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The Honorable Fred Van Sickle

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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

13 In re METROPOLITAN SECURITIES
14 LITIGATION

No. CV-04-0025-FVS

15 THIS DOCUMENT RELATES TO:
16 ALL ACTIONS

17 ORDER BIFURCATING AND
18 STAYING CLAIMS AGAINST
19 DEFENDANT ERNST & YOUNG LLP

20 Having considered the Motion and Memorandum of Plaintiffs, pursuant to
21 Fed. R. Civil P. 42(b), for an Order bifurcating and staying all claims against
22 Defendant Ernst & Young LLP (EY”),

23 **IT IS HEREBY ORDERED:**

24 1. This Order incorporates by reference the definitions in the Settlement
25 Agreement.
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ORDER BIFURCATING & STAYING
CLAIMS AGAINST DEFENDANT
ROTH CAPITAL PARTNERS, LLC - 1

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1 2. The Court has personal jurisdiction over all parties to the Action,
2 including all Class Members, EY and the non-settling defendants, and subject
3 matter jurisdiction over the Action.

4 3. In light of the Settlement between the Class and EY pursuant to the
5 Settlement Agreement dated February 22, 2010 and the trial scheduled to
6 commence in the Action against non-settling defendants on March 15, 2010, and in
7 order to allow the Settling Parties to implement and seek final approval of the
8 Settlement, it will further the interests of convenience, avoid prejudice to the
9 parties and expedite and economize these proceedings to bifurcate any and all
10 claims that have been made, could be made or may be made in this Action against
11 EY pursuant to Fed. Rule Civil P. 42(b).

12 4. All claims, demands and causes of action, whether known or
13 unknown, that have been asserted, could have been asserted or might be asserted
14 by the Lead Plaintiffs, the Class, any non-settling defendant or any other person or
15 entity in this Action or any other proceeding or forum, which are based upon or
16 relate to the matters alleged in the Consolidated And Fourth Amended Class
17 Action Complaint are hereby: (i) bifurcated from the Action and shall instead be
18 maintained in a separate proceeding before this Court (the "EY Action"); and
19 (ii) stayed pending determination by the Court as to whether the Settlement, as set
20 forth in the Settlement Agreement, is fair, reasonable and adequate and should be
21 finally approved and whether the Judgment dismissing the Action and the EY
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1 Action with prejudice as to EY, including a provision barring any claims for
2 contribution or indemnification against the EY Released Parties, should be entered.

3 5. In the event the Action proceeds to trial as to a non-settling
4 defendant(s): (i) the Class may not use any finding, ruling, order, trial testimony,
5 verdict or judgment or any attribution of fault or responsibility to EY, verdict or
6 judgment-for any purpose whatsoever against EY in the Action or in any other
7 proceeding or forum, or for any other purpose; (ii) any finding, ruling, order, trial
8 testimony, verdict or judgment or any attribution of fault or responsibility to EY,
9 shall not be admissible for any purpose whatsoever as against EY in the Action or
10 in any other proceeding or forum; (iii) any finding, ruling, order, trial testimony,
11 verdict or judgment or any attribution of fault or responsibility to EY, shall not
12 constitute collateral estoppel or res judicata as to EY in the Action or the EY
13 Action or in any other proceeding or forum; (iv) EY shall not be estopped from
14 challenging liability in the Action or the EY Action or any other proceeding or
15 forum as if no settlement had been negotiated or entered into; (v) EY shall not use
16 any finding, ruling, order, trial testimony, verdict or judgment for any purpose
17 whatsoever against the Class in the Action or the EY Action or against the Class in
18 any other proceeding or forum, or for any other purpose; (vi) any finding, ruling,
19 order, trial testimony, attribution of fault or responsibility to any other defendant,
20 verdict or judgment shall not be admissible for any purpose against the Class in the
21 Action or the EY Action or against the Class in any other proceeding or forum in
22 any litigation between EY and the Class; (vii) any finding, ruling, order, trial
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1 testimony, attribution of fault or responsibility to any other defendant, verdict or
2 judgment shall not constitute collateral estoppel or res judicata as to the Class in
3 the Action or the EY Roth Action or against the Class in any other proceeding or
4 forum in any litigation between EY and the Class; and (viii) the Class shall not be
5 estopped from asserting the liability of EY in the Action or the EY Action or any
6 other proceeding or forum as if no settlement had been negotiated or entered into.
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8 6. The Settling Parties shall have the right to move for an order by this
9 Court modifying the provisions of, or terminating, this Order.

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11 **IT IS SO ORDERED.**

12 Dated this 25th day of February, 2010.

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14 s/ Fred Van Sickle
15 THE HONORABLE FRED VAN SICKLE
16 UNITED STATES DISTRICT COURT
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