

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re REFCO, INC. SECURITIES :  
LITIGATION :  
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MASTER FILE NO.  
05 Civ. 8626 (GEL)

**ANSWER AND AFFIRMATIVE DEFENSES OF  
CERTAIN UNDERWRITER DEFENDANTS TO LEAD PLAINTIFFS'  
FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

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Company, L.L.C., Harris Nesbitt Corp., CMG  
Institutional Trading LLC, Samuel A.  
Ramirez & Company, Inc., Muriel Siebert &  
Co. Inc., The Williams Capital Group, L.P.,  
and Utendahl Capital Partners, L.P.*

Defendants Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities, Inc., Sandler O'Neill & Partners, L.P., HSBC Securities (USA) Inc., William Blair & Company, L.L.C., Harris Nesbitt Corp., CMG Institutional Trading LLC, Samuel A. Ramirez & Company, Inc., Muriel Siebert & Co. Inc., The Williams Capital Group, L.P., and Utendahl Capital Partners, L.P. (together, the "Answering Underwriter Defendants"),<sup>1</sup> by their attorneys, hereby answer the First Amended Consolidated Class Action Complaint, dated May 5, 2006 (the "Complaint"). The Answering Underwriter Defendants deny all allegations in the Complaint to the extent they suggest that the IPO Registration Statement was false and misleading and further respond to the specific allegations in the Complaint as follows:

**I. NATURE OF THE ACTION**

1. The Answering Underwriter Defendants deny the allegations contained in Paragraph 1, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations involving the non-underwriter defendants, admit that Plaintiffs purport to describe the nature of this action, and respectfully refer the Court to Refco's public statements for a true and accurate description of the Company's statements regarding its historical financial statements.

2. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 2, except the Answering Underwriter Defendants deny the allegations contained in Paragraph 2 to the extent they suggest that the IPO Registration Statement was false and misleading, admit, upon information and belief, that Refco provided brokerage and clearing services in the international derivatives, currency, and futures markets,

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<sup>1</sup> The underwriters for the 144A private placement have moved to dismiss Counts One and Three of the First Amended Consolidated Class Action Complaint and, accordingly, do not join this Answer. The non-answering underwriters include Credit Suisse Securities (USA) LLC, Banc of America Securities LLC, and Deutsche Bank Securities Inc.

and respectfully refer the Court to the Refco 144A Offering Memorandum, dated July 22, 2004 (“Offering Memorandum”), the Refco Form S-4, dated October 12, 2004 (the “Bond Registration Statement”), and the Refco IPO Registration Statement, dated August 10, 2005 (“IPO Registration Statement”), for a description of Refco’s business at the time of the offerings.

3. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 3, except the Answering Underwriter Defendants deny the allegations contained in Paragraph 3 to the extent they suggest that the IPO Registration Statement was false and misleading, and refer to and incorporate their responses below to the extent Plaintiffs refer to their subsequent allegations.

4. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 4, except the Answering Underwriter Defendants deny the allegations contained in Paragraph 4 to the extent they suggest that the IPO Registration Statement was false and misleading, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations involving the non-underwriter defendants.

5. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 5, except the Answering Underwriter Defendants deny the allegations contained in Paragraph 5 to the extent they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to the Bond Offering Memorandum (“Offering Memorandum”) for a description of that transaction, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations involving the non-underwriter defendants.

6. The Answering Underwriter Defendants deny the allegations contained in Paragraph 6, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations involving the non-underwriter defendants, admit that they acted as underwriters for the August 2005 IPO, and respectfully refer the Court to Refco's August 2005 IPO Registration Statement for a description of that transaction.

7. The Answering Underwriter Defendants deny the allegations contained in Paragraph 7, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations involving the non-underwriter defendants, admit that Refco's stock was issued at \$22 per share on August 10, 2005, and respectfully refer the Court to publicly reported sources for the closing prices of Refco stock in the secondary market.

8. The Answering Underwriter Defendants deny the allegations contained in Paragraph 8, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations involving the non-underwriter defendants, and respectfully refer the Court to Refco's public announcements for the contents thereof and to publicly reported sources for the market prices of Refco securities.

9. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 9, except the Answering Underwriter Defendants deny the allegations contained in Paragraph 9 to the extent they suggest that the IPO Registration Statement was false and misleading, admit on information and belief that there are ongoing criminal, civil, and regulatory investigations related to Refco, and respectfully refer the Court to the dockets of such matters for a description of the proceedings.

10. The Answering Underwriter Defendants deny the allegations contained in Paragraph 10, except admit that they purport to describe Plaintiffs' claims and legal conclusions.

## **II. JURISDICTION AND VENUE**

11. To the extent that Paragraph 11 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations, except admit that Plaintiffs purport to bring this action pursuant to the statutes cited therein.

12. To the extent that Paragraph 12 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations, except admit that Plaintiffs purport to base jurisdiction over the subject matter of this action on the statutes cited therein.

13. To the extent that Paragraph 13 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations involving the non-underwriter defendants, except admit that Plaintiffs purport to base venue on the statutes cited therein.

14. The allegations contained in Paragraph 14 are directed at another defendant and require no response by the Answering Underwriter Defendants.

15. To the extent that Paragraph 15 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 15, and deny knowledge or information sufficient to form a belief as to the truth or falsity of such allegations involving the non-underwriter defendants, except admit that they used the mails, interstate telephone communications and/or the facilities of national securities exchanges in the course of the IPO.

### **III. PARTIES AND RELEVANT NON-PARTIES**

#### **A. Plaintiffs**

16. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 16, except admit on February 3, 2006, the Court appointed RH Capital Associates LLC (“RH Capital”) as Co-Lead Plaintiff in the above-captioned action.

17. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 17, except admit on information and belief that Pacific Investment Management Company LLC (“PIMCO”) is a registered investment adviser, and respectfully refer the Court to the Form ADV for PIMCO for a description of that firm’s business, and admit that on February 3, 2006 the Court appointed PIMCO as Co-Lead Plaintiff in the above-captioned action.

18. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 18, except admit on information and belief that Pacific Investment Management Series - PIMCO High Yield Fund (the “PIMCO High Yield Fund”) is a registered investment company, and respectfully refer the Court to the registration statement of the PIMCO High Yield Fund for a description of that Fund’s investment objective, and admit that PIMCO High Yield Fund is not a lead Plaintiff in the above-captioned action.

