

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE NETBANK, INC.)
SECURITIES LITIGATION) Civil Action No 1:07-cv-2298-BBM

ANSWER

Defendants Steven F. Herbert (“Herbert”), Douglas K. Freeman (“Freeman”), James P. Gross (“Gross”), Thomas H. Muller, Jr. (“Muller”), Eula L. Adams (“Adams”), and David W. Johnson, Jr. (“Johnson”) (collectively “Defendants”) hereby answer Plaintiff’s Consolidated and Amended Class Action Complaint (the “Complaint”) as follows:

The Complaint is not a “short and plain statement” of Plaintiff’s claim as required by Federal Rule of Civil Procedure 8(a)(2). To the contrary, Plaintiff’s Complaint spans over 200 pages and over 350 separately numbered paragraphs. Much like the Complaint that the Eleventh Circuit criticized in *Wagner v. First Horizon Pharmaceutical Corporation*, 464 F.3d 1273 (11th Cir. 2006), Plaintiff’s Complaint is “a proverbial shotgun pleading,” in which a party “incorporate[s] every antecedent allegation by reference into each subsequent claim for relief or affirmative defense.” Defendants have attempted to answer the Complaint within the letter and spirit of the Federal Rules of Civil Procedure. By answering the

Complaint, Defendants do not concede that any of the Complaint's allegations are proper bases of liability or foundations for discovery.

Unless otherwise indicated, the answers and defenses contained herein are on behalf of all Defendants, as defined above. To the extent that allegations contained in the Complaint are specifically directed toward one or more of the Defendants, those other Defendants to whom the allegations are not directed, unless otherwise stated in this Answer, lack knowledge or information sufficient to admit or deny the allegation.

Answering the preamble paragraph, Defendants admit that Plaintiff purports to bring claims individually and on behalf of a class defined as described in the preamble paragraph. Defendants deny that Plaintiff has properly alleged claims against Defendants, deny that Plaintiff's claims have merit and deny that a class should be certified pursuant to Rule 23 of the Federal Rules of Civil Procedure. Defendants deny the remaining allegations contained in the preamble paragraph.

1. Defendants admit that Plaintiff purports to bring this case as a federal securities law class action against Defendants, who are former officers and/or directors of NetBank, Inc. ("NetBank"). Defendants deny that Plaintiff has properly alleged claims against any of the Defendants, deny that Plaintiff's claims

have any merit and deny that a class should be certified pursuant to Federal Rule of Civil Procedure 23. Defendants deny the remaining allegations in paragraph 1.

2. Defendants deny the allegations contained in paragraph 2.

3. Defendants state that the records of prices at which NetBank's common stock traded during the alleged class period speak for themselves. Defendants deny the allegations contained in paragraph 3.

4. Defendants admit that NetBank acquired Market Street Mortgage Corporation 2001, that NetBank acquired Resource Bancshares Mortgage Group in 2002, and that, in connection with the 2002 acquisition, Defendants Freeman and Herbert joined NetBank. Defendants deny the remaining allegations contained in paragraph 4.

5. Defendants admit that information regarding the profitability of NetBank's retail banking business and information regarding the Company's strategic initiatives were disclosed in various public filings, press releases, and public statements, all of which speak for themselves. Defendants deny the remaining allegations contained in paragraph 5.

6. Defendants deny the allegations contained in paragraph 6.

7. Defendants deny the allegations contained in paragraph 7.

8. Defendants deny the allegations contained in paragraph 8.

9. Defendants admit that in 2006 and 2007, NetBank made various disclosures concerning efforts to restructure its businesses in various public filings, press releases, and public statements, all of which speak for themselves. Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict these filings, press releases, and public statements. Defendants deny the remaining allegations contained in paragraph 9.

10. Defendants admit that on October 16, 2006, NetBank disclosed that its outside auditor, Ernst & Young, LLP ("E&Y"), resigned effective upon the filing of NetBank's 10-Q for the period ending September 30, 2006. Defendants further admit that on February 16, 2007, NetBank announced that it had engaged a new outside auditor. Defendants deny the remaining allegations contained in paragraph 10.

11. Defendants admit that on May 21, 2007, NetBank issued a press release reporting NetBank's plan to sell certain assets to EverBank Financial Corp. ("EverBank"). Defendants state that this press release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants admit that the share price of NetBank's common stock fell from \$1.75 per share on May 18, 2007 to \$.59 per share on May 21, 2007. Defendants deny the remaining allegations contained in paragraph 11.

12. Defendants admit that on August 6, 2007, NetBank filed with the SEC a Form 8-K in which it disclosed that it expected to record a non-cash impairment charge of approximately \$24.6 million for the impairment of goodwill that had previously been assigned to Market Street Mortgage Corporation. Defendants state that the Form 8-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict this filing. Defendants deny the remaining allegations contained in paragraph 12.

13. Defendants admit that NetBank was unable to timely file with the SEC certain periodic reports, including NetBank's 2006 Form 10-K, and Forms 10-Q for the first and second quarter of 2007, and that the resignation of NetBank's outside auditor was among the reasons NetBank provided as an explanation for the filing delay. Defendants further admit that NetBank's inability to timely file these reports was a factor in NASDAQ's determination to delist NetBank's common stock effective August 7, 2007. Defendants deny the remaining allegations contained in paragraph 13.

14. Defendants admit that on August 10, 2007, NetBank filed a Form 12b-25 with the SEC. Defendants state that the Form 12b-25 speaks for itself. Defendants deny Plaintiff's allegations to the extent that they misquote,

mischaracterize, or contradict the Form 12b-25. Defendants deny the remaining allegations contained in paragraph 14.

15. Defendants admit that NetBank was unable to timely file any periodic reports following the Form 10-Q for the third quarter of 2006. Defendants further admit that on September 28, 2007, the Office of Thrift Supervision closed NetBank and that, on that date, NetBank filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. Defendants deny the remaining allegations contained in paragraph 15.

16. Defendants lack information sufficient to form a belief as to the truth of the allegations contained in the first and second sentences of paragraph 16. Defendants deny the remaining allegations contained in paragraph 16.

17. Paragraph 17 contains legal conclusions that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the allegations in paragraph 17.

18. Paragraph 18 contains legal conclusions that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the allegations in paragraph 18.

19. Defendants deny the allegations in paragraph 19.

20. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation that there were 46,425,000 shares of NetBank stock outstanding on February 21, 2007. Defendants admit the remaining allegations contained in paragraph 20.

21. Defendants deny the allegations contained in paragraph 21.

22. Defendants deny the allegations contained in paragraph 22.

23. Defendants deny the allegations contained in paragraph 23.

24. Defendants deny the allegations contained in paragraph 24.

25. Defendants deny the allegations contained in paragraph 25.

26. Defendants deny the allegations contained in paragraph 26.

27. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 regarding conduct by Plaintiff and the alleged members of the proposed class. Defendants deny the remaining allegations contained in paragraph 27.

28. Defendants deny the allegations contained in paragraph 28.

29. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29. Defendants deny that they caused Plaintiff or any class members any damages.

30. Defendants deny that Defendant Herbert was a director of the Company from the inception of the alleged class period through October 5, 2006. Defendants state that Defendant Herbert became a director of NetBank at the time that he replaced Defendant Freeman as CEO. Defendants admit the remaining allegations contained in paragraph 30.

