay any or all of such taxes and other charges without contesting the validity or legality thereof. The payments so made shall become part of the indebtedness secured hereunder and until paid shall bear interest at the minimum per annum rate, compounded semi-annually, required to avoid the imputation of interest income to the Corporation and compensation income to Pledgor under the Federal tax laws.

5. <u>Stockholder Rights</u>. So long as there exists no event of default under Paragraph 10 of this Agreement, Pledgor may exercise all stockholder voting rights and be entitled to receive any and all regular cash dividends paid on the Collateral and all proxy statements and other stockholder materials pertaining to the Collateral.

6. <u>Rights and Powers of Corporation</u>. The Corporation may, without obligation to do so, exercise at any time and from time to time one or more of the following rights and powers with respect to any or all of the Collateral:

(i) subject to the applicable limitations of Paragraph 9, accept in its discretion other property of Pledgor in exchange for all or part of the Collateral and release Collateral to Pledgor to the extent necessary to effect such exchange, and in such event the other property received in the exchange shall become part of the Collateral hereunder;

(ii) perform such acts as are necessary to preserve and protect the Collateral and the rights, powers and remedies granted with respect to such Collateral by this Agreement; and

(iii) transfer record ownership of the Collateral to the Corporation or its nominee and receive, endorse and give receipt for, or collect by legal proceedings or otherwise, dividends or other distributions made or paid with respect to the Collateral, <u>provided and only if</u> there exists at the time an outstanding event of default under Paragraph 10 of this Agreement. Any cash

sums which the Corporation may so receive shall be applied to the payment of the Note and any other indebtedness secured hereunder, in such order of application as the Corporation deems appropriate. Any remaining cash shall be paid over to Pledgor.

Any action by the Corporation pursuant to the provisions of this Paragraph 6 may be taken without notice to Pledgor. Expenses reasonably incurred in connection with such action shall be payable by Pledgor and form part of the indebtedness secured hereunder as provided in Paragraph 12.

7. <u>Care of Collateral</u>. The Corporation shall exercise reasonable care in the custody and preservation of the Collateral. However, the Corporation shall have no obligation to (i) initiate any action with respect to, or otherwise inform Pledgor of, any conversion, call, exchange right, preemptive right, subscription right, purchase offer or other right or privilege relating to or affecting the Collateral, (ii) preserve the rights of Pledgor against adverse claims or protect the Collateral against the possibility of a decline in market value or (iii) take any action with respect to the Collateral requested by Pledgor unless the request is made in writing and the Corporation determines

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that the requested action will not unreasonably jeopardize the value of the Collateral as security for the Note and other indebtedness secured hereunder.

Subject to the limitations of Paragraph 9, the Corporation may at any time release and deliver all or part of the Collateral to Pledgor, and the receipt thereof by Pledgor shall constitute a complete and full acquittance for the Collateral so released and delivered. The Corporation shall accordingly be discharged from any further liability or responsibility for the Collateral, and the released Collateral shall no longer be subject to the provisions of this Agreement.

8. Transfer of Collateral. In connection with the transfer or assignment of the Note (whether by negotiation, discount or otherwise), the Corporation may transfer all or any part of the Collateral, and the transferee shall thereupon succeed to all the rights, powers and remedies granted the Corporation hereunder with respect to the Collateral so transferred. Upon such transfer, the Corporation shall be fully discharged from all liability and responsibility for the transferred Collateral.

9. Release of Collateral. Provided all indebtedness secured hereunder (other than payments not yet due and payable under the Note) shall at the time have been paid in full and there does not otherwise exist any event of default under Paragraph 10, the Purchased Shares, together with any additional Collateral which may hereafter be pledged and deposited hereunder, shall be released from pledge and returned to Pledgor in accordance with the following provisions:

(i) Upon payment or prepayment of principal under the Note, together with payment of all accrued interest to date on the principal amount so paid or prepaid, one or more of the Purchased Shares held as Collateral hereunder shall (subject to the applicable limitations of Paragraphs 9(iii) and 9(v) below) be released at the time of such payment or prepayment. The number of

the shares to be so released shall be equal to the number obtained by multiplying (i) the total number of Purchased Shares held under this Agreement at the time of the payment or prepayment, by (ii) a fraction, the numerator of which shall be the amount of the principal paid or prepaid and the denominator of which shall be the unpaid principal balance of the Note immediately prior to such payment or prepayment. In no event, however, shall any fractional shares be released.