19. Because Paragraph 19 contains no factual allegations, no responsive pleading is required.

#### **B. The Company**

20. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 20,

except admit on information and belief that Refco, Inc. filed for bankruptcy in October 2005, that it was (prior to its bankruptcy filing) a publicly-traded financial services company with its principal offices located at One World Financial Center, 200 Liberty Street, Tower A, New York, New York, and that it issued stock in the August 2005 IPO, and respectfully refer the Court to the IPO Registration Statement for a description of Refco, Inc. and its owners at the time of the IPO.

21. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 21, except admit on information and belief that Refco Group Ltd., LLC (“Refco Group”) is a Delaware limited liability company with its principal offices at One World Financial Center, 200 Liberty Street, Tower A, New York, New York, and that it filed for bankruptcy in October 2005, and respectfully refer the Court to the IPO Registration Statement, Offering Memorandum, Bond Registration Statement, and Refco Group’s securities filings for a description of Refco Group at the time of such offering.

22. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 22, except admit on information and belief that New Refco Group Ltd., LLC (“New Refco”) was the parent of, and owned all of the outstanding membership interest in, Refco Group, and respectfully refer the Court to the IPO Registration Statement and Offering Memorandum for a description of New Refco at the time of such offering.

23. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 23, except admit on information and belief that Refco Finance Holdings Inc. (“Refco Finance

Holdings”) was a co-issuer of the Company’s bonds and merged with Refco Group, and respectfully refer to the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of Refco Finance Holdings at the time of such offering.

24. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 24, except admit on information and belief that Refco Finance Inc. (“Refco Finance”) was a co-issuer of the Company’s bonds and respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and the Form 10K referred to therein for a description of Refco Finance at the time of such offering or documents.

25. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 25, except admit on information and belief that Refco Capital Markets Ltd. (“Refco Capital”) is a Bermuda-based Refco subsidiary, and respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of Refco Capital at the time of such offering, and respectfully refer the Court to the criminal complaint filed against Phillip R. Bennett for the contents thereof.

**C. The Defendants**

**1. The Bennett Shell-Entity Defendants**

26. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 26, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of Bennett’s ownership interest in Refco Holdings prior to the date of the Bond Offering.

27. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 27.

28. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 28.

**2. The Refco-Affiliated Defendants**

29. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 29, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of Refco Managed Futures LLC.

30. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 30, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of Westminster-Refco and its rights and obligations with respect to the Registered Bonds.

31. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 31, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of Lind-Waldock and its rights and obligations with respect to the Registered Bonds.

**3. The Officer Defendants**

32. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 32, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and Refco's public filings for a description of

Philip R. Bennett (“Bennett”), his employment history and his responsibility for Refco’s filings, and to his indictment for the contents thereof.

33. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 33, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and Refco’s public filings for a description of Gerald M. Sherer (“Sherer”), his employment history and his responsibility for Refco’s filings.

34. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 34, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and Refco’s public filings for a description of William M. Sexton (“Sexton”), his employment history and his responsibility for Refco’s filings.

35. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 35, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and Refco’s public filings for a description of Santo C. Maggio (“Maggio”), his employment history and his responsibility for Refco’s filings.

36. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 36, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and Refco’s public filings for a description of Joseph J. Murphy (“Murphy”), his employment history, and his responsibility for Refco’s filings.

37. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 37, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and Refco's public filings for a description of Philip Silverman ("Silverman"), his employment history, and his responsibility for Refco's filings.

38. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 38, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and Refco's public filings for a description of Dennis A. Klejna ("Klejna"), his employment history, and his responsibility for Refco's filings.

39. Because the allegations contained in Paragraph 39 have no legal significance, no responsive pleading is required.

**4. Defendant Trosten**

40. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 40, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and Refco's public filings for a description of Robert C. Trosten ("Trosten"), his employment history, and his responsibility for Refco's filings.

**5. Defendant Grant**

41. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 41, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and Refco's public filings for a description of Tone N. Grant ("Grant") and his employment history.

**6. The Audit Committee Defendants**

42. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 42, except respectfully refer the Court to the IPO Registration Statement and Refco's public filings for a description of Ronald L. O'Kelley ("O'Kelley") and his employment history.

43. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 43, except respectfully refer the Court to the IPO Registration Statement and Refco's public filings for a description of Leo R. Breitman ("Breitman") and his employment history.

44. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 44, except respectfully refer the Court to the IPO Registration Statement and Refco's public filings for a description of Nathan Gantcher ("Gantcher") and his employment history.

45. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 45, except respectfully refer the Court to Refco's public filings for a description of the scope and function of its Audit Committee.

**7. The Defendants Affiliated with Thomas H. Lee Partners**

46. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 46(a), 46(b), and 46(c) of the Complaint, except admit on information and belief that certain affiliates of Thomas H. Lee Partners held equity interests in Refco, and respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of the THL Partner Defendants and their involvement with Refco.

47. Because Paragraph 47 contains no factual allegations, no responsive pleading is required.

48. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 48, except respectfully refer the Court to the IPO Registration Statement for a description of the THL Partner Defendants' ownership interest in Refco before and after the IPO.

49. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 49, except respectfully refer the Court to (i) the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of Lee's employment history, involvement with Refco, and responsibility for the IPO Registration Statement, and (ii) other publicly available filings for a more general description of Lee.

50. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 50, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of David V. Harkins ("Harkins"), his employment history, and his responsibility for Refco's filings.

51. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 51, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of Scott L. Jaeckel ("Jaeckel"), his employment history, and his responsibility for Refco's filings.

52. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 52, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of Scott A. Schoen (“Schoen”), his employment history, and his responsibility for Refco’s filings.

53. Because Paragraph 53 contains no factual allegation, no responsive pleading is required.

#### **8. Grant Thornton**

54. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 54, except admit on information and belief that Grant Thornton provided auditing and accounting services to Refco prior to and in connection with the Bond Offering and the August 2005 IPO, which included the issuance of clean and unqualified audit opinion letters on the Company’s financial statements for fiscal years 2003, 2004, and 2005, and that Grant Thornton’s unqualified audit opinion letters were also included in the Company’s fiscal year 2005 Annual Report on Form 10-K and Form 10-K/A, and respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of Grant Thornton and its relationship to Refco.