31. Defendants deny the allegations contained in paragraph 31.

32. Defendants admit the allegations contained in paragraph 32.

33. Defendants admit the allegations contained in paragraph 33.

34. Defendants deny the allegations contained in paragraph 34.

35. Defendants admit the allegations contained in paragraph 35.

36. Defendants deny the allegations contained in paragraph 36.

37. Defendants admit the allegations contained in paragraph 37.

38. Defendants deny that Defendant Muller replaced T. Stephen Johnson as Chairman of NetBank's board of directors. Defendants admit the remaining allegations contained in paragraph 38.

39. Defendants admit the allegations contained in paragraph 39.

40. Defendants admit the allegations contained in paragraph 40.

41. Defendants admit the allegations contained in paragraph 41.

42. Defendants deny that Defendant Johnson resigned from NetBank's board of directors in May 2005. Defendants admit the remaining allegations contained in paragraph 42.

43. Defendants admit the allegations contained in paragraph 43.

44. Defendants admit the allegations contained in paragraph 44.

45. Defendants lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 45.

46. Defendants admit the allegations contained in paragraph 46.

47. Defendants deny the allegations contained in paragraph 47.

48. Defendants deny the allegations contained in paragraph 48.

49. Defendants admit the allegations contained in paragraph 49.

50. Defendants admit that the language quoted in paragraph 50 of the Complaint is contained in the charter of the audit committee of NetBank's board of directors. Defendants state that the charter speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the charter.

51. Defendants deny the allegations contained in paragraph 51.

52. Responding to the first sentence of paragraph 52, Defendants admit that E&Y served as NetBank's outside accountant and auditor from the beginning

of Plaintiff's putative class period through the time that NetBank filed its 10-Q for the period ending September 30, 2006. Defendants state that Nick Spina was the Engagement Partner for NetBank's engagement of E&Y and that Konstantin Grobovsky was the Senior Audit Manager. Defendants admit that Porter Keadle Moore, LLP succeeded E&Y as NetBank's outside accountant and auditor. Defendants deny the remaining allegations contained in paragraph 52.

53. Defendants admit the allegations contained in paragraph 53.

54. Defendants admit the allegations contained in the first two sentences of paragraph 54. Defendants lack information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 54.

55. Defendants admit the allegations contained in the first two sentences of paragraph 55. Defendants lack information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 55.

56. Defendants admit the allegations contained in the first two sentences of paragraph 56. Defendants lack information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 56.

57. Defendants admit the allegations contained in the first two sentences of paragraph 57. Defendants lack information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 57.

58. Defendants admit the allegations contained in the first two sentences of paragraph 58. Defendants lack information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 58.

59. Defendants deny that T. Stephen Johnson served on NetBank's board of directors through the entire alleged class period. Defendants admit the remaining allegations contained in the first two sentences of paragraph 59. Defendants lack information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 59.

60. Defendants admit that Plaintiff purports to bring an action individually and on behalf of a class that is defined in paragraph 60 of the Complaint. Defendants deny that Plaintiff has properly alleged claims against Defendants, deny that Plaintiff's claims have merit and deny that a putative class should be certified pursuant to Rule 23 of the Federal Rules of Civil Procedure. Defendants lack information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 60.

61. Defendants deny the allegations contained in paragraph 61 of the Complaint, including all subparts except that Defendants admit that NetBank common stock was a publicly traded and listed on the NASDAQ during the alleged class period.

62. Paragraph 62 contains numerous legal conclusions that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the allegations in paragraph 62, including all subparts.

63. Defendants admit that NetBank made certain public statements regarding its corporate history and operating expenses, which statements speak for themselves. Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict these statements. Defendants deny the remaining allegations contained in paragraph 63.

64. Defendants admit that, over time, NetBank evolved into a financial holding company. Defendants deny the remaining allegations contained in the first sentence of paragraph 64. Defendants admit the allegations contained in the second sentence of paragraph 64.

65. Defendants admit the allegations contained in paragraph 65.

66. Defendants deny the allegations contained in the first two sentences of paragraph 66. Defendants admit the remaining allegations contained in paragraph 66.

67. Defendants admit the allegations contained in the first, sixth, seventh, eighth, and ninth sentences of paragraph 67. Defendants deny the remaining allegations contained in paragraph 67.

68. Defendants admit the allegations contained in paragraph 68.

69. Defendants admit the allegations contained in paragraph 69.

70. Paragraph 70 contains no allegations against Defendants, and therefore Defendants are not required to admit or deny the allegations contained therein. To the extent a response is required, Defendants deny the allegations in paragraph 70.

71. Paragraph 71 contains no allegations against Defendants, and therefore Defendants are not required to admit or deny the allegations contained therein. To the extent a response is required, Defendants deny the allegations in paragraph 71.

72. Paragraph 72 contains no allegations against Defendants, and therefore Defendants are not required to admit or deny the allegations contained therein. To the extent a response is required, Defendants deny the allegations in paragraph 72.

73. Defendants lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 73.

74. Paragraph 74 contains no allegations against Defendants, and therefore Defendants are not required to admit or deny the allegations contained

therein. To the extent a response is required, Defendants deny the allegations in paragraph 74.

75. Defendants admit that NetBank was founded in 1996. Defendants admit that in 2001, NetBank was the largest independent retail internet bank. Defendants admit that as of December 31, 2001, NetBank had 245,000 accounts with \$1.5 billion in deposits and \$2.9 billion in assets. Defendants deny the remaining allegations of paragraph 75.

76. Defendants deny the allegations contained in paragraph 76.

77. Defendants deny the allegations contained in paragraph 77.

78. Defendants admit the allegations contained in the first sentence of paragraph 78 and admit that Market Street contributed positively to NetBank's earnings immediately following the acquisition. Defendants deny the remaining allegations contained in paragraph 78.

79. Defendants state that NetBank's 2001 Form 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 79.

80. Defendants deny the allegations contained in the first sentence of paragraph 80. Defendants admit the remaining allegations contained in paragraph 80.

81. Defendants admit the allegations contained in the first two sentences of paragraph 81. Defendants deny the remaining allegations contained in paragraph 81.

82. Defendants deny the allegations contained in paragraph 82.

83. Defendants state that NetBank's 2001 Annual Report speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the annual report. Defendants deny the remaining allegations contained in paragraph 83.

84. Defendants admit that NetBank held an earnings conference call on August 3, 2005. Defendants state that the transcript of the conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript of the conference call. Defendants deny the remaining allegations contained in paragraph 84.

85. Defendants lack information sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 regarding Defendant Freeman's

comments as reported in the July 27, 2006 *Atlanta Journal Constitution* article.

Defendants deny the remaining allegations contained in paragraph 85.

86. Defendants state that the Company's 2000 Annual Report speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 2000 Annual Report. Defendants deny the remaining allegations contained in paragraph 86.

87. Defendants state that NetBank's Form 10-K for the year ended December 31, 2005 speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 87.

88. Defendants admit that the Office of Thrift Supervision ("OTS") issued a press release concerning NetBank on September 28, 2007. Defendants state that the press release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 88.

89. Defendants admit the allegations contained in paragraph 89.

90. Defendants admit the allegations contained in paragraph 90.

91. Defendants admit the allegations contained in paragraph 91.

92. Defendants state that the 2004 Annual Report speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 2004 Annual Report. Defendants deny the remaining allegations contained in paragraph 92.

93. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 93.

94. Defendants state that the transcript of the August 3, 2005 conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript. Defendants deny the remaining allegations contained in paragraph 94.

95. Defendants state that the Company's Form 10-Q for the period ended September 30, 2005 speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-Q. Defendants deny the remaining allegations contained in paragraph 95.

96. Defendants state that the transcript of the conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote,

mischaracterize, or contradict the transcript. Defendants deny the remaining allegations contained in paragraph 96.