(ii) Any additional Collateral which may hereafter be pledged and deposited with the Corporation (pursuant to the requirements of Paragraph 3) with respect to the Purchased Shares shall be released at the same time the particular shares of Common Stock to which the additional Collateral relates are to be released in accordance with the applicable provisions of Paragraph 9(i) or 9(vi).

(iii) Under no circumstances, however, shall any Purchased Shares or any other Collateral be released if previously applied to the payment of any indebtedness secured hereunder. In addition, in no event shall any Purchased Shares or other Collateral be released pursuant to the provisions of Paragraph 9(i), 9(ii) or 9(vi) if, and to the extent, the fair market value of the Common Stock and all other Collateral which would otherwise remain in pledge hereunder after such release were effected would be less than the unpaid principal and accrued interest under the Note.

(iv) For all valuation purposes under this Agreement, the fair market value per share of Common Stock on any relevant date shall be determined in accordance with the following provisions:

(A) If the Common Stock is at the time traded on the Nasdaq National Market, the fair market value shall be the average of the high and low selling prices per share of Common Stock on the date in question, as such prices are reported by the National Association of Securities Dealers on the Nasdaq National Market. If there is no average of the high and low selling prices for the Common Stock on the date in question, then the average of the high and low selling prices on the last preceding date for which such quotation exists shall be determinative of fair market value.

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(B) If the Common Stock is at the time listed on the American Stock Exchange or the New York Stock Exchange, then the fair market value shall be the average of the high and low selling prices selling prices per share of Common Stock on the date in question on the securities exchange serving as the primary market for the Common Stock, as such prices are officially quoted in the composite tape of transactions on such exchange. If there is no average of the high and low selling prices of Common Stock on such exchange on the date in question, then the fair market value shall be the average of the high and low selling prices on the exchange on the last preceding date for which such quotation exists.

(C) If the Common Stock is at the time neither listed on any securities exchange nor traded on the Nasdaq National Market, the fair market value shall be determined by the Corporation's Board of Directors after taking into account such factors as the Board shall deem appropriate.

(v) So long as the Collateral is in whole or in part comprised of "margin stock" within the meaning of Section 221.2 of Regulation U of the Federal Reserve Board, then no Collateral shall be substituted for any Collateral under the provisions of Paragraph 6(i) or be released under Paragraph 9(i), 9(ii) or 9(vi), unless there is compliance with each of the following additional requirements:

(A) The substitution or release must not increase the amount by which the indebtedness secured hereunder at the time of such substitution or release exceeds the maximum loan value (as defined below) of the Collateral immediately prior to such substitution or release.

(B) The substitution or release must not cause the amount of indebtedness secured hereunder at the time of such substitution or release to exceed the maximum loan value of the Collateral remaining after such substitution or release is effected.

(C) For purposes of this Paragraph 9(v), the maximum loan value of each item of Collateral shall be determined on the day the substitution or release is to be effected and shall, in the case of the shares of Common Stock and any additional Collateral (other than margin stock), equal the good faith loan value thereof (as defined in Section 221.2 of Regulation U) and shall, in the case of all margin stock (other than the Common Stock), equal fifty percent (50%) of the current market value of such margin stock.

(vi) The Compensation Committee of the Corporation's Board of Directors shall have the discretion, exercisable upon such terms and conditions as the Compensation Committee deems advisable, to authorize the release of one or more shares of Common Stock from pledge hereunder in the event the maximum loan value of the Collateral pledged hereunder (as such value is determined pursuant to subparagraph 9(v)(C)) should substantially exceed the outstanding indebtedness at the time secured hereunder. Any such release of the pledged shares of Common Stock shall, however, be effected in compliance with the requirements of subparaphs (iii) and (v) of this Paragraph 9.

