

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA—ATLANTA DIVISION**

**IN RE NETBANK, INC.  
SECURITIES LITIGATION**

: **Civil Action No.**  
: **1:07-cv-2298-TCB**  
: **JURY TRIAL DEMANDED**

**NOTICE OF PENDENCY OF CLASS ACTION**

*The Court authorized this Notice. This is **not** a solicitation from a lawyer.*

**If you purchased or acquired the publicly-registered common stock of NetBank, Inc. (“NetBank” or the “Company”), during the period March 16, 2005 through and including May 21, 2007 (the “Class Period”), and held such stock as of May 21, 2007, and were damaged as a result (the “Class”), a class action may affect your rights, and you should carefully read this Notice.**

The Court has allowed the above-captioned litigation (the “Litigation”) to proceed as a class action on behalf of the above-described Class, against certain former officers and directors of NetBank for alleged violations of the federal securities laws. The Court has not decided whether those officers and directors did anything wrong. There is no money available now, and no guarantee that there will be. However, your legal rights are affected, and you have a choice to make now:

<b>YOUR LEGAL RIGHTS AND OPTIONS:</b>	
<b>DO NOTHING</b>	<b>Stay in this lawsuit. Await the outcome. Give up certain rights.</b> By doing nothing, you retain the possibility of getting money or benefits that may come from a trial or a settlement. But, you give up any rights to sue separately about the same legal claims in this lawsuit.
<b>ASK TO BE EXCLUDED</b>	<b>Get out of this lawsuit. Get no benefits from it. Keep rights.</b> If you ask to be excluded and money or benefits are later awarded, you won’t share in those. But, you keep any rights to sue separately about the same legal claims in this lawsuit.

- Your options are explained in this Notice. To ask to be excluded, you must act by January 21, 2011.
- The parties are continuing to conduct discovery in this litigation and there is currently no trial scheduled. If money or benefits are obtained for the benefit of the Class, you will be notified about how to ask for a share, if you have not asked to be excluded from this litigation.
- Any questions? Read on and visit [www.hrsclaimsadministration.com](http://www.hrsclaimsadministration.com).

**DEFINITION OF THE CLASS**

1. On August 7, 2009, the Court entered an Order certifying this Litigation as a class action for purposes of trial. The Class is defined as follows:

All persons who, during the period March 16, 2005 through and including May 21, 2007, purchased or otherwise acquired the publicly-registered common stock of NetBank, Inc., held such stock as of May 21, 2007, and were damaged as a result (“the Class”).

Excluded from the Class are defendants Douglas K. Freeman, James P. Gross, Steven F. Herbert, Thomas H. Muller, Jr., Eula L. Adams and David W. Johnson, Jr. (collectively, the “Defendants”), members of the immediate families of any Defendant, any entity in which any of the Defendants has or had a controlling interest, any person or entity affiliated with any of the Defendants, and the legal representatives, heirs, successors or assigns of any of the Defendants. The Court’s August 7, 2009 Order also appointed Robert A. Brown (“Lead Plaintiff” or “Plaintiff”) as the Class representative and designated the law firm Berger & Montague, P.C. as Lead Counsel for the Class.

2. This Notice is given to you in the belief that you may be a member of the Class. To be a Class Member, you must meet all of the criteria listed above in the definition of the Class. If you are uncertain whether you are a member of the Class, you should contact counsel for the Class (listed in paragraph 11 below) or your own attorney. Class Members may be entitled to recover monetary damages on the claims asserted. This Notice, however, is not intended to suggest any likelihood that Lead Plaintiff or members of the Class will prevail on their claims or that any Class Member will be entitled to recover monetary damages.

**BACKGROUND OF THE LITIGATION**

3. Beginning in September 2007, two class actions were instituted on behalf of purchasers of NetBank common stock, alleging claims against NetBank and certain of its officers and directors for violations of the federal securities laws. By an Order of the Court dated April 21, 2008, the Court consolidated the class actions filed, appointed Robert A. Brown to serve as the Lead Plaintiff, and appointed Berger & Montague, P.C. as Lead Counsel for the Lead Plaintiff.

4. On July 3, 2008, the Lead Plaintiff filed a Consolidated and Amended Class Action Complaint on behalf of the Class (the "Complaint") against certain of NetBank's former officers and directors, including defendants Douglas K. Freeman, James P. Gross, Steven F. Herbert, Thomas H. Muller, Jr., Eula L. Adams and David W. Johnson, Jr. Former NetBank director Catherine Ghiglieri was also named as a defendant in the Complaint but was dismissed from the litigation, by agreement between counsel for Ms. Ghiglieri and counsel for Lead Plaintiff. The Complaint did not include NetBank as a defendant because NetBank had by then filed for bankruptcy and all further litigation against NetBank was stayed by the protections afforded under the federal bankruptcy laws.

5. The Complaint alleges two bases for relief: (1) violation of § 10(b) of the Securities Exchange Act of 1934 and the related SEC Rule 10b-5; and (2) violation of § 20(a) of the Securities Exchange Act of 1934. The Complaint alleges, among other things, that the Defendants artificially inflated the market price of NetBank common stock by making false and misleading statements during the years 2005, 2006 and 2007, regarding the financial results, operations and condition of the Company. Among other things, Plaintiff alleges that NetBank publicly issued false financial statements of its operating results and financial condition, as well as misrepresentations concerning its business operations, including its subprime mortgage exposure, deficient mortgage underwriting and risk control practices, inadequate reserves and controls, failure to comply with Generally Accepted Accounting Principles (GAAP) and regulatory requirements, the departure of its outside auditor, its inability to file accurate financial statements, its overstated and unreliable book value, and its true financial condition and results. You can access and read Plaintiff's Complaint online at [www.hrsclaimsadministration.com](http://www.hrsclaimsadministration.com).

6. In their Answer filed March 2, 2009, the Defendants denied any wrongdoing and asserted several affirmative defenses. Defendants deny Plaintiff's allegations that they (or NetBank) made false or misleading statements or otherwise misrepresented the Company's financial results, operations, and condition. Defendants maintain that NetBank's Class Period disclosures to investors accurately and appropriately conveyed material information about the Company as it became known and identified risk factors to which the Company's businesses were subject. Defendants assert that the decline in NetBank's business was the result of external factors unrelated to the alleged fraud including, but not limited to, the rapid deterioration in the United States housing markets, resulting contraction in the markets for investment in mortgage-backed securities and other instruments, and related negative effects in the credit and financial markets, all of which similarly impacted virtually all financial institutions with mortgage lending operations. Defendants further deny that the Company failed to record appropriate reserves or that its financial statements issued during the Class Period failed to comply with GAAP. You can access and read Defendants' Answer online at [www.hrsclaimsadministration.com](http://www.hrsclaimsadministration.com).

7. On August 7, 2009, the Court certified this Litigation as a class action, appointed Robert A. Brown as the representative of the Class and designated Berger & Montague, P.C. to serve as Lead Counsel for the Class. The Court did not rule on the merits of the parties' claims or defenses. Thereafter, the Defendants filed a petition with the Eleventh Circuit Court of Appeals seeking permission to file an appeal of the Court's class certification decision. On September 9, 2010, the Eleventh Circuit Court of Appeals denied Defendants' petition for leave to file an appeal at this time.

8. This Notice is given to you in the belief that you may be a member of the Class whose rights may be affected by this Litigation. This Notice is not an admission by Defendants or an expression of any opinion by the Court concerning the merits of the Litigation or a finding by the Court that the claims asserted by Plaintiff in either case are valid, or that there has been any wrongdoing or violation of law by Defendants. There is no assurance that a judgment in favor of the Class will be granted. This Notice is intended merely to advise you of the pendency of this Litigation and of your rights with respect to the Litigation, including the right to remain a Member of the Class, or to exclude yourself from the Class. *YOU NEED NOT TAKE ANY ACTION TO BE OR TO REMAIN A MEMBER OF THE CLASS.*

#### **YOUR RIGHTS IF YOU REMAIN A MEMBER OF THE CLASS**

9. IF YOU WISH TO REMAIN A CLASS MEMBER, YOU ARE NOT REQUIRED TO DO ANYTHING AT THIS TIME. If you wish to remain a member of the Class, you need not respond to this Notice. Remaining in the Class will not obligate you to personally pay any attorneys' fees or costs.

10. If you remain a Class Member, you will be bound by any judgment in this Litigation, whether it is favorable or unfavorable, and whether entered after motion or trial, or from a settlement. If there is a recovery, you may be entitled to share in the proceeds, less such costs, expenses, and attorneys' fees as the Court may allow out of any such recovery. If the Defendants prevail, you may not pursue a lawsuit on your own with regard to any of the issues decided in this Litigation.

11. If you remain in the Class and do not request exclusion in the manner set forth below, you will be represented by the Court-appointed Lead Plaintiff as the representative of the Class and the Court-appointed Lead Counsel for the Class. Lead Counsel for the Class is:

BERGER & MONTAGUE, P.C.  
Merrill G. Davidoff, Esq.  
Michael Dell'Angelo, Esq.  
Lane L. Vines, Esq.  
1622 Locust Street  
Philadelphia, PA 19103  
Telephone: (215) 875-3000 [(800) 424-6690]

**Please do not contact the Lead Plaintiff directly or the Court; questions should be addressed to Lead Counsel.**

12. If you remain a member of the Class, you will not be personally responsible for Plaintiff's attorneys' fees or costs. Any fees or expenses for the Lead Counsel for the Class, which may ultimately be allowed by the Court, will be payable out of the recovery in the Litigation, if any. You may arrange to have your own attorney enter an appearance on your behalf in this Litigation if you so desire. However, if you appear in this Litigation through your own counsel, you will be solely responsible for that attorney's fees and expenses. In the event of a recovery, you will be required to prove your membership in the Class.

**TO BE EXCLUDED FROM THE CLASS**

13. IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS AND NOT BE A PART OF THIS LITIGATION, YOU MUST MAKE A REQUEST IN WRITING. In order to be valid, each such request for exclusion must set forth the following information: (a) the name and address of the person or entity requesting exclusion, (b) a statement that such person or entity requests exclusion from the Class in *In re NetBank, Inc. Securities Litigation*, No. 1:07-cv-2298-TCB (N.D. Ga.), and must be signed by such person or entity. Such persons requesting exclusion are also directed to state the date(s) and number of shares of NetBank common stock they purchased and sold. Requests for exclusion must be sent via first class mail to the Notice Administrator at the address provided in paragraph 16 below. For it to be effective, your request for exclusion must be postmarked no later than January 21, 2011. *Do not request exclusion if you wish to participate in this Litigation against the Defendants as a Class Member.*

14. If you exclude yourself from the Class, you will **not** be entitled to share in any recovery in this Litigation against the Defendants, should any recovery be obtained, nor will you be bound by any judgment in this Litigation against the Defendants, but you may individually pursue any legal rights you may have against the Defendants at your own expense.

15. IF YOU DO NOT REQUEST EXCLUSION FROM THE CLASS BY JANUARY 21, 2011, YOU WILL BE CONSIDERED A MEMBER OF THE CLASS AND THE COURT WILL CONSIDER YOU BOUND BY ANY DECISIONS AND FINAL JUDGMENT IN THE ACTION.

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

16. If you purchased the common stock of NetBank between March 5, 2005 and May 21, 2007, inclusive, for the beneficial ownership of a person or entity other than yourself, you are directed by the Court that, within ten (10) days of your receipt of this Notice, that you either: (a) provide to the Notice Administrator identified below the name and last known address of each person or entity for whom or which you purchased any of NetBank's common stock; or (b) request additional copies of this Notice, which will be provided to you free of charge, and within ten (10) days of receiving those copies, mail the Notice directly to the beneficial owners of the securities. When submitting names and addresses, please identify the date and number of shares of NetBank common stock purchased and sold by the potential Class Member. If you choose to follow alternative procedure (b), the Court has directed that, upon such mailing, you send a statement to the Notice Administrator confirming that the mailing was made as directed. You are entitled to reimbursement of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of reasonable postage expenses, and the reasonable costs of ascertaining the names and addresses of beneficial owners. Those reasonable expenses and costs will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Notice Administrator:

In re NetBank, Inc. Securities Litigation – Notice of Pendency  
c/o Heffler, Radetich & Saitta LLP  
P.O. Box 58999  
Philadelphia, PA 19102-8999  
Telephone: (800) 768-8450  
[www.hrsclaimsadministration.com](http://www.hrsclaimsadministration.com)

**CORRECTING YOUR MAILING ADDRESS**

17. If this Notice was sent to you at your current address, you do not have to do anything further to receive further notices concerning this Litigation. If it was forwarded by the postal service, or if it was otherwise sent to you at an address that is not current, you should immediately contact the Notice Administrator referred to above in paragraph 16.

**AVAILABILITY OF FILED PAPERS**

18. This Notice does not fully describe all of the claims and contentions of the parties. The pleadings and other papers filed in this Litigation are available for inspection, during business hours, at the Office of the Clerk of the Court, United States District Court for the Northern District of Georgia, Atlanta division. In addition, you may obtain a copy of the Complaint by contacting the above listed Plaintiff's counsel.

19. If you have any questions about this Notice, you may consult an attorney of your own choosing, or Plaintiff's counsel whose name, address and telephone number are listed in paragraph 11 above. DO NOT ADDRESS ANY QUESTIONS ABOUT THIS LITIGATION TO THE CLERK OF THE COURT OR TO THE JUDGE. They are not permitted to answer your questions.

Dated: October 21, 2010

By Order of the United States District Court  
for the Northern District of Georgia  
Honorable Timothy C. Batten, Sr., Judge

Claims Administrator  
In re NetBank, Inc. Securities Litigation  
c/o Heffler, Radetich & Saitta LLP  
P.O. Box 58999  
Philadelphia, PA 19102-8999

**PLEASE FORWARD**

**FIRST CLASS MAIL**

**PLEASE FORWARD—IMPORTANT LEGAL NOTICE**