97. Defendants state that the 2005 Form 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 97.

98. Defendants state that the Form 10-Q for the period ended March 31, 2005 speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-Q. Defendants deny the remaining allegations contained in paragraph 98.

99. Defendants state that the transcript of the conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript. Defendants deny the remaining allegations contained in paragraph 99.

100. Defendants state that the transcript of the conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript. Defendants deny the remaining allegations contained in paragraph 100.

101. Defendants state that the transcript of the conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript. Defendants deny the remaining allegations contained in paragraph 101.

102. Defendants state that the transcript of the conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript. Defendants deny the remaining allegations contained in paragraph 102.

103. Defendants state that the transcript of the conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript. Defendants deny the remaining allegations contained in paragraph 103.

104. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 104.

105. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged

former NetBank employee. Defendants deny the remaining allegations contained in paragraph 105.

106. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 106.

107. Defendants deny the allegations contained in paragraph 107.

108. Defendants admit the allegations contained in paragraph 108.

109. Defendants deny the allegations contained in paragraph 109.

110. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 110.

111. Defendants admit the allegations contained in paragraph 111.

112. Defendants admit the allegations contained in the first sentence of paragraph 112. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 112.

113. Defendants admit the allegations contained in the first three sentences of paragraph 113. Responding to the remaining allegations contained in Paragraph 113, Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 113.

114. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 114.

115. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 115.

116. Defendants deny the allegations contained in paragraph 116.

117. Defendants deny the allegations contained in paragraph 117.

118. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged

former NetBank employee. Defendants deny the remaining allegations contained in paragraph 118.

119. Defendants deny the allegations contained in paragraph 119.

120. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 120.

121. Defendants deny the allegations contained in paragraph 121.

122. Defendants deny the allegations contained in paragraph 122.

123. Defendants admit that the Office of the Inspector General, Department of the Treasury ("OIG") issued a report on April 23, 2008 entitled "SAFETY AND SOUNDNESS: Material Loss Review of NetBank, FSB" (the "OIG Audit Report"). Defendants state that the OIG Audit Report speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the OIG Audit Report. Defendants deny the remaining allegations contained in paragraph 123.

124. Defendants state that the OIG Audit Report speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or

contradict the OIG Audit Report. Defendants deny the remaining allegations contained in paragraph 124.

125. Defendants state that the OIG Audit Report speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the OIG Audit Report. Defendants deny the remaining allegations contained in paragraph 125.

126. Defendants admit that on March 16, 2005, NetBank filed its Form 10-K for the fiscal year ended December 31, 2004. Defendants state that the Form 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 126.

127. Defendants state that the transcript of NetBank's May 4, 2005 conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the conference call. Defendants deny the remaining allegations contained in paragraph 127.

128. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 128.

129. Defendants state that the transcript of NetBank's August 3, 2005 conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript. Defendants deny the remaining allegations contained in paragraph 129.

130. Defendants admit the allegations contained in the last sentence of paragraph 130. Defendants deny the remaining allegations contained in paragraph 130.

131. Defendants admit the allegations contained in the first sentence of paragraph 131. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 131.

132. Defendants admit that on March 15, 2006, NetBank filed its Form 10-K for the fiscal year ended December 31, 2005. Defendants state that the Form 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 132.

133. Defendants admit that NetBank issued a press release on May 1, 2006. Defendants state that the press release speaks for itself and deny Plaintiff's

allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 133.

134. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 134.

135. Defendants lack information sufficient to form a belief as to the truth of the allegations contained in Paragraph 135 regarding Defendant Freeman's comments as reported in the May 2, 2006 media report in *American Banker*. Defendants deny the remaining allegations contained in paragraph 135.

136. Defendants deny the allegations contained in paragraph 136.

137. Defendants admit that NetBank filed a Form 8-K with the SEC on October 5, 2006. Defendants state that the Form 8-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 8-K. Defendants deny the remaining allegations contained in paragraph 137.

138. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 138.

139. Defendants admit that NetBank issued a press release on October 13, 2006, which was attached to a Form 8-K filed with the SEC on October 16, 2006. Defendants state that the press release and the Form 8-K speak for themselves and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release and/or the 8-K. Defendants deny the remaining allegations contained in paragraph 139.

140. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 140.

141. Defendants deny the allegations contained in paragraph 141.

142. Defendants admit that NetBank issued a press release on November 6, 2006. Defendants state that the press release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 142.

143. Defendants deny the allegations contained in paragraph 143.

144. Defendants state that the transcript of NetBank's May 4, 2005 conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript. Defendants deny the remaining allegations contained in paragraph 144.

145. Defendants state that the transcript of NetBank's May 4, 2005 conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript. Defendants deny the remaining allegations contained in paragraph 145.

146. Defendants admit that NetBank issued a press release on May 1, 2006, in which NetBank announced a plan to sell its mortgage servicing platform and part of its portfolio of mortgage servicing rights. Defendants state that the press release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 146.

147. Defendants admit that NetBank issued a press release on November 8, 2006. Defendants state that the press release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the release. Defendants deny the remaining allegations contained in paragraph 147.

148. Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations contained in paragraph 148.

149. Defendants admit that on May 10, 2006, NetBank held a conference call to discuss the Company's financial results for the first quarter of 2006. Defendants state that the May 2, 2006 *American Banker* article speaks for itself

and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the article. Defendants deny the remaining allegations contained in paragraph 149.

150. Defendants admit that on November 8, 2006, NetBank issued a press release concerning its operating results for its third quarter ended September 31, 2006. Defendants state that the press release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 150.

151. Defendants deny the allegations contained in paragraph 151.

152. Defendants admit that, on November 9, 2006, Defendant Gross signed a Form 8-K filed with the SEC. Defendants state that the Form 8-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 8-K. Defendants deny the remaining allegations contained in paragraph 152.

153. Defendants state that NetBank's November 9, 2006 Form 8-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 8-K. Defendants deny the remaining allegations contained in paragraph 153.

154. Paragraph 154 contains legal conclusions that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the allegations contained in paragraph 154.

155. Defendants deny the allegations contained in paragraph 155.

156. Defendants state that NetBank's November 9, 2006 Form 8-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 8-K. Defendants deny the remaining allegations contained in paragraph 156.

157. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 157.

158. Defendants admit that NetBank had an inventory of mortgages for which they managed servicing rights and admit that FAS 133 requires certain demonstration of hedge effectiveness. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 158.

159. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants admit that in 2006 and 2007 NetBank exchanged comment letter correspondence with the SEC that included discussion of FAS 133, and that in 2007, NetBank representatives had conversations with the SEC staff regarding FAS 133 and hedge effectiveness testing. Defendants deny the remaining allegations contained in paragraph 159.

160. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 160.

161. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 161.

162. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 162.

163. Defendants admit that NetBank filed a Form 8-K with the SEC on October 16, 2006, a portion of which Plaintiff appears to quote in paragraph 163. Defendants state that the 8-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 8-K. Defendants deny the remaining allegations contained in paragraph 163.

164. Defendants admit that NetBank received a comment letter from the SEC that included questions regarding the Company's hedge accounting. Defendants state that the comment letter speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the letter. Defendants deny the remaining allegations contained in paragraph 164.

165. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 165.

166. Defendants admit that on July 18, 2007 E&Y advised NetBank that it would not re-issue its audit reports for NetBank's financial years ended December 31, 2004 and December 31, 2005 until NetBank had resolved with the SEC the SEC's questions with respect to NetBank's application of SFAS 133. Defendants admit that NetBank did not file audited financial results for 2006. Defendants deny the remaining allegations contained in paragraph 166.

167. Defendants deny the allegations contained in paragraph 167.

168. Defendants admit that NetBank issued a press release on January 3, 2007. Defendants state that the release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 168.

169. Defendants admit that the referenced private placement closed on January 5, 2007. Defendants admit that on January 8, 2007, NetBank issued a press release that was later attached to a Form 8-K filed with the SEC. Defendants state that the press release and the Form 8-K speak for themselves and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release and/or 8-K. Defendants deny the remaining allegations contained in paragraph 169.

170. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 170.

171. Defendants deny the allegations contained in paragraph 171.

172. Defendants admit that NetBank filed a Form 8-K on January 3, 2007. Defendants state that the Form 8-K speaks for itself and deny Plaintiff's allegations

to the extent that they misquote, mischaracterize, or contradict the 8-K. Defendants deny the remaining allegations contained in paragraph 172.

173. Defendants state that NetBank's January 3, 2007 Form 8-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 8-K. Defendants deny the remaining allegations contained in paragraph 173.

174. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 174.

175. Defendants deny the allegations contained in paragraph 175.

176. Defendants admit that NetBank filed a Form 8-K on February 16, 2007. Defendants state that the Form 8-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 8-K. Defendants deny the remaining allegations contained in paragraph 176.

177. Defendants admit that NetBank issued a press release and filed a Form 8-K on February 21, 2007. Defendants state that the press release and the Form 8-K speak for themselves and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release and/or the 8-K. Defendants deny the remaining allegations contained in paragraph 177.

178. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 178.

179. Defendants deny the allegations contained in paragraph 179.

180. Defendants admit that NetBank issued a press release on February 21, 2007. Defendants state that the press release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 180.

181. Defendants state that NetBank's February 21, 2007 release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 181.

182. Defendants deny the allegations contained in paragraph 182.

183. Defendants state that NetBank's February 21, 2007 press release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 183.

184. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 184.

185. Defendants deny the allegations contained in paragraph 185.

186. Defendants admit that NetBank filed a Form 8-K with the SEC on March 23, 2007. Defendants state that the Form 8-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 8-K. Defendants deny the remaining allegations contained in paragraph 186.

187. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 187.

188. Defendants admit that on May 14, 2007, NetBank received notice from the NASDAQ stating that the Company's inability to timely file its Form 10-Q for the quarter ended March 31, 2007 served as a basis for the Company's common stock to be subject to delisting. Defendants deny the remaining allegations contained in paragraph 188.

189. Defendants admit that NetBank issued a press release and filed a Form 8-K with the SEC on May 15, 2007. Defendants state that the press release

and the Form 8-K speak for themselves and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release and/or the 8-K. Defendants deny the remaining allegations contained in paragraph 189.

190. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 190.

191. Defendants deny the allegations contained in paragraph 191.

192. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 192.

193. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants deny the remaining allegations contained in paragraph 193.

194. Defendants admit that, at times during the alleged class period, NetBank sold certain assets to raise capital. Defendants deny the remaining allegations contained in paragraph 194.

195. Defendants admit that NetBank issued a press release on May 1, 2007. Defendants state that the press release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 195.

196. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 196.

197. Defendants deny the allegations contained in paragraph 197.

198. Defendants deny the allegations contained in paragraph 198.

199. Paragraph 199 contains various legal conclusions and other allegations not directed to any Defendant that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the allegations contained in paragraph 199.

200. Paragraph 200 contains various legal conclusions and other allegations not directed to any Defendant that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the allegations contained in paragraph 200.

201. Paragraph 201 contains various legal conclusions and other allegations not directed to any Defendant that Defendants are not required to admit

or deny. To the extent a response is required, Defendants deny the allegations contained in paragraph 201.

202. Defendants deny the allegations contained in paragraph 202.

203. Defendants admit the allegations contained in the third sentence of paragraph 203. Defendants deny the remaining allegations contained in paragraph 203.

204. In response to paragraph 204, Defendants state that that “prospectus” quoted and characterized in this paragraph is not identified in the Complaint. Thus, Defendants lack information sufficient to form a belief as to the truth of the allegations regarding this unidentified document. Defendants deny the remaining allegations contained in paragraph 204.

205. Defendants state that NetBank’s 2005 Annual Report speaks for itself and deny Plaintiff’s allegations to the extent that they misquote, mischaracterize, or contradict the Annual Report. Defendants deny the remaining allegations contained in paragraph 205.

206. Defendants admit that NetBank exchanged comment letter correspondence with the SEC in 2006 and 2007 which included discussion of SFAS 133. Defendants state that this correspondence speaks for itself and denies Plaintiff’s allegations to the extent that they misquote, mischaracterize, or

contradict such correspondence. Defendants deny the remaining allegations contained in paragraph 206.

207. Defendants state that NetBank's 2005 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 207.

208. Defendants admit the allegations contained in paragraph 208.

209. In response to the allegations contained in paragraph 209, Defendants state that the SEC's August 31, 2006 comment letter speaks for itself. Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict this document. Defendants deny the remaining allegations contained in paragraph 209.

210. Defendants admit that NetBank filed a Form 8-K with the SEC on July 18, 2007, in which NetBank disclosed for the first time the SEC's August 31, 2006 comment letter. Defendants deny the remaining allegations contained in paragraph 210.

211. Defendants admit that NetBank filed a Form 8-K with the SEC on July 18, 2007. Defendants state that the 8-K speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or

contradict the 8-K. Defendants deny the remaining allegations contained in paragraph 211.

212. Defendants admit that NetBank filed a Form 8-K with the SEC on July 18, 2007. Defendants state that the 8-K speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 8-K. Defendants deny the remaining allegations contained in paragraph 212.

213. Defendants admit that NetBank's independent auditors reviewed the application of FAS 133 to NetBank's operations. Defendants admit that during the alleged Class Period, representatives of E&Y discussed with NetBank employees NetBank's methodology for performing hedge effectiveness calculations, particularly in light of evolving regulatory interpretations of FAS 133, and that, at times during the alleged Class Period, representatives of E&Y requested that NetBank perform certain additional or different calculations. Defendants deny the remaining allegations contained in paragraph 213.

214. Defendants admit that during the alleged Class Period, representatives of E&Y discussed with NetBank employees NetBank's methodology for performing hedge effectiveness calculations, particularly in light of evolving regulatory interpretations of FAS 133, and that, at times during the alleged Class

Period, representatives of E&Y requested that NetBank perform certain additional or different calculations. Defendants deny the remaining allegations contained in paragraph 214.

215. Defendants deny the allegations contained in paragraph 215.

216. Defendants admit that NetBank issued a press release on May 21, 2007. Defendants state that this press release speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 216.

217. Defendants admit that NetBank issued a press release on May 21, 2007. Defendants state that this press release speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 217.

218. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former senior executive officer of NetBank. Defendants deny the remaining allegations contained in paragraph 218.

219. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former senior executive officer of NetBank. Defendants deny the remaining allegations contained in paragraph 219.

220. Defendants admit that NetBank agreed to sell \$2.5 billion of NetBank's assets to EverBank Financial Corp. Defendants also admit that NetBank issued a press release on May 21, 2007 that disclosed the material terms of this anticipated sale. Defendants state that this press release speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 220.

221. Defendants admit that NetBank held a conference call with analysts on May 21, 2007. Defendants state that the transcript of this conference call speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict this transcript. Defendants deny the remaining allegations contained in paragraph 221.

222. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 222.

223. Paragraph 223 purports to quote from public statements allegedly made by Defendant Herbert made at some unidentified time. In response, Defendants state that any such statements speak for themselves, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict such statements. Defendants deny the remaining allegations contained in paragraph 223.