10. Events of Default. The occurrence of one or more of the following events shall constitute an event of default under this Agreement:

(i) the failure of Pledgor to pay, when due under the Note, any installment of principal or accrued interest; or

(ii) the occurrence of any other acceleration event specified in the Note; or

(iii) the failure of Pledgor to perform any obligation imposed upon Pledgor by reason of this Agreement; or

(iv) the breach of any warranty of Pledgor contained in this Agreement.

Upon the occurrence of any such event of default, the Corporation may, at its election, declare the Note and all other indebtedness secured hereunder to become immediately due and payable and may exercise any or all of the rights

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and remedies granted to a secured party under the provisions of the California Uniform Commercial Code (as now or hereafter in effect), including (without limitation) the power to dispose of the Collateral by public or private sale or to accept the Collateral in full payment of the Note and all other indebtedness secured hereunder.

Any proceeds realized from the disposition of the Collateral pursuant to the foregoing power of sale shall be applied first to the payment of expenses incurred by the Corporation in connection with the disposition, then to the payment of the Note and finally to any other indebtedness secured hereunder. Any surplus proceeds shall be paid over to Pledgor. However, in the event such proceeds prove insufficient to satisfy all obligations of Pledgor under the Note, then Pledgor shall remain personally liable for the resulting deficiency.

11. Other Remedies. The rights, powers and remedies granted to the Corporation pursuant to the provisions of this Agreement shall be in addition to all rights, powers and remedies granted to the Corporation under any statute or rule of law. Any forbearance, failure or delay by the Corporation in exercising any right, power or remedy under this Agreement shall not be deemed to be a waiver of such right, power or remedy. Any single or partial exercise of any right, power or remedy under this Agreement shall not preclude the further exercise thereof, and every right, power and remedy of the Corporation under this Agreement shall continue in full force and effect unless such right, power or remedy is specifically waived by an instrument executed by the Corporation.

12. Costs and Expenses. All costs and expenses (including reasonable attorneys fees) incurred by the Corporation in the exercise or enforcement of any right, power or remedy granted it under this Agreement shall become part of the indebtedness secured hereunder and shall constitute a personal liability of Pledgor payable immediately upon demand and bearing interest until paid at the minimum per annum rate, compounded semi-annually, required to avoid the imputation of interest income to the Corporation and compensation income to Pledgor under the Federal tax laws.

13. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without resort to that State's conflict-of-laws rules.

14. Successors. This Agreement shall be binding upon the Corporation and its successors and assigns and upon Pledgor and the executors, heirs and legatees of Pledgor's estate.

15. Severability. If any provision of this Agreement is held to be invalid under applicable law, then such provision shall be ineffective only to the extent of such invalidity, and neither the remainder of such provision nor any other provisions of this Agreement shall be affected thereby.

IN WITNESS WHEREOF, this Agreement has been executed by Pledgor and the Corporation on this [Date].

____
PLEDGOR

Address: ______________________

____

AGREED TO AND ACCEPTED BY:

E*TRADE GROUP, INC.

By: _________________________

Title: ______________________

Dated: [Date]

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ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, ______________ hereby sells, assigns and transfers unto E*TRADE Group, Inc. (the "Corporation"),__________ (____) shares of the Common Stock of the Corporation standing in his name on the books of the Corporation represented by Certificate No. _____________ herewith and does hereby irrevocably constitute and appoint ____________________ Attorney to transfer the said stock on the books of the Corporation with full power of substitution in the premises.

Dated: ________________________

Signature: ___________________________

Instruction: Please do not fill in any blanks other than the signature line. Please sign exactly as you would like your name to appear on the issued stock certificate.

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Exhibit 10.13

E*TRADE GROUP, INC.

NOTE SECURED BY DEED OF TRUST

$4,217,365.63 May 7, 2000
Menlo Park, California

FOR VALUE RECEIVED, Charles W. Thomson and Sara A. Fields-Thomson, as husband and wife (collectively, the "Maker") promises to pay to the order of E*TRADE Group, Inc. (the "Corporation"), at its corporate offices at 4500 Bohannon Drive, Menlo Park, CA 94025, the principal sum of Four Million Two Hundred Seventeen Thousand Three Hundred Sixty-five and 63/100 Dollars ($4,217,365.63), together with all accrued interest thereon (the "Loan"), upon the terms and conditions specified below.

1. Interest. No interest shall accrue on the unpaid balance outstanding under this Note during the first 36 months of the Loan. Commencing on June 1, 2003, interest shall accrue on the unpaid balance outstanding from time to time under this Note at six and four tenths percent (6.4%), compounded annually. All computations of interest shall be made on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Anything herein to the contrary notwithstanding, if during any period for which interest is computed hereunder the amount of interest computed on the basis provided for in this Note, together with all fees, charges and other payments which are treated as interest under applicable law, as provided for herein or in any other document executed in connection herewith, would exceed the amount of such interest computed on the basis of the Highest Lawful Rate (as defined below), the Maker shall not be obligated to pay, and the Corporation shall not be entitled to charge, collect, receive, reserve or take, interest in excess of the Highest Lawful Rate, and during any such period the interest payable hereunder shall be computed on the basis of the Highest Lawful Rate. As used herein, "Highest Lawful Rate" means the maximum non-usurious rate of interest, as in effect from time to time, which may be charged, contracted for, reserved, received or collected by the Corporation in connection with this Note under applicable law.

2. Principal. The entire principal balance of this Note, together with all accrued and unpaid interest, shall become due and payable in one lump sum on May 7, 2005.

3. Payment. All payments of principal and interest on the Loan shall be made without offset or deduction and shall be made in immediately available lawful tender of the United States and shall be applied first to the payment of all accrued and unpaid interest and then to the payment of principal. Prepayment of the principal balance of this Note, together with all accrued and unpaid interest, may be made in whole or in part at any time without penalty. Whenever any payment hereunder shall be stated to be due, or whenever any interest payment date or any other date specified hereunder would otherwise occur, on a day other than a Business Day (as defined below), then such payment shall be made, and such interest payment date or other date shall occur, on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest hereunder. As used herein,

"Business Day" means a day (i) other than Saturday or Sunday, and (ii) on which commercial banks are open for business in San Francisco, California.

4. Representations and Warranties. The Maker represents and warrants to the Corporation that this Note does not contravene any contractual or judicial restriction binding on or affecting the Maker and that this Note is the legal, valid and binding obligation of the Maker enforceable against him in accordance with its terms.

5. Notice. The Maker agrees to notify the Corporation of the

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incurrence of any other indebtedness secured by the Collateral (as defined below) prior to the incurrence thereof.

6. Events of Acceleration. The entire unpaid principal balance of this Note, together with all accrued and unpaid interest, shall become immediately due and payable prior to the specified due date of this Note upon the occurrence of one or more of the following events:

a. the failure to make any payment of principal, interest or any other amount payable hereunder when due under this Note or the breach of any other condition, obligation or covenant under this Note;

b. the breach of any representation or covenant under the Deed of Trust (as defined below);

c. the filing of a petition by or against the Maker under any provision of the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or recodified from time to time, or under any similar law relating to bankruptcy, insolvency or other relief for debtors and the continuation of such petition without dismissal for a period of thirty (30) days or more; or appointment of a receiver, trustee, custodian or liquidator of or for all or any part of the assets or property of the Maker; or the insolvency of the Maker; or the making of a general assignment for the benefit of creditors by the Maker;

d. The Maker's death or incapacity;

e. any of the documents relating to the Collateral after delivery thereof shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect, or the Maker or any other person shall contest in any manner the validity or enforceability thereof, or the Maker or any other person shall deny that it has any further liability or obligation thereunder; or any of the documents relating to the Collateral for any reason, except to the extent permitted by the terms thereof, shall cease to create a valid and perfected first priority lien in any of the Collateral purported to be covered thereby;

f. the incurrence by the Maker of any other indebtedness secured by the Collateral which has not been consented to by the Corporation;

g. the expiration of the two (2)-month period following the date the Maker ceases for any reason to remain in the Corporation's employ;

h. an acquisition of the Corporation (whether by merger or acquisition of all or substantially all of the Corporation's assets or outstanding voting stock) for consideration

payable in cash or freely-tradable securities; provided, however, that if the Pooling of Interest Method, as described in Accounting Principles Board Opinion No. 16, is used to account for the acquisition for financial reporting purposes, acceleration shall not occur prior to the end of the sixty (60)-day period immediately following the end of the applicable restriction period required under Accounting Series Release Numbers 130 and 135; or

i. the occurrence of any event of default under the Deed of Trust securing this Note or any obligation secured thereby.

7. Special Acceleration Event. In the event that the Maker sells any shares of the common stock of the Corporation, the unpaid principal balance of this Note shall become immediately due and payable to the extent of one hundred percent (100%) of the after-tax proceeds realized upon such sale, and the Maker shall promptly deliver those after-tax proceeds to the Company to the extent necessary to satisfy the accelerated balance of this Note.

8. Late Fee; Default.

a. If any payment hereunder is not paid on or before the fifth (5th) business day of the month during which any such payment first became due and payable. Maker shall pay to Corporation a reasonable late or administrative

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charge in the amount of five percent (5%) of the amount so unpaid.

b. Upon and after the occurrence of a default hereunder or any other agreement or instrument evidencing, governing or securing this Loan (an "Event of Default"), the Loan shall bear interest, payable upon demand, at the lessor of twelve percent (12%) or the maximum rate allowed by law (the "Default Rate").

c. If any interest payment hereunder is not paid on of before the fifth (5th) business day of the month during which such payment first became due and payable, any interest so unpaid shall bear interest from the first day of the month during which such payment first became due and payable until paid at the Default Rate. Interest on the amount of interest so unpaid shall be compounded monthly and shall be payable upon demand.

d. Maker and Corporation agree that the actual damages and costs sustained by Corporation due to the failure to make timely payments would be extremely difficult to measure and that the charges specified herein represent a reasonably estimate by Maker and Corporation of a fair average compensation for such damages and costs. Such charges shall be paid by Maker without prejudice to the right of Corporation to collect any other amounts provided to be paid under this Note or any other agreement or, with respect to late payments, to declare an Event of Default.

9. Employment. For purposes of applying the provisions of this Note, the Maker shall be considered to remain in the Corporation's employ for so long as the Maker renders services as a full-time employee of the Corporation, any successor entity or one or more of the Corporation's fifty percent (50%)-or-more owned (directly or indirectly) subsidiaries.

10. Use of Proceeds; Security. The proceeds of the loan evidenced by this Note shall be applied solely to the payment of the purchase price of Maker's principal residence in the San Francisco Bay Area. The obligations of Maker under this Note shall be secured by a mortgage security interest in such home (the "Collateral"), which security interest shall be more specifically described by a deed of trust on such home to be executed by the Maker in favor of the Corporation and recorded in the Official Records of San Mateo County immediately upon completion of the purchase of such home (the "Deed of Trust"), in substantially the same form as the deed of trust attached hereto as Exhibit A. The Maker shall remain personally liable for payment of this Note, and any other assets of the Maker, in addition to the Collateral, may be applied to the satisfaction of the Maker's obligations hereunder.

11. Collection. The Maker agrees to pay on demand all the losses, costs, and expenses (including, without limitation, attorneys' fees and disbursements) which the Corporation incurs in connection with enforcement or attempted enforcement of this Note, or the protection or preservation of the Corporation's rights under this Note, whether by judicial proceedings or otherwise. Such costs and expenses include, without limitation, those incurred in connection with any workout or refinancing, or any bankruptcy, insolvency, liquidation or similar proceedings.

12. Waiver. A waiver of any term of this Note, the Deed of Trust or of any of the obligations secured thereby must be made in writing and signed by a duly-authorized officer of the Corporation and any such waiver shall be limited to its express terms. No delay by the Corporation in acting with respect to the terms of this Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure of a condition under this Note, the Deed of Trust or the obligations secured thereby. No single or partial exercise of any power under this Note shall preclude any other or further exercise of such power or exercise of any other power. The Maker waives presentment, demand, notice of dishonor, notice of default or delinquency, notice of acceleration, notice of protest and nonpayment, notice of costs, expenses or losses and interest thereon, notice of interest on interest and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights or interests in or to properties securing payment of this Note. The Maker agrees to make all payments under this Note without set-off of deduction and regardless of any counterclaim or defense.

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13. Conflicting Agreements. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the loan evidenced by the Note, the terms of this Note shall prevail.

14. Governing Law. This Note shall be construed in accordance with the laws of the State of California. This Note shall be binding on the Maker and his successors, assigns, personal representatives, heirs, and legatees, and shall be binding upon and inure to the benefit of the Corporation, any future holder of this Note and their respective successors and assigns. The Maker may not assign or transfer this Note or any of his obligations hereunder without the Corporation's prior written consent.

15. Time of Essence. Time is of the essence with respect to every provision hereof.

"MAKER"

/s/ Charles W. Thomson

Charles W. Thomson

/s/ Sara A. Fields-Thomson

Sara A. Fields-Thomson

EXHIBIT A

DEED OF TRUST

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Brobeck, Phleger & Harrison LLP
One Market
Spear Street Tower
San Francisco, CA 94105
Attn: Douglas G. Van Gessel, Esq.

SPACE ABOVE THIS LINE FOR RECORDERS USE

DEED OF TRUST WITH ASSIGNMENT OF RENTS

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS (this "Deed of Trust") is made as of this __ day of May, 2000, by Charles W. Thomson and Sara A. Fields-Thomson, as husband and wife (collectively, "Trustor"), whose address is 1850 Brookdale Avenue, Hillsborough, CA, 94010, to NORTH AMERICAN TITLE COMPANY, a California corporation ("Trustee"), for the benefit of E*TRADE GROUP, INC., a Delaware corporation ("Beneficiary").

Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale that certain property located at 1850 Brookdale Avenue, Hillsborough, San Mateo County, California, more particularly described in Exhibit A attached hereto, together with all improvements thereon, rights appurtenant thereto and the rents, issues and profits thereof (collectively, the "Property"), subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits, for the purpose of securing: (i) payment of the sum of Four Million

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Two Hundred Seventeen Thousand Three Hundred Sixty-five and 63/100 Dollars ($4,217,365.63) with interest thereon according to the terms of that certain Note Secured by Deed of Trust dated as of May __, 2000 ("Note") made by Trustor, payable to the order of Beneficiary, and extensions or renewals thereof; (ii) the performance of each agreement of Trustor incorporated by reference or contained herein or reciting it is so secured; and (iii) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his or her successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust. The Property and any and all other collateral pledged as security to Beneficiary are collectively referred to herein as the "Collateral."

A. To protect the security of this Deed of Trust, and with respect to the Property, Trustor agrees:

(1) To keep the Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike

manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof: not to commit, suffer or permit any act upon the Property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide maintain and deliver to Beneficiary insurance policies satisfactory to and with loss payable to Beneficiary. The amount collected under any earthquake, fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to the Note or otherwise.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary or Trustee to foreclose this Deed of Trust.

(4) To pay, at least ten days before delinquency all taxes and assessments affecting the Property, including assessments on appurtenant water stock; and to pay, when due, all encumbrances, charges and liens, with interest, on the Property or any part thereof, which appear to be prior or superior hereto and all costs, fees and expenses incurred by Beneficiary or Trustee in connection with this Deed of Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto and, in exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount then applicable under the Note, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby, any amount demanded by Beneficiary or Trustee not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is further agreed:

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(1) That any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received in the same manner and with the same effect as above provided for disposition of proceeds of insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Beneficiary or Trustee may: reconvey any part of the Property, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these trusts to collect the rents, issues and profits of the Property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder or under the Note, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default by Trustor in the payment of any indebtedness secured hereby or in performance of any agreement hereunder, or upon the occurrence of any Event of Acceleration or any other default by Trustor in the payment or performance of any obligation under the Note, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice

of default and of election to cause the Property to be sold, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in said notice for sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone the sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including

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Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of (in the following order of priority): all sums owing under the terms hereof or under the Note, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary or any successor in ownership of any indebtedness secured hereby may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from Trustee's predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

(8) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall mean the owner and holder, including pledgees, of the Note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

(9) Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

(10) Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge thereof does not exceed the maximum allowed by law.

(11) The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him or her at his or her address hereinbefore set forth.

(12) This Deed of Trust is further subject to the terms and conditions set forth in Addendum to this Deed of Trust attached hereto and incorporated herein by this reference.

(13) This Deed of Trust shall be governed by the laws of the state of California and all applicable federal laws.

(14) Any married person who executes this Deed of Trust as a Trustor and who is obligated under the Note or any other instrument relating thereto or hereto agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon that person's separate property and any community property of which that person is a manager.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust effective as of the date first set forth above.

"TRUSTOR"

/s/ Charles W. Thomson

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Charles W. Thomson

/s/ Sara A. Fields Thomson

Sara A. Fields-Thomson

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

On ____________, 2000 before me, ___________________________ Notary Public, personally appeared _____________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal. (SEAL)

____
Signature of Notary

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

On ______________, 2000 before me, _________________________ Notary Public, personally appeared _______________________, personally known to me (or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal. (SEAL)

____
Signature of Notary

EXHIBIT A

Description: The land referred to herein is situated in the State of California, County of SAN MATEO, TOWN OF HILLSBOROUGH, and is described as follows:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF BROOKVALE ROAD, AT THE MOST SOUTHERLY CORNER OF THAT CERTAIN 14 ACRE TRACT OF LAND DESCRIBED IN DEED FROM ELEANOR J. SPRECKLES TO ALBERTA EATON RYAN, BY DEED DATED MARCH 11, 1932 AND RECORDED MARCH 14, 1932 IN BOOK 559 OF OFFICIAL RECORDS OF SAN MATEO COUNTY AT PAGE 44; THENCE NORTH 50(Degrees) 47' WEST ALONG THE SOUTHWESTERLY LINE OF SAID 14 ACRE TRACT, 249.04 FEET, MORE OR LESS, TO THE SOUTHEASTERLY LINE OF LANDS DESCRIBED IN DEED FROM THOMAS F. RYAN III TO ALBERTA EATON RYAN, DATED FEBRUARY 25, 1937 AND RECORDED FEBRUARY 27, 1937 IN BOOK 733 OF OFFICIAL RECORDS AT PAGE 139; THENCE NORTH 39(Degrees) 13' EAST ALONG SAID SOUTHEASTERLY LINE 131.2 FEET, MORE OR LESS, TO THE SOUTHWESTERLY LINE OF LANDS DESCRIBED IN DEED FROM THOMAS F. RYAN III AND WIFE, TO JOHN J. BALDWIN, DATED JUNE 9, 1936 AND RECORDED JUNE 24, 1936 IN BOOK 699 OF OFFICIAL RECORDS OF SAN MATEO COUNTY AT PAGE 85; THENCE SOUTH 46(Degrees) 49' 45" EAST ALONG SAID SOUTHWESTERLY LINE 227 FEET, MORE OR LESS, TO THE NORTHWESTERLY LINE OF BROOKVALE ROAD; THENCE ALONG SAID NORTHWESTERLY LINE SOUTH 32(Degrees) 53' WEST 70 FEET AND SOUTH 28(Degrees) 28' WEST 46.35 FEET TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NO.: 028-120-210 J.P.N. NO. 028-012-120-21 A

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ADDENDUM

THIS ADDENDUM is attached to, and made a part of, that certain Deed of Trust With Assignment of Rents (the "Deed of Trust") dated May ____, 2000 executed by Charles W. Thomson and Sara A. Fields-Thomson, as Trustor, to NORTH AMERICAN TITLE COMPANY, a California corporation, as Trustee, for the benefit and security of E*TRADE GROUP, INC., a Delaware corporation, as Beneficiary. Capitalized terms used herein and not otherwise defined herein shall have the same meaning as in the Deed of Trust.

In addition to the terms and conditions set forth in the Deed of Trust, the following provisions are hereby incorporated as if fully set forth therein.

1. Due on Sale or Encumbrance. If Trustor shall convey or alienate the Property or any part thereof or interest therein, or shall be divested of its title to the Property in any manner, whether voluntary or involuntary, any indebtedness or obligation secured by the Deed of Trust, irrespective of the maturity date expressed in the Note, shall become immediately due and payable at the option of Beneficiary, without demand or notice.

2. Hazardous Materials. Trustor represents and warrants that, to the best of its knowledge, no hazardous materials (which shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a hazardous waste, hazardous substance, pollutant or contaminant under any environmental laws or regulations or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous) are located at, on, in, under or about the Property and that the Property is in full compliance with all such environmental laws and regulations. Trustor shall comply in all respects with all environmental laws and regulations and will not generate, release, store, handle, process, dispose of or otherwise use any hazardous materials on or about the Property. Trustor shall defend, indemnify and hold harmless Beneficiary and its officers, directors and shareholders from and against any and all claims, demands, penalties, causes of actions, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise arising out of, or in any way related to (i) any breach by Trustor of the provisions of this paragraph, (ii) the release, disposal, spillage, discharge, emission, leakage, generation, release or threatened release of any hazardous materials in, on, under or about the Property, (iii) any personal injury arising out of or related thereto or (iv) any violation of any such environmental laws or regulations. To the extent applicable, Beneficiary shall have all the rights and remedies under California Code of Civil Procedure Sections 564(c) and 726.5 and California Civil Code Section 2929.5.

3. Events of Default. In addition to the defaults set forth in the Deed of Trust (which shall be deemed "Events of Acceleration" for purposes of the Note), each of the following events shall also constitute an Event of Default:

a. Trustor shall become insolvent or generally shall not be paying its debts as they become due, as defined in the Bankruptcy Reform Act, Title 11 of the United States Code, as amended from time to time (the "Bankruptcy Code") or shall file a voluntary petition in bankruptcy seeking to effect a plan or other arrangement with creditors or seek any

other relief under the Bankruptcy Code or under any other state or federal law relating to bankruptcy or other relief for debtors;

b. Any court or similar tribunal shall enter a decree or order appointing a receiver, trustee, assignee in bankruptcy or insolvency of Trustor or of the Property or shall enter a decree or order for relief in any involuntary case under the Bankruptcy Code; or

c. The occurrence of any breach, default or failure under any other deed of trust, mortgage or other security agreement or interest

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encumbering the Property.

d. The failure of Trustor to pay any principal or interest evidenced by that certain Note Secured by Deed of Trust (the "Note") of even date herewith from Trustor to Beneficiary, within five (5) days of the date so provided for therein;

e. The failure by Trustor to perform or comply with any other material obligation, covenant or condition contained in this Deed of Trust within ten (10) days following written notice from Beneficiary of such failure; or

f. If any hazardous materials are found in, on, under or about the Property, or if Trustor becomes subject to any proceeding or investigation pertaining to the release by Trustor or any other person of any hazardous materials into the environment or to any violation of any environmental laws and Trustor fails to cure the same within such time as may be provided by applicable law.

"Trustor"

/s/ Charles W. Thomson

Charles W. Thomson

/s/ Sara A. Fields-Thomson

Sara A. Fields-Thomson

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

On _____________, 2000 before me, ____________________, Notary Public, personally appeared ______________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal. (SEAL)

____
Signature of Notary

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

On _____________, 2000 before me, ____________________, Notary Public, personally appeared ______________________, personally known, to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal. (SEAL)

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Signature of Notary

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THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE
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QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.
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