#### **9. The Underwriter Defendants**

55. The Answering Underwriter Defendants deny the allegations contained in Paragraph 55, except admit, upon information and belief, that Credit Suisse is an investment banking firm, and respectfully refer the Court to (i) the public website for Credit Suisse Securities (USA) LLC for a description of its corporate structure and business, and (ii) the

Offering Memorandum and the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

56. The Answering Underwriter Defendants deny the allegations contained in Paragraph 56, except admit, upon information and belief, that Banc of America Securities LLC (“BAS”) is an investment banking firm, and respectfully refer the Court to (i) the public website for BAS for a description of its corporate structure and business, and (ii) the Offering Memorandum and the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

57. The Answering Underwriter Defendants deny the allegations contained in Paragraph 57, except admit, upon information and belief, that Deutsche Bank Securities Inc. (“Deutsche Bank”) is an investment banking firm, and respectfully refer the Court to (i) the public website for Deutsche Bank for a description of its corporate structure and business, and (ii) the Offering Memorandum and the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

58. The Answering Underwriter Defendants deny the allegations contained in Paragraph 58, except that Goldman, Sachs & Co. (“Goldman Sachs”) admits that it is an investment banking firm, and the remaining Answering Underwriter Defendants admit, upon information and belief, that Goldman Sachs is an investment banking firm, and respectfully refer the Court to (i) the public website for Goldman Sachs for a description of its corporate structure and business, and (ii) the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

59. The Answering Underwriter Defendants deny the allegations contained in Paragraph 59, except that Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”)

admits that it is an investment banking firm, and the remaining Answering Underwriter Defendants admit, upon information and belief, that Merrill Lynch is an investment banking firm, and respectfully refer the Court to (i) the public website for Merrill Lynch for a description of its corporate structure and business, and (ii) the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

60. The Answering Underwriter Defendants deny the allegations contained in Paragraph 60, except that J.P. Morgan Securities, Inc. (“J.P. Morgan”) admits that it is an investment banking firm, and the remaining Answering Underwriter Defendants admit, upon information and belief, that J.P. Morgan is an investment banking firm, and respectfully refer the Court to (i) the public website for J.P. Morgan for a description of its corporate structure and business, and (ii) the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

61. The Answering Underwriter Defendants deny the allegations contained in Paragraph 61, except that Sandler O’Neill & Partners, L.P. (“Sandler O’Neill”) admits that it is an investment banking firm, and the remaining Answering Underwriter Defendants admit, upon information and belief, that Sandler O’Neill is an investment banking firm, and respectfully refer the Court to (i) the public website for Sandler O’Neill for a description of its corporate structure and business, and (ii) the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

62. The Answering Underwriter Defendants deny the allegations contained in Paragraph 62, except that HSBC Securities (USA) Inc. (“HSBC”) admits that it is an investment banking firm, and the remaining Answering Underwriter Defendants admit, upon information and belief, that HSBC is an investment banking firm, and respectfully refer the Court to (i) the

public website for HSBC for a description of its corporate structure and business, and (ii) the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

63. The Answering Underwriter Defendants deny the allegations contained in Paragraph 63, except that William Blair & Company, L.L.C. (“William Blair”) admits that it is an investment banking firm, and the remaining Answering Underwriter Defendants admit, upon information and belief, that William Blair is an investment banking firm, and respectfully refer the Court to (i) the public website for William Blair for a description of its corporate structure and business, and (ii) the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

64. The Answering Underwriter Defendants deny the allegations contained in Paragraph 64, except that Harris Nesbitt Corp. (“Harris Nesbitt”) admits that it is an investment banking firm, and the remaining Answering Underwriter Defendants admit, upon information and belief, that Harris Nesbitt is an investment banking firm, and respectfully refer the Court to (i) the public website for Harris Nesbitt for a description of its corporate structure and business, and (ii) the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

65. The Answering Underwriter Defendants deny the allegations contained in Paragraph 65, except that CMG Institutional Trading LLC (“CMG”) admits that it is an investment banking firm, and the remaining Answering Underwriter Defendants admit, upon information and belief, that CMG is an investment banking firm, and respectfully refer the Court to (i) the public website for CMG for a description of its corporate structure and business, and (ii) the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

66. The Answering Underwriter Defendants deny the allegations contained in Paragraph 66, except that Samuel A. Ramirez & Company, Inc. (“Ramirez & Co.”) admits that it is an investment banking firm, and the remaining Answering Underwriter Defendants admit, upon information and belief, that Ramirez & Co. is an investment banking firm, and respectfully refer the Court to (i) the public website for Ramirez & Co. for a description of its corporate structure and business, and (ii) the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

67. The Answering Underwriter Defendants deny the allegations contained in Paragraph 67, except that Muriel Siebert & Co. Inc. (“Seibert & Co.”) admits that it is an investment banking firm, and the remaining Answering Underwriter Defendants admit, upon information and belief, that Seibert & Co. is an investment banking firm, and respectfully refer the Court to (i) the public website for Seibert & Co. for a description of its corporate structure and business, and (ii) the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

68. The Answering Underwriter Defendants deny the allegations contained in Paragraph 68, except that The Williams Capital Group, L.P. (“Williams Capital”) admits that it is an investment banking firm, and the remaining Answering Underwriter Defendants admit, upon information and belief, that Williams Capital is an investment banking firm, and respectfully refer the Court to (i) the public website for Williams Capital for a description of its corporate structure and business, and (ii) the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

69. The Answering Underwriter Defendants deny the allegations contained in Paragraph 69, except that Utendahl Capital Partners, L.P. (“Utendahl”) admits that it is an

investment banking firm, and the remaining Answering Underwriter Defendants admit, upon information and belief, that Utendahl is an investment banking firm, and respectfully refer the Court to (i) the public website for Utendahl for a description of its corporate structure and business, and (ii) the IPO Registration Statement for a description of the underwriting arrangements relating thereto.

70. Because Paragraph 70 contains no factual allegations, no responsive pleading is required.

71. Because Paragraph 71 contains no factual allegations, no responsive pleading is required.

**10. Defendant BAWAG**

72. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 72, except admit, upon information and belief, that Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft (“BAWAG”), is a banking and financial services corporation and respectfully refer the Court to the public website for BAWAG for a description of its corporate structure and business.

73. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 73, except respectfully refer the Court to the IPO Registration Statement for a description of BAWAG’s equity interest in the Refco Group.

74. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 74.

75. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 75.

76. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 76.

77. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 77, except admit, upon information and belief, that on or about November 15, 2005, BAWAG filed an adversary complaint in connection with Refco's bankruptcy proceedings and that on or about April 21, 2006, Refco's Official Committee of Unsecured Creditors filed counterclaims against BAWAG.

#### **IV. CLASS ALLEGATIONS**

78. To the extent that Paragraph 78 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 78, except admit that Plaintiffs purport to bring this action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

79. To the extent that Paragraph 79 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 79, except admit that Refco conducted an IPO in August 2005.