224. Defendants deny the allegations contained in paragraph 224.

225. Defendants lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 225.

226. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 226.

227. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former corporate officer employed in NetBank's Corporate Finance Department throughout the alleged class period. Defendants deny the remaining allegations contained in paragraph 227.

228. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged

former senior corporate officer employed of NetBank during much of the alleged class period. Defendants deny the remaining allegations contained in paragraph 228.

229. Defendants admit that NetBank held a conference call with analysts on May 21, 2007. Defendants state that the transcript of this conference call speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript. Defendants deny the remaining allegations contained in paragraph 229.

230. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former senior executive of NetBank during the alleged class period. Defendants deny the remaining allegations contained in paragraph 230.

231. Defendants admit that Plaintiff has no basis for seeking damages against Defendants for any decline in NetBank's share price. Defendants deny the remaining allegations contained in paragraph 231.

232. Defendants admit that NetBank filed a Form 8-K with the SEC on August 6, 2007. Defendants state that this Form 8-K speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote,

mischaracterize, or contradict the 8-K. Defendants deny the remaining allegations contained in paragraph 232.

233. Defendants admit that NetBank filed a Form 8-K with the SEC on August 6, 2007. Defendants state that this 8-K speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict this 8-K. Defendants deny the remaining allegations contained in paragraph 233.

234. Defendants admit that NetBank filed a Form 8-K with the SEC on August 6, 2007. Defendants state that this 8-K speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict this 8-K. Defendants deny the remaining allegations contained in paragraph 234.

235. Defendants admit that NetBank filed a Form 8-K with the SEC on August 6, 2007. Defendants state that this 8-K speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict this 8-K. Defendants deny the remaining allegations contained in paragraph 235.

236. Paragraph 236 purports to describe certain public statements allegedly made by NetBank on August 7, 2007 without identifying where such statements

were made. Defendants state that any such statements speak for themselves, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict any such statements. Defendants deny the remaining allegations contained in paragraph 236.

237. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 237.

238. Defendants deny the allegations contained in paragraph 238.

239. Defendants admit that on September 17, 2007, EverBank issued a press release. Defendants state that this press release speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 239.

240. Defendants admit that NetBank filed a Form 8-K with the SEC on September 17, 2007. Defendants state that this 8-K speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict this 8-K. Defendants deny the remaining allegations contained in paragraph 240.

241. Defendants admit the allegations contained in the first and second sentences of paragraph 241. Defendants are without information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 241.

242. Defendants admit that NetBank filed a Form 8-K with the SEC on September 28, 2007. Defendants state that this 8-K speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict this 8-K. Defendants deny the remaining allegations contained in paragraph 242.

243. Paragraph 243 purports to discuss a press release issued by the Office of Thrift Supervision on September 28, 2007. Defendants state that this press release speaks for itself, and Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict this document. Defendants deny the remaining allegations contained in paragraph 243.

244. Defendants admit the allegations contained in paragraph 244.

245. Defendants admit the allegations contained in paragraph 245.

246. Defendants deny the allegations contained in paragraph 246.

247. Paragraph 247 contains no allegations against Defendants, and therefore Defendants are not required to admit or deny the allegations contained

therein. To the extent a response is required, Defendants deny the allegations contained in paragraph 247.

248. Paragraph 248 contains legal conclusions that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the allegations contained in paragraph 248, except that Defendants admit that NetBank was a publicly traded company during the alleged class period.

249. Paragraph 249 contains legal conclusions that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the allegations contained in paragraph 249.

250. Defendants deny the allegations in the first and third sentences of paragraph 250, except that Defendants admit that E&Y resigned as the Company's independent auditor effective November 9, 2006. The remaining allegations contained in paragraph 250 are not asserted against Defendants, and therefore Defendants are not required to admit or deny those allegations. To the extent a response is required, the allegations are denied.

251. Defendants admit that NetBank filed its Form 10-K for the year ended December 31, 2004 with the SEC on or about March 16, 2005. Defendants state that the 10-K speaks for itself and deny Plaintiff's allegations to the extent that

they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 251.

252. Defendants admit that NetBank filed its Form 10-K for the year ended December 31, 2004 with the SEC on or about March 16, 2005. Defendants state that the 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 252.

253. Defendants admit that NetBank filed its Form 10-K for the year ended December 31, 2004 with the SEC on or about March 16, 2005. Defendants state that the 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 253.

254. Defendants admit that NetBank filed its Form 10-K for the year ended December 31, 2004 with the SEC on or about March 16, 2005. Defendants state that the 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 254.

255. Defendants admit that NetBank filed its Form 10-Q for the first fiscal quarter of 2005 with the SEC on or about May 10, 2005, that NetBank filed its

Form 10-Q for the second fiscal quarter of 2005 with the SEC on or about August 9, 2005, and that NetBank filed its Form 10-Q for the third fiscal quarter of 2005 with the SEC on or about November 14, 2005. Defendants state that these 10-Qs speak for themselves and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-Qs. Defendants deny the remaining allegations contained in paragraph 255.

256. Defendants admit that NetBank filed its Form 10-K for the year ended December 31, 2005 with the SEC on or about March 15, 2006. Defendants state that the 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 256.

257. Defendants admit that NetBank filed its Form 10-K for the year ended December 31, 2005 with the SEC on or about March 15, 2006. Defendants state that the 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 257.

258. Defendants admit that NetBank filed its Form 10-K for the year ended December 31, 2005 with the SEC on or about March 15, 2006. Defendants state that the 10-K speaks for itself and deny Plaintiff's allegations to the extent that

they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 258.

259. Defendants state that the text quoted in paragraph 259 appears to come from a press release issued by FRS, that the press release speaks for itself, and that Defendants deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 259.

260. Defendants admit that NetBank filed its Form 10-Q for the first fiscal quarter of 2006 with the SEC on or about May 10, 2006, that NetBank filed its Form 10-Q for the second fiscal quarter of 2006 with the SEC on or about August 8, 2005, and that NetBank filed its Form 10-Q for the third fiscal quarter of 2006 with the SEC on or about November 9, 2006. Defendants state that these 10-Qs speak for themselves and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-Qs. Defendants deny the remaining allegations contained in paragraph 260.

261. Defendants admit that E&Y's resignation as NetBank's independent auditor became effective on November 9, 2006. Defendants admit that, on November 9, 2006, the Company filed with the SEC a Form 8-K/A regarding the resignation and updating a prior disclosure concerning the resignation, portions of

which Plaintiff appears to quote in paragraph 261. Defendants state that the 8-K/A speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 8-K/A. Defendants deny the remaining allegations contained in paragraph 261.

262. Defendants admit that, on November 9, 2006, the Company filed with the SEC a Form 8-K/A regarding E&Y's resignation as the Company's auditor and updating a prior disclosure concerning the resignation. Defendants state that the 8-K/A speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 8-K/A. Defendants deny the remaining allegations contained in paragraph 262.

263. Defendants admit that NetBank issued a press release on February 21, 2007. Defendants state that the press release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 263.

264. Defendants admit that the Company issued a press release on March 23, 2007. Defendants state that the press release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 264.

265. Defendants admit that, on July 18, 2007, the Company filed with the SEC a Form 8-K, a portion of which Plaintiff quotes in paragraph 265. Defendants state that the 8-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 8-K. Defendants deny the remaining allegations contained in paragraph 265.

266. Defendants admit that, on July 17, 2007, E&Y advised the Company that it would not re-issue its audit report covering the Company's consolidated financial statements for the years ended December 31, 2004 and 2005 for inclusion in the Company's Form 10-K for 2006 until the Company resolved with the SEC the SEC's comments with respect to the Company's application of SFAS 133. Defendants admit that NetBank filed Form 8-K with the SEC on July 18, 2007, which reported the July 17, 2007 communication from E&Y. Defendants admit that as of September 28, 2007, NetBank had not filed audited financial results for 2006. Defendants deny the remaining allegations contained in paragraph 266.

267. Defendants have not been able to identify a *Wall Street Journal* article about NetBank dated September 27, 2007. Defendants admit that the *Wall Street Journal* ran an article concerning NetBank on September 29, 2007. Defendants state that the article speaks for itself and deny Plaintiff's allegations to the extent that they

misquote, mischaracterize, or contradict the article. Defendants deny the remaining allegations contained in paragraph 267.

268. Defendants admit that the OTS issued a press release on September 28, 2007, announcing that the OTS had closed NetBank and appointed the FDIC as receiver. Defendants state that the press release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 268.

269. Defendants admit that the OIG issued a report (the "OIG Audit Report") on April 23, 2008 entitled "SAFETY AND SOUNDNESS: Material Loss Review of NetBank, FSB." Defendants state that the OIG Audit Report speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the OIG Audit Report. Defendants deny the remaining allegations contained in paragraph 269.

270. Defendants admit that Douglas Freeman served as NetBank's Chief Executive Officer ("CEO") from April 1, 2002 through his resignation effective October 5, 2006, and that Steven Herbert served as NetBank's Chief Financial Executive ("CFE") from at least March 16, 2005 through October 5, 2006 and served as NetBank's CEO from October 5, 2006 through December 17, 2007.

Defendants state that paragraph 270 contains numerous legal conclusions that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny those allegations. Defendants deny the remaining allegations contained in paragraph 270.

271. Paragraph 271 of the Complaint contains no allegations that Defendants are required to admit or deny. To the extent a response is required, Defendants deny the allegations contained in paragraph 271.

272. Defendants admit that certain prevailing market conditions, including declining home values and increasing credit delinquencies and defaults, impaired NetBank's financial position and caused significant declines in the Company's results of operations during the alleged class period. Defendants deny the remaining allegations contained in paragraph 272.

273. Defendants deny the allegations contained in paragraph 273.

274. Defendants deny the allegations contained in paragraph 274.

275. Defendants deny the allegations contained in paragraph 275.

276. Defendants deny the allegations contained in paragraph 276.

277. Defendants deny that they engaged in any improper accounting practices, misrepresentations, omissions, or any other improper or unlawful

conduct alleged in the Complaint and deny the remaining allegations contained in paragraph 277.

278. Defendants admit that certain of the Defendants were involved, to varying degrees, in reviewing certain of NetBank's financial statements prior to their filing with the SEC. Defendants deny the remaining allegations contained in paragraph 278.

279. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants also lack knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the last two sentences of paragraph 279. Defendants deny the remaining allegations contained in paragraph 279.

280. Defendants admit the allegations in the first two sentences of paragraph 280. Defendants deny the remaining allegations contained in paragraph 280.

281. Defendants admit that NetBank held an earnings conference call on August 3, 2005. Defendants state that the transcript of the conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote,

mischaracterize, or contradict the transcript of the conference call. Defendants deny the remaining allegations contained in paragraph 281.

282. Defendants admit that NetBank held an earnings conference call on November 14, 2005. Defendants state that the transcript of the conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript of the conference call. Defendants deny the remaining allegations contained in paragraph 282.

283. Defendants admit that NetBank held an earnings conference call on November 14, 2005. Defendants state that the transcript of the conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript of the conference call. Defendants deny the remaining allegations contained in paragraph 283.

284. Defendants deny the allegations contained in paragraph 284.

285. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants admit that, at times during the alleged class period, NetBank made a business decision to repurchase loans that the Company believed it was not obligated to repurchase under the terms of applicable

agreements. Defendants deny the remaining allegations contained in paragraph 285.

286. Defendants admit that NetBank filed its Form 10-K for the year ended December 31, 2005 with the SEC on or about March 15, 2006. Defendants state that the 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 286.

287. Paragraph 287 contains numerous legal conclusions and other allegations not directed to any Defendant that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the allegations contained in paragraph 287.

288. Defendants admit that, at times during the alleged Class Period, NetBank Treasury Group managed servicing rights for certain mortgage loans. Defendants admit that, at times during the alleged Class Period, NetBank sold certain fixed-rate agency-eligible mortgage loans to Fannie Mae and other buyers and that NetBank retained servicing rights with respect to certain such mortgage loans. Defendants admit that NetBank performed calculations to show hedge effectiveness under FAS 133. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from

an alleged former NetBank employee. Defendants admit that, at times during the alleged Class Period, representatives of E&Y discussed with NetBank employees NetBank's methodology for performing hedge effectiveness calculations, particularly in light of evolving regulatory interpretations of FAS 133, and that, at times during the alleged Class Period, representatives of E&Y requested that NetBank perform certain additional or different calculations. Defendants deny the remaining allegations contained in paragraph 288.

289. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from an alleged former NetBank employee. Defendants admit that, at times during the alleged class period, certain NetBank personnel had discussions with the SEC regarding the frequency with which NetBank performed certain hedge effectiveness calculations and the SEC ultimately reached agreement concerning the appropriate frequency for such calculations. Defendants deny the remaining allegations contained in paragraph 289.

290. Paragraph 290 of the Complaint contains no allegations that Defendants are required to admit or deny. To the extent a response is required, Defendants deny the allegations contained in paragraph 290.

291. Defendants admit that NetBank filed its Form 10-K for the year ended December 31, 2005 with the SEC on or about March 15, 2006. Defendants state that the 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 291.

292. Defendants admit that NetBank filed its Form 10-K for the year ended December 31, 2003 with the SEC on or about March 12, 2004. Defendants state that the 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 292.

293. Defendants admit that NetBank held an earnings conference call on May 4, 2005. Defendants state that the transcript of the conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript of the conference call. Defendants deny the remaining allegations contained in paragraph 293.

294. Defendants admit that NetBank held an earnings conference call on May 4, 2005. Defendants state that the transcript of the conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote,

mischaracterize, or contradict the transcript of the conference call. Defendants deny the remaining allegations contained in paragraph 294.

295. Defendants admit that NetBank held an earnings conference call on August 3, 2005. Defendants state that the transcript of the conference call speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the transcript of the conference call. Defendants deny the remaining allegations contained in paragraph 295.

296. Defendants admit that NetBank filed its Form 10-Q for the third fiscal quarter of 2006 with the SEC on or about November 9, 2006. Defendants state that the 10-Q speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-Q. Defendants deny the remaining allegations contained in paragraph 296.

297. Defendants admit that NetBank incurred higher loan repurchase volumes during the three months ended September 30, 2006, as compared to the same period in 2005. In further response, Defendants admit that NetBank filed its Form 10-Q for the third fiscal quarter of 2006 with the SEC on or about November 9, 2006. Defendants state that the 10-Q speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-Q. Defendants deny the remaining allegations contained in paragraph 297.

298. Defendants admit that NetBank issued an earnings press release dated February 21, 2007, reporting results for the fourth quarter of 2006. Defendants state that the press release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants deny the remaining allegations contained in paragraph 298.

299. Defendants deny the allegations contained in paragraph 299.

300. Defendants deny the allegations contained in paragraph 300.

301. Paragraph 301 contains numerous legal conclusions that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny these allegations. Defendants deny the remaining allegations contained in paragraph 301.

302. Defendants deny the allegations contained in paragraph 302.

303. Defendants admit that NetBank filed its Form 10-Q for the third fiscal quarter of 2006 with the SEC on or about November 9, 2006. Defendants state that the 10-Q speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-Q. Defendants deny the remaining allegations contained in paragraph 303.

304. Defendants deny the allegations contained in paragraph 304.

305. Defendants deny the allegations contained in paragraph 305.

306. Defendants admit that NetBank filed its Form 10-Q for the third fiscal quarter of 2006 with the SEC on or about August 8, 2006. Defendants state that the 10-Q speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-Q. Defendants deny the remaining allegations contained in paragraph 306.

307. Paragraph 307 contains numerous legal conclusions that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny these allegations. Defendants deny the remaining allegations contained in paragraph 307.

308. Defendants admit that NetBank issued a press release dated July 2, 2004, regarding the Beacon Credit Services ("Beacon") acquisition. Defendants state that the press release speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the press release. Defendants admit that Defendant Freeman supported the purchase of Beacon for \$6.8 million. Defendants admit that one member of Beacon's management team at the time of the acquisition was John Redmond. Defendant Freeman denies that Mr. Redmond was a close personal friend of Defendant Freeman. The remaining Defendants lack knowledge or information sufficient to form a belief concerning the truth of that allegation. Defendants lack knowledge concerning what, if any,

information Plaintiff purports to have obtained regarding NetBank's business from one or more alleged former NetBank employee(s). Defendants deny the remaining allegations contained in paragraph 308.

309. Defendants admit that NetBank acquired Beacon in June 2004, that NetBank exited Beacon's operations after selling select Beacon assets to members of the senior management team of NetBank's RV, boat, and aircraft financing operations in October or November 2006, and that NetBank did not receive any material financial or other consideration in connection with the sale. Defendants lack knowledge concerning what, if any, information Plaintiff purports to have obtained regarding NetBank's business from one or more alleged former NetBank employee(s). Defendants deny the remaining allegations contained in paragraph 309.

310. Defendants admit that certain of the Defendants were involved, to varying degrees, in reviewing certain of NetBank's financial statements prior to their filing with the SEC. Defendants deny the remaining allegations contained in paragraph 310.

311. Paragraph 311 contains no allegations that Defendants are required to admit or deny. To the extent a response is required, Defendants deny the allegations contained in paragraph 311.

312. Defendants admit that NetBank filed its Form 10-K for the year ended December 31, 2005 with the SEC on or about March 15, 2006. Defendants state that the 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants state that Paragraph 312 contains allegations not directed at any Defendant that Defendants are required to admit or deny. To the extent a response is required, Defendants deny these allegations. Defendants deny the remaining allegations contained in paragraph 312.

313. Defendants admit that NetBank filed its Form 10-K for the year ended December 31, 2005 with the SEC on or about March 15, 2006. Defendants state that the 10-K speaks for itself and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-K. Defendants deny the remaining allegations contained in paragraph 313.

314. Defendants deny the allegations contained in paragraph 314.

315. Defendants admit that NetBank filed its Form 10-Q for the three months ended September 30, 2006 with the SEC on or about November 9, 2006 and that NetBank filed a Form 8-K with the SEC on June 21, 2007. Defendants state that the 10-Q and 8-K speak for themselves and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the 10-Q and/or the

8-K. Defendants state that, at times during the alleged class period, NetBank sold certain mortgage servicing rights, as disclosed in the Company's SEC filings. Defendants deny the remaining allegations contained in paragraph 315.

316. Defendants deny the allegations contained in paragraph 316.

317. Paragraph 317 contains numerous legal conclusions that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny these allegations. Defendants deny the remaining allegations contained in paragraph 317.

318. Paragraph 318 contains numerous legal conclusions that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny these allegations. Defendants deny the remaining allegations contained in paragraph 318.

319. Paragraph 319 contains numerous legal conclusions that Defendants are not required to admit or deny. To the extent a response is required, Defendants deny these allegations. Defendants deny the remaining allegations contained in paragraph 319.

320. Defendants admit that certain of the Defendants were involved, to varying degrees, in reviewing certain of NetBank's financial statements prior to their filing with the SEC. Defendants admit that NetBank filed Forms 10-K for the

years ended December 31, 2004 and December 31, 2005 with the SEC, and that the Company filed Forms 10-Q for the first, second, and third quarters of 2005 and 2006 with the SEC. Defendants state that these SEC filings speak for themselves and deny Plaintiff's allegations to the extent that they misquote, mischaracterize, or contradict the SEC filings. Defendants deny the remaining allegations contained in paragraph 320.

321. Defendants admit that certain of the Defendants were involved, to varying degrees, in reviewing certain of NetBank's financial statements prior to their filing with the SEC. Defendants deny the remaining allegations contained in paragraph 321.

322. Defendants deny the allegations contained in paragraph 322.

323. Defendants deny the allegations contained in paragraph 323.

324. Defendants admit that NetBank filed a Form 8-K with the SEC on July 18, 2007, in which the Company reported that, on July 17, 2007, E&Y advised the Company that it would not re-issue its audit report covering the Company's consolidated financial statements for the years ended December 31, 2004 and 2005 for inclusion in the Company's Form 10-K for 2006 until the Company resolved with the SEC the SEC's comments with respect to the Company's application of SFAS 133. Defendants deny the remaining allegations contained in paragraph 324.

325. Defendants deny the allegations contained in paragraph 325.

326. Defendants deny the allegations contained in paragraph 326.

327. Defendants deny the allegations contained in paragraph 327.

328. Defendants deny the allegations contained in paragraph 328.

329. Defendants deny the allegations contained in paragraph 329.

330. Defendants deny the allegations contained in paragraph 330.

331. Defendants deny the allegations contained in paragraph 331.

332. Defendants state that public records reflecting the prices of trades in shares of NetBank's common stock speak for themselves. Defendants deny the remaining allegations contained in paragraph 332.

333. Defendants admit that, during and after the alleged Class Period, NetBank issued public statements reporting events such as Defendant Freeman resignation, E&Y's resignation as NetBank's outside auditor, delays in the Company's ability to make certain SEC filings, and NetBank's reported financial results. Defendants deny the remaining allegations contained in paragraph 333.

334. Defendants admit that NetBank's stock price fell significantly on May 21, 2007. Defendants deny the remaining allegations contained in paragraph 334.

335. Defendants deny the allegations contained in paragraph 335.

336. Defendants deny the allegations contained in paragraph 336.

337. Defendants admit that, during the alleged class period, NetBank common stock met the requirements for listing and was traded on the NASDAQ and that NetBank filed periodic reports with the SEC and the NASDAQ. Defendants deny the market for NetBank common stock was an efficient market throughout the class period. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 337.

338. Defendants deny the allegations contained in paragraph 338.

339. Defendants admit that, during the alleged class period, NetBank common stock met the requirements for listing and was traded on the NASDAQ, that NetBank filed periodic reports with the SEC and the NASDAQ, and that NetBank hosted investor conference calls and issued press releases. Defendants deny that the market for NetBank's securities was an efficient market at all relevant times. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 339.

340. Defendants deny the allegations contained in paragraph 340.

341. Defendants deny the allegations contained in paragraph 341.

342. Defendants incorporate by reference their responses to all previous allegations of the Complaint.

343. Defendants deny the allegations contained in paragraph 343.

344. Defendants deny the allegations contained in paragraph 344.

345. Defendants deny the allegations contained in paragraph 345.

346. Defendants deny the allegations contained in paragraph 346.

347. Defendants deny the allegations contained in paragraph 347.

348. Defendants deny the allegations contained in paragraph 348.

349. Defendants deny the allegations contained in paragraph 349.

350. Defendants deny the allegations contained in paragraph 350.

351. Defendants deny the allegations contained in paragraph 351.

352. Defendants deny the allegations contained in paragraph 352.

353. Defendants incorporate by reference their responses to all previous allegations of the Complaint.

354. Defendants deny the allegations contained in paragraph 354.

355. Defendants deny the allegations contained in paragraph 355.

356. Defendants deny the allegations contained in paragraph 356.

357. Defendants deny each and every allegation of the Complaint to which they have not otherwise made a specific response in this Answer. Defendants further deny Plaintiff's prayer for relief and jury demand in all respects.

DEFENSES

Without assuming the burden of proof where it otherwise rests with Plaintiff, Defendants plead the following defenses:

First Defense

Plaintiff's claims are barred in whole or in part because the Complaint, and each and every purported claim for relief alleged therein, fails to allege facts sufficient to state a claim upon which relief can be granted against Defendants.

Second Defense

Plaintiff's claim are barred in whole or in part because the Complaint fails to allege fraud with particularity as required by Federal Rules of Civil Procedure 9(b), and fails to comply with the pleading requirements of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 78u-4, 78u-5, and Rule 8 of the Federal Rules of Civil Procedure.

Third Defense

Plaintiff's claims are barred in whole or in part because any material information alleged to have been disclosed by Defendants or NetBank was true or any material information alleged to have been omitted by Defendants or NetBank was disclosed in NetBank's SEC filings, press releases, and other public statements

and material incorporated therein or was otherwise publicly disclosed or available to Plaintiff and the market through credible sources.

Fourth Defense

Plaintiff's claims are barred in whole or in part because the misrepresentations and omissions alleged are not material as a matter of law.

Fifth Defense

Plaintiff's claims are barred in whole or in part because Plaintiff has not sustained any cognizable injury.

Sixth Defense

Plaintiff's claims are barred in whole or in part because Plaintiff had a duty to take reasonable action to minimize any damage allegedly sustained as a result of the conduct alleged in the Complaint, but failed to comply with that duty, and is therefore barred from recovering any damages that might have been reasonably avoided.

Seventh Defense

Plaintiff's claims are barred in whole or in part to the extent Plaintiff's claims are based on Defendants' or NetBank's alleged omission(s) of purported material information, because Defendants and NetBank had no duty to disclose or update the information.

Eighth Defense

Plaintiff's claims are barred in whole or in part because no act or omission by Defendants individually or as a group or by NetBank was the cause in fact or proximate cause of any damage alleged by Plaintiff.

Ninth Defense

Plaintiff's claims are barred in whole or in part because of a lack of loss causation, *i.e.*, the depreciation in the market price of NetBank stock purchased or exchanged for by Plaintiff, and other purported class members, resulted from factors other than the alleged misstatements and omissions alleged in the Complaint.

Tenth Defense

Plaintiff's claims are barred in whole or in part because Plaintiff did not rely on (a) any of the alleged representations or omissions by any Defendant or NetBank; or (b) the market price of NetBank's stock in making investment decisions, and the market price of NetBank's stock was not inflated as a result of any alleged representation or omission by any Defendant or NetBank.

Eleventh Defense

Plaintiff's claims are barred in whole or in part because Plaintiff is not entitled to the "fraud on the market" presumption under *Basic Inc. v. Levinson*, 485 U.S. 224 (1998).

Twelfth Defense

Plaintiff's claims are barred in whole or in part because Plaintiff's alleged damages, if any, were the result of one or more intervening or superseding causes or were caused by the acts and/or failures to act of persons and/or entities other than Defendants or NetBank, over who Defendants had no control or influence, and were not the result of any act or omission on the part of Defendants, individually or collectively, or NetBank.

Thirteenth Defense

Plaintiff's claims are barred in whole or in part because Defendants acted in good faith and in reliance on their advisors and did not directly or indirectly induce the acts or act constituting the alleged violations or causes of action.

Fourteenth Defense

Plaintiff's claims are barred in whole or in part because Defendants, after reasonable investigation and due diligence, did not know, and in the exercise of reasonable care could not have known or had reasonable grounds to believe at the

time, that any misstatement or omission of material fact existed in NetBank's SEC filings, press releases, or other public statements.

Fifteenth Defense

Plaintiff's claims are barred in whole or in part because any alleged statements of material fact, alleged omissions of material fact, or other challenged statements, with respect to which the alleged liability of each Defendant is asserted, contained or were made in the context of sufficient cautionary language or risk disclosure to be non-actionable under the "bespeaks caution" doctrine.

Sixteenth Defense

Plaintiff's claims are barred in whole or in part because any alleged statements of material fact, alleged omissions of material fact, or other challenged statements, with respect to which the alleged liability of each Defendant is asserted, are non-actionable under the safe harbor provisions of the Private Securities Litigation Reform Act of 1995.

Seventeenth Defense

Plaintiff's claims are barred in whole or in part because, at the time Plaintiff acquired the securities at issue Plaintiff knew or reasonably should have known and/or learned of the acts and omissions complained of, thereby assuming the risk of any alleged damages proximately caused thereby.

Eighteenth Defense

Plaintiff's claims are barred in whole or in part because neither Plaintiff nor any purported class member can establish the prerequisites for certifying a class or maintaining this action as a class action.

Nineteenth Defense

Plaintiff's claims are barred in whole or in part because Defendants are not liable as "controlling persons" of NetBank as that term is used in the Securities Exchange Act of 1934.

Twentieth Defense

Plaintiff's claims are barred in whole or in part because the alleged damages, if any, are speculative.

Twenty-First Defense

Without admitting that Plaintiff suffered any damages, or that Defendants are or should be liable for any such damages, Defendants assert that their liability is limited by 15 U.S.C. §§ 78u-4(e).

Twenty-Second Defense

Plaintiff's claims are barred in whole or in part because the acts or failures to act alleged in the Complaint were ratified or approved by the Office of Thrift

Supervision, the Securities and Exchange Commission and/or other federal and state regulatory authorities or other entities.

Twenty-Third Defense

Any damage, loss, or liability sustained by Plaintiff must be reduced, diminished and/or eliminated in proportion to the wrongful or negligent conduct of entities or individuals other than Defendants under the principles of equitable allocation, recoupment, set-off, proportionate liability, and comparative fault, including but not limited to, the proportionate liability provisions of 15 U.S.C. § 78u-4(f).

Twenty-Fourth Defense

Defendants hereby assert all defenses available under federal law and under any applicable state law. Additional facts may be revealed in discovery or otherwise supporting additional defenses presently available, but unknown, to Defendants. Defendants therefore reserve the right to assert additional defenses in the event discovery or investigation reveals additional defenses.

WHEREFORE, Defendants, having fully answered Plaintiff's Consolidated And Amended Class Action Complaint, pray:

(a) that the Consolidated And Amended Class Action be dismissed with prejudice;

- (b) that judgment be entered in Defendants' favor;
- (c) that all costs of this action be taxed against Plaintiff; and
- (d) for such other and further relief as the Court deems proper.

DATED: March 2, 2009.

s/ Michael R. Smith
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7.1(D) of the Local Rules of the Northern District of Georgia, the undersigned counsel for Defendants hereby certifies that the foregoing document was prepared in a font and point selection approved by this Court and authorized in Local Rule 5.1(C).

s/ Michael R. Smith

Michael R. Smith
Georgia Bar No. 661689

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **ANSWER** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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This 2nd day of March, 2009.

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