80. To the extent that Paragraph 80 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 80.

81. To the extent that Paragraph 81 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 81.

82. To the extent that Paragraph 82 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 82.

83. To the extent that Paragraph 83 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 83.

84. To the extent that Paragraph 84 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 84.

85. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 85.

**V. FACTUAL ALLEGATIONS PERTINENT TO CLAIMS FOR RELIEF UNDER THE SECURITIES ACT**

**A. Historical Background Regarding the Company**

86. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 86, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of Refco and its business at the time of the offerings.

87. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 87, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of Refco and its business at the time of the offerings.

88. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 88, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of Refco and its business at the time of the offerings.

89. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 89, except respectfully refer the Court to contemporaneous financial news reports for descriptions of the Asian financial crisis.

90. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 90, except respectfully refer the Court to contemporaneous financial news reports for discussions of the effect of the Asian financial crisis on U.S. equity and bond markets.

91. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 91.

92. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 92, except the Answering Underwriter Defendants deny the allegations contained in Paragraph 92 to the extent they suggest that the IPO Registration Statement was false and misleading.

**B. The THL Partner Defendants' Investment and the 2004 Recapitalization**

93. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 93, except respectfully refer the Court to Refco Group's public disclosures for a description of its investors.

94. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 94, except respectfully refer the Court to the Merger Agreement for a true and accurate description of its contents.

95. The Answering Underwriter Defendants deny the allegations contained in Paragraph 95, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of the recapitalization of Refco in 2004.

96. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 96.

97. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 97, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the Senior Credit Facility for a description of the arrangements relating to the senior credit facility.

98. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 98, except respectfully refer the Court to the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement for a description of the Senior Subordinated Notes and Refco's corporate structure at the time of such offering.

99. The Answering Underwriter Defendants deny the allegations contained in Paragraph 99, except respectfully refer the Court to the Bond Registration Statement and the IPO

Registration Statement for a description of Refco's corporate structure at the time of the offerings.

**C. The Bond Offering**

100. To the extent that Paragraph 100 of the Complaint states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 100, except respectfully refer the Court to the Offering Memorandum and the Bond Registration Statement for a description of the 144A private placement and the *Exxon Capital Exchange*.

101. To the extent that Paragraph 101 of the Complaint states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 101, except respectfully refer the Court to the Offering Memorandum and the Bond Registration Statement for a description of the 144A private placement and the *Exxon Capital Exchange*.

102. To the extent that Paragraph 102 of the Complaint states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 102, except respectfully refer the Court to the Offering Memorandum and the Bond Registration Statement for a description of the 144A private placement, the *Exxon Capital Exchange*, and a description of the underwriting arrangements relating thereto.

103. To the extent that Paragraph 103 of the Complaint states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 103, except respectfully refer the Court to the

Offering Memorandum and the Bond Registration Statement for a description of the terms of the 144A private placement and the *Exxon Capital* Exchange.

104. To the extent that Paragraph 104 of the Complaint states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 104, except respectfully refer the Court to the Registration Statement for the PIMCO High Yield Fund for a description of its investment objective and fundamental investment restrictions, and to the Offering Memorandum and the Bond Registration Statement for a description of the terms of the 144A private placement and the *Exxon Capital* Exchange.

**1. The Offering Memorandum**

105. To the extent that Paragraph 105 of the Complaint states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 105, except respectfully refer the Court to the Offering Memorandum for a description of the terms of the 144A private placement.

106. To the extent that Paragraph 106 of the Complaint states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 106, except respectfully refer the Court to the Offering Memorandum for a description of the terms of the 144A private placement.

107. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 107,

except respectfully refer the Court to the Offering Memorandum for information relating to the 144A private placement.

108. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 108 that the Offering Memorandum was false or misleading, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 108.

**(a) The Financial Statements in the Offering Memorandum Contained Untrue Statements of Material Facts**

109. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 109, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

110. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 110, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

111. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 111, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

112. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 112, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

113. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 113, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

114. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 114, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

115. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 115, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

116. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 116, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

117. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 117, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

118. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 118, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

119. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 119, except respectfully refer the Court to the public disclosures and the complaint referred to therein for the contents thereof.

120. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 120, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations involving the non-underwriter defendants.

121. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 121, except respectfully refer the Court to the Indictment referred to therein for the contents thereof.

122. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 122, except deny knowledge or information sufficient to form a belief as to the truth or falsity of such allegations as to the non-underwriter defendants, and respectfully refer the Court to the Offering Memorandum for the contents thereof.

**(b) The Description of Customer Receivables and Related-Party Transactions in the Offering Memorandum Contained Untrue Statements and Omissions of Material Fact**

123. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 123, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

124. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 124, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

125. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 125, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

126. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 126, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

**(c) The Offering Memorandum Misrepresented the Reasons for the Company's Purported Success**

127. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 127, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

128. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 128, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

129. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 129, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

**(d) The Offering Memorandum Misrepresented  
the Company's Ability to Access the Cash It  
Needed to Service Its Debt**

130. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 130, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

131. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 131, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

132. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 132, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

133. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 133.

134. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 134, except deny knowledge or information sufficient to form a belief

as to the truth or falsity of the allegations involving the non-underwriter defendants, and respectfully refer the Court to the Offering Memorandum for the contents thereof.

135. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 135.

**(e) The Offering Memorandum Misrepresented That the Company Had Taken Adequate Steps to Protect Itself From the Risk of Customer Defaults**

136. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 136, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

137. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 137, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

138. The Answering Underwriter Defendants deny on information and belief the allegations of Paragraph 138, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

139. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 139, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

**(f) The Offering Memorandum Misrepresented That the Company Maintained Excess Regulatory Capital**

140. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 140, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

141. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 141, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

142. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 142, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

**(g) The Offering Memorandum Failed to Disclose  
BAWAG's Full Ownership Interest in Refco Group**

143. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 143, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

**2. The Bond Road Show**

144. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 144.

145. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 145, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

146. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 146, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

147. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 147, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

148. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 148, except respectfully refer the Court to the Offering Memorandum for the contents thereof.

**3. The Bond Registration Statement**

149. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 149, except respectfully refer the Court to the Bond Registration Statement and its amendments for the contents thereof.

150. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 150, except respectfully refer the Court to the Bond Registration Statement and its amendments for the contents thereof.

151. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 151, except respectfully refer the Court to the Bond Registration Statement and its amendments for the contents thereof.

152. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 152, except respectfully refer the Court to the Bond Registration Statement and its amendments for the contents thereof.

153. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 153, except respectfully refer the Court to the Bond Registration Statement and its amendments for the contents thereof.

154. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 154, except respectfully refer the Court to the Bond Registration Statement and its amendments for the contents thereof.

155. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 155, except respectfully refer the Court to the Bond Registration Statement and its amendments for the contents thereof.

156. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 156, except respectfully refer the Court to the Bond Registration Statement and its amendments for the contents thereof.

157. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 157, except respectfully refer the Court to the Bond Registration Statement and its amendments for the contents thereof.

158. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 158, except respectfully refer the Court to the Bond Registration Statement and its amendments for the contents thereof.

159. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 159, admit, upon information and belief, that the Bond Registration Statement contained an audit report from Grant Thornton dated October 8, 2004, and respectfully refer the Court to the Bond Registration Statement for the contents thereof.

160. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 160, except respectfully refer the Court to the Offering Memorandum and the Bond Registration Statement for the contents thereof.

161. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 161, except respectfully refer the Court to the Offering Memorandum and the Bond Registration Statement for the contents thereof.

162. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 162, except respectfully refer the Court to the Offering Memorandum and the Bond Registration Statement for the contents thereof.

163. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 163, except respectfully refer the Court to the Offering Memorandum and the Bond Registration Statement for the contents thereof.

164. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 164, except respectfully refer the Court to the Offering Memorandum and the Bond Registration Statement for the contents thereof.

165. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 165, except respectfully refer the Court to the Offering Memorandum and the Bond Registration Statement for the contents thereof.

**D. The August 2005 Initial Public Offering**

166. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 166, except admit that Refco offered shares through the IPO

in or about August 2005, and respectfully refer the Court to the IPO Registration Statement for a description of the offering, including the underwriting agreements.

167. The Answering Underwriter Defendants deny the allegations of Paragraph 167, except respectfully refer the Court to the IPO Registration Statement for a description of Refco and its affiliates as of the date of the IPO.

**1. The IPO Registration Statement**

168. The Answering Underwriter Defendants deny the allegations contained in Paragraph 168, except admit that Refco offered stock pursuant to the IPO Registration Statement, and respectfully refer the Court to the IPO Registration Statement for a description of the IPO.

169. The Answering Underwriter Defendants admit on information and belief the allegations contained in Paragraph 169.

170. The Answering Underwriter Defendants deny the allegations contained in Paragraph 170, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

171. The Answering Underwriter Defendants deny the allegations contained in Paragraph 171.

**(a) The Financial Statements in the IPO Registration Statement Contained Untrue Statements of Material Facts**

172. The Answering Underwriter Defendants deny the allegations contained in Paragraph 172, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

173. The Answering Underwriter Defendants deny the allegations contained in Paragraph 173, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

174. The Answering Underwriter Defendants deny the allegations contained in Paragraph 174, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

175. The Answering Underwriter Defendants deny the allegations contained in Paragraph 175, except admit that Grant Thornton provided audit opinions incorporated in to the IPO Registration Statement and respectfully refer the Court to the Grant Thornton letters and the IPO Registration Statement for the contents thereof.

176. The Answering Underwriter Defendants deny the allegations contained in Paragraph 176, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

177. The Answering Underwriter Defendants deny the allegations contained in Paragraph 177, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

178. The Answering Underwriter Defendants deny the allegations contained in Paragraph 178, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

179. The Answering Underwriter Defendants deny the allegations contained in Paragraph 179, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

180. The Answering Underwriter Defendants deny the allegations contained in Paragraph 180, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

181. The Answering Underwriter Defendants deny the allegations contained in Paragraph 181, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

182. The Answering Underwriter Defendants deny the allegations contained in Paragraph 182, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

183. The Answering Underwriter Defendants deny the allegations contained in Paragraph 183, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

184. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 184, except deny such allegations in Paragraph 184 to the extent they suggest that the IPO Registration Statement was false and misleading.

185. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 185, except deny such allegations in Paragraph 185 to the extent they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to the indictment of Bennett for the contents thereof.

186. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 186,

except deny such allegations to the extent they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to the Grant Thornton audit opinions and the IPO Registration Statement for the contents thereof.

**(b) Description of Customer Receivables and Related-Party Transactions in the IPO Registration Statement Contained Untrue Statements and Omissions of Material Fact**

187. The Answering Underwriter Defendants deny the allegations contained in Paragraph 187, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

188. The Answering Underwriter Defendants deny the allegations contained in Paragraph 188, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

189. The Answering Underwriter Defendants deny the allegations contained in Paragraph 189, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

190. The Answering Underwriter Defendants deny the allegations contained in Paragraph 190, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

**(c) The IPO Registration Statement Misrepresented That the Company Had Taken Adequate Steps to Protect Itself From the Risk of Customer Defaults**

191. The Answering Underwriter Defendants deny the allegations contained in Paragraph 191, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

192. The Answering Underwriter Defendants deny the allegations contained in Paragraph 192, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

193. The Answering Underwriter Defendants deny the allegations contained in Paragraph 193, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

**(d) The IPO Registration Statement Misrepresented That The Company Maintained Excess Regulatory Capital**

194. The Answering Underwriter Defendants deny the allegations contained in Paragraph 194, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

195. The Answering Underwriter Defendants deny the allegations contained in Paragraph 195, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

196. The Answering Underwriter Defendants deny the allegations contained in Paragraph 196, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

197. The Answering Underwriter Defendants deny the allegations contained in Paragraph 197, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

**(e) The IPO Registration Statement Failed to Disclose BAWAG's Full Ownership Interest in Refco Group.**

198. The Answering Underwriter Defendants deny the allegations contained in Paragraph 198, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

**E. The Truth Begins to Emerge and the Company Collapses**

199. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 199, except deny such allegations to the extent they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to Refco's October 10, 2005 Press Release for the contents thereof.

200. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 200, except deny such allegations to the extent they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to Refco's October 10, 2005 Press Release for the contents thereof.

201. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 201, except deny such allegations to the extent they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to Refco's October 10, 2005 Press Release for the contents thereof.

202. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 202, except deny such allegations to the extent they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to publicly reported market services for the trading price of Refco's securities.

203. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 203, except deny such allegations to the extent they suggest that the IPO Registration Statement was

false and misleading, and respectfully refer the Court to Refco's October 10, 2005 Press Release for the contents thereof.

204. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 204, except deny such allegations to the extent they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to Refco's October 10, 2005 Press Release for the contents thereof.

205. The Answering Underwriter Defendants deny the allegations contained in Paragraph 205, except respectfully refer the Court to the SEC announcement of October 11, 2005, Refco's press release of October 11, 2005, and publicly reported market services for the trading price of Refco's securities.

206. The Answering Underwriter Defendants deny the allegations contained in Paragraph 206, except respectfully refer the Court to the "news" referred to therein, as well as publicly reported market services for the trading price of Refco's securities.

207. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 207, except deny such allegations to the extent they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to Refco's October 10, 2005 Press Release for the contents thereof.

208. The Answering Underwriter Defendants deny the allegations contained in Paragraph 208, except respectfully refer the Court to the public statements of the NYSE and publicly reported market services for the price of Refco's securities.

209. The Answering Underwriter Defendants deny the allegations contained in Paragraph 209, except respectfully refer the Court to market services for the trading price of Refco's securities and to Refco's public announcement of October 17, 2005, and Refco's bankruptcy filing for the contents thereof.

210. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 210.

211. To the extent that Paragraph 211 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 211.

#### **VI. THE COMPANY'S VIOLATIONS OF GAAP**

212. To the extent that the allegations contained in Paragraph 212 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 212, except respectfully refer the Court to statements of the organizations identified in Paragraph 212 and the GAAP accounting principles for the contents thereof.

213. To the extent that the allegations contained in Paragraph 213 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 213, except respectfully refer the Court to 17 C.F.R. § 210.4-01(a)(1) for the contents thereof.

214. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 214, except deny that the IPO Registration Statement was false and misleading.

215. To the extent that the allegations contained in Paragraph 215 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the

Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 215, except deny that the IPO Registration Statement was false and misleading, and respectfully refer the Court to SFAS No. 57 for the contents thereof.

216. To the extent that the allegations contained in Paragraph 216 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 216, except deny that the IPO Registration Statement was false and misleading, and respectfully refer the Court to SFAS No. 57 for the contents thereof.

217. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 217, except deny that the IPO Registration Statement was false and misleading.

218. To the extent that Paragraph 218 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 218, except deny that the IPO Registration Statement was false and misleading.

219. To the extent that the allegations contained in Paragraph 219 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 219, except deny that the IPO Registration Statement was false and misleading.

220. To the extent that the allegations contained in Paragraph 220 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 220, except deny that the IPO Registration Statement was false and misleading, and respectfully refer the Court to SFAS No. 5 for the contents thereof.

221. To the extent that the allegations contained in Paragraph 221 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 221, except deny that the IPO Registration Statement was false and misleading at the time of the IPO, and respectfully refer the Court to FIN No. 45 for the contents thereof.

222. To the extent that the allegations contained in Paragraph 222 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 222, except deny that the IPO Registration Statement was false and misleading, and respectfully refer the Court to APB Opinion No. 22 for the contents thereof.

223. The Answering Underwriter Defendants deny the allegations contained in Paragraph 223, and respectfully refer the Court to Refco's SEC filings for the contents thereof.

224. To the extent that the allegations contained in Paragraph 224 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as

to the truth or falsity of the allegations contained in Paragraph 224, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to FASCON Nos. 1, 2, and 6 for the contents thereof.

225. To the extent that the allegations contained in Paragraph 225 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 225, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading.

## **VII. GRANT THORNTON'S VIOLATIONS OF AUDITING STANDARDS**

206 (sic). To the extent that the allegations contained in Paragraph 206 purport to state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 206, except respectfully refer the Court to the Public Company Accounting Oversight Board and AU § 150 for the contents thereof.

226. To the extent that the allegations contained in Paragraph 226 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 226, except respectfully refer the Court to the GAAS provisions for the contents thereof.

### **A. Violations of General Standards**

227. To the extent that the allegations contained in Paragraph 227 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 227, except deny such allegations

to the extent that they suggest that the IPO Registration Statement was false and misleading, admit, upon information and belief, that Grant Thornton audited Refco's financial statements for the three years ending February 28, 2003, February 29, 2004, and February 28, 2005, and respectfully refer the Court to GAAS No. 3 for the contents thereof.

228. To the extent that the allegations contained in Paragraph 228 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 228, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading, admit on information and belief that Grant Thornton partner Mark Ramler, formerly of Arthur Anderson, was the lead audit partner on the Refco engagement, and respectfully refer the Court to GAAS No. 2 for the contents thereof.

**B. Violations of Standards of Fieldwork**

229. To the extent that the allegations contained in Paragraph 229 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 229, except respectfully refer the Court to GAAS Standard of Fieldwork No. 1 for the contents thereof.

230. To the extent that the allegations contained in Paragraph 230 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 230, except respectfully refer the Court to GAAS provisions SFAS § 57 and AU § 334 for the contents thereof.

231. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 231,

except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading.

232. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 232 except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading.

233. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 233, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading.

234. To the extent that the allegations contained in Paragraph 234 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 234, except respectfully refer the Court to AU § 312 and GAAS Standard of Fieldwork No. 2 for the contents thereof.

235. To the extent that the allegations contained in Paragraph 235 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 235, except respectfully refer the Court to AU § 312 and GAAS Standard of Fieldwork No. 2 for the contents thereof.

236. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 236, except deny such allegations to the extent that they suggest that the IPO Registration Statement

was false and misleading, admit on information and belief that Grant Thornton identified and reported certain significant deficiencies in Refco's internal controls for the year ending February 28, 2005 and that these deficiencies were disclosed in the Company's Form S1/A filed on July 25, 2005, and respectfully refer the Court to the Grant Thornton audit report and Company's Form S1/A for the contents thereof.

237. To the extent that the allegations contained in Paragraph 237 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 237, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to AU § 316 for the contents thereof.

238. To the extent that the allegations contained in Paragraph 238 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 238, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to GAAS Standard of Fieldwork No. 3 and AU § 326 for the contents thereof.

239. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 239, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading.

240. To the extent that the allegations contained in Paragraph 240 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 240, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to AU § 342 for the contents thereof.

241. The Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 241, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading.

242. To the extent that the allegations contained in Paragraph 242 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 242, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading.

**C. Violations of Reporting Standards**

243. To the extent that the allegations contained in Paragraph 243 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 243, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to GAAS Standard of Reporting No. 1 for the contents thereof.

244. To the extent that the allegations contained in Paragraph 244 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the

Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 244, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to GAAS Standard of Reporting No. 4 and AU § 508 for the contents thereof.

245. To the extent that the allegations contained in Paragraph 245 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 245, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading.

246. To the extent that the allegations contained in Paragraph 246 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 246, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to GAAS Standard of Reporting No. 3 for the contents thereof.

247. To the extent that Paragraph 247 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 247, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading.

**D. Violations of CFTC Rules and Regulations**

248. To the extent that the allegations contained in Paragraph 248 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the

Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 248, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading, and respectfully refer the Court to the CFTC rules and regulations for the contents thereof.

### **VIII. DEFENDANTS' NEGLIGENCE**

#### **A. The Offering Memorandum and the Bond Registration Statement**

249. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 249.

250. The Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 250, except respectfully refer the Court to the Offering Memorandum and the Bond Registration Statement for the contents thereof.

251. To the extent that the allegations contained in Paragraph 251 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny on information and belief the allegations contained in Paragraph 251, except respectfully refer the Court to the entire *WorldCom* decision for the contents thereof.

252. The allegations contained in Paragraph 252 are not directed at the Answering Underwriter Defendants and therefore the Answering Underwriter Defendants are not required to answer such allegations.

253. To the extent that the allegations contained in Paragraph 253 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 253, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading.

**B. The IPO Registration Statement**

254. The Answering Underwriter Defendants deny the allegations contained in Paragraph 254.

255. To the extent that the allegations contained in Paragraph 255 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 255, except respectfully refer the Court to the entire *WorldCom* decision for the contents thereof.

256. The Answering Underwriter Defendants deny the allegations contained in Paragraph 256, except respectfully refer the Court to the IPO Registration Statement for the contents thereof.

257. The allegations contained in Paragraph 257 are not directed at the Answering Underwriter Defendants and therefore the Answering Underwriter Defendants are not required to answer such allegations.

258. To the extent that the allegations contained in Paragraph 258 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 258, except deny such allegations to the extent that they suggest that the IPO Registration Statement was false and misleading.

**IX. ALLEGATIONS PERTAINING TO CONTROL PERSON LIABILITY**

259. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein. The remaining allegations contained in Paragraph 259 are not directed at the Answering Underwriter Defendants, who are not alleged to be control persons, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

260-269. The allegations contained in Paragraphs 260-269 are not directed at the Answering Underwriter Defendants, who are not alleged to be control persons, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

**CLAIMS FOR RELIEF UNDER THE SECURITIES ACT**

**COUNT ONE**

**For Violations of Section 12(a)(2) of the Securities Act,  
On Behalf of Those Who Purchased or Otherwise  
Acquired 144A Bonds in the Bond Offering,  
Against Bennett, Trosten, Jaeckel, the THL Partner Defendants,  
and the Bond Underwriter Defendants**

270. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein. The remaining allegations contained in Paragraph 270 are not directed at the Answering Underwriter Defendants, who are not alleged to be underwriters in the 144A private placement, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

271-283. The allegations contained in Paragraphs 271-283 are not directed at the Answering Underwriter Defendants, who are not alleged to be underwriters for the 144A private placement, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

**COUNT TWO**

**Control Person Liability Pursuant to Section 15 of the Securities Act,  
On Behalf of Purchasers of 144A Bonds in the Bond Offering,  
Against the THL Partner Defendants, Lee, Bennett,  
Refco Holdings, Grant, Murphy, Trosten, Sexton, Silverman, Maggio and BAWAG  
(Based on Violations of Section 12(a)(2) of the Securities Act  
by Refco Group, Refco Finance Holdings, and Refco Finance)**

284. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein. The remaining

allegations contained in Paragraph 284 are not directed at the Answering Underwriter Defendants, who are not alleged to be control persons, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

285-298. The allegations contained in Paragraphs 285-298 are not directed at the Answering Underwriter Defendants, who are not alleged to be control persons, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

### **COUNT THREE**

#### **For Violations of Section 11 of the Securities Act, On Behalf of Purchasers of Registered Bonds, Against the Section 11 Bond Defendants**

299. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein. The remaining allegations contained in Paragraph 299 are not directed at the Answering Underwriter Defendants, who are not alleged to be underwriters in the 144A private placement or the *Exxon Exchange*, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

300-312. The allegations contained in Paragraphs 300-312 are not directed at the Answering Underwriter Defendants, who are not alleged to be underwriters for the 144A private placement or the *Exxon Exchange*, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

### **COUNT FOUR**

#### **Control Person Liability Pursuant to Section 15 of the Securities Act, On Behalf of the Section 11 Bond Plaintiffs, Against the THL Defendants, Bennett, Refco Holdings, the Bennett Trust, Murphy, Sherer, Sexton, Maggio, Klejna, O'Kelley, Gantcher, Breitman and BAWAG (Based on Violation of Section 11 of the Securities Act by Refco Group)**

313. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein. The remaining allegations contained in Paragraph 313 are not directed at the Answering Underwriter Defendants, who are not alleged to be control persons, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

314-328. The allegations contained in Paragraphs 314-328 are not directed at the Answering Underwriter Defendants, who are not alleged to be control persons, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

#### **COUNT FIVE**

#### **For Violations of Section 11 of the Securities Act, On Behalf of Purchasers of Refco Common Stock, Against the Section 11 Stock Defendants**

329. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein, except admit that Plaintiffs purport to describe their Claim therein.

330. The Answering Underwriter Defendants deny the allegations of Paragraph 330, except admit that Plaintiffs purport to bring Count Five as described therein.

331. To the extent that the allegations contained in Paragraph 331 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 331, except admit that Refco issued common stock pursuant to the IPO Registration Statement.

332. To the extent that the allegations contained in Paragraph 332 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 332.

333. The allegations contained in Paragraph 333 are not directed at the Answering Underwriter Defendants and therefore the Answering Underwriter Defendants are not required to answer such allegations.

334. The Answering Underwriter Defendants admit on information and belief the allegations contained in Paragraph 334.

335. The Answering Underwriter Defendants admit on information and belief the allegations contained in Paragraph 335.

336. The Answering Underwriter Defendants deny the allegations contained in Paragraph 336, except admit, upon information and belief, that Grant Thornton was the auditor for Refco Group and its subsidiaries and respectfully refer the Court to Grant Thornton's audit opinions and consents and the IPO Registration Statement for the contents thereof.

337. To the extent that the allegations contained in Paragraph 337 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 337, except admit that they acted as underwriters in connection with the August 2005 IPO and respectfully refer the Court to the IPO Registration Statement for the contents of the underwriting arrangements.

338. Paragraph 338 states a legal conclusion as to which no responsive pleading is required.

339. To the extent that the allegations contained in Paragraph 339 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 339.

340. To the extent that the allegations contained in Paragraph 340 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 340.

341. To the extent that the allegations contained in Paragraph 341 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 341.

### **COUNT SIX**

**Control Person Liability Pursuant to Section 15 of the Securities Act,  
On Behalf of Purchasers of Refco Common Stock  
Against The Section 15 Stock Defendants  
(Based on Violations of Section 11 of the Securities Act  
by Refco)**

342. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein. The remaining allegations contained in Paragraph 342 are not directed at the Answering Underwriter Defendants, who are not alleged to be control persons, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

343-360. Count Six is not asserted against the Answering Underwriter Defendants and, therefore, no response is required to Paragraphs 343-360.

### **COUNT SEVEN**

**For Violations of Section 12(a)(2) of the Securities Act,  
On Behalf of Those Who Purchased or Otherwise Acquired  
Refco Common Stock in the August 2005 IPO,  
Against the Stock Underwriter Defendants**

361. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein, except admit that Plaintiffs purport to describe their Claim therein.

362. The Answering Underwriter Defendants deny the allegations of Paragraph 362, except admit that Plaintiffs purport to bring Count Seven as described therein.

363. To the extent that the allegations contained in Paragraph 363 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 363, except admit that the Answering Underwriter Defendants acted as underwriters of Refco stock in connection with the August 2005 IPO and respectfully refer the Court to the IPO Registration Statement for the contents thereof.

364. Paragraph 364 states a legal conclusion as to which no responsive pleading is required.

365. To the extent that the allegations contained in Paragraph 365 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 365.

366. To the extent that the allegations contained in Paragraph 366 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 366.

367. To the extent that the allegations contained in Paragraph 367 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Answering Underwriter Defendants deny the allegations contained in Paragraph 367.

368. Paragraph 368 states a legal conclusion as to which no responsive pleading is required.

**COUNT EIGHT**

**Control Person Liability Pursuant to Section 15 of the Securities Act,  
On Behalf of Purchasers of Refco Common Stock  
Against the Section 15 Stock Defendants  
(Based on Violations of Section 12(a)(2) of the Securities Act  
by Refco)**

369. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein. The remaining allegations contained in Paragraph 369 are not directed at the Answering Underwriter Defendants, who are not alleged to be control persons, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

370-379. The Answering Underwriter Defendants deny that Plaintiffs are entitled to the relief requested in Paragraph 368 as to the Answering Underwriter Defendants, deny that Plaintiffs have suffered any damages as a consequence of any acts of the Answering Underwriter Defendants alleged in the Complaint, and deny that the Answering Underwriter Defendants have any liability thereunder.

380-636. The allegations contained in Paragraphs 380-636 are not directed at the Answering Underwriter Defendants, as to whom the Complaint disclaims any claim of fraud or intentional misconduct, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

**CLAIMS FOR RELIEF UNDER THE EXCHANGE ACT**

**COUNT NINE**

**For Violations of Section 10(b) of the Exchange Act and  
Rule 10b-5(b) Promulgated Thereunder,  
On Behalf of Plaintiffs and All Members of the Class,  
Against the Officer Defendants, the Audit Committee Defendants, Trosten, and Grant  
Thornton**

637. The Answering Underwriter Defendants repeat and reallege each and every

response set forth in the foregoing Paragraphs as if fully set forth herein. The remaining allegations contained in Paragraph 637 are not directed at the Answering Underwriter Defendants, as to whom the Complaint disclaims any claim of fraud or intentional misconduct, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

638-645. The allegations contained in Paragraphs 638-645 are not directed at the Answering Underwriter Defendants, as to whom the Complaint disclaims any claim of fraud or intentional misconduct, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

#### **COUNT TEN**

#### **For Violations of Section 10(b) of the Exchange Act, and Rule 10b-5(a) and (c) Promulgated Thereunder, On Behalf of Lead Plaintiffs and All Members of the Class, Against Refco Holdings**

646. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein. The remaining allegations contained in Paragraph 646 are not directed at the Answering Underwriter Defendants, as to whom the Complaint disclaims any claim of fraud or intentional misconduct, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

647-653. The allegations contained in Paragraphs 647-653 are not directed at the Answering Underwriter Defendants, as to whom the Complaint disclaims any claim of fraud or intentional misconduct, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

**COUNT ELEVEN**

**Control Person Liability Pursuant to Section 20(a) of the Exchange Act,  
On Behalf of Purchasers of 144A Bonds in the Bond Offering,  
Against Bennett, Grant, Refco Holdings, the THL Partner Defendants, Lee, Murphy,  
Trosten, Sexton, Silverman, Maggio and BAWAG  
(Based on Violations of Section 10(b) and Rule 10b-5 by Refco Group,  
Refco Finance Holdings, and Refco Finance)**

654. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein. The remaining allegations contained in Paragraph 654 are not directed at the Answering Underwriter Defendants, who are not alleged to be control persons, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

655-669. The allegations contained in Paragraphs 655-659 are not directed at the Answering Underwriter Defendants, who are not alleged to be control persons, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

**COUNT TWELVE**

**Control Person Liability Pursuant to Section 20(a) of the Exchange Act,  
On Behalf of Purchasers of Bonds After the Bond Offering and  
Before the Date of the August 2005 IPO, Against the  
THL Defendants and Defendants Bennett, Refco Holdings, the Bennett Trust,  
Murphy, Trosten, Sherer, Sexton, Silverman, Maggio, Klejna, O'Kelley,  
Gantcher, Breitman and BAWAG  
(Based on Violations of Section 10(b) and Rule 10b-5 By Refco Group)**

670. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein. The remaining allegations contained in Paragraph 670 are not directed at the Answering Underwriter Defendants, who are not alleged to be control persons, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

671-689. The allegations contained in Paragraphs 671-689 are not directed at the Answering Underwriter Defendants, who are not alleged to be control persons, and therefore the

Answering Underwriter Defendants are not required to answer such allegations.

**COUNT THIRTEEN**

**Control Person Liability Pursuant to Section 20(a) of the Exchange Act,  
On Behalf of Purchasers of Bonds and/or Refco Common Stock  
On and After the Date of the August 2005 IPO, Against the  
THL Defendants and Defendants Bennett, Refco Holdings, the  
Bennett Trust, Murphy, Sherer, Sexton, Silverman, Maggio, Klejna,  
O'Kelley, Gantcher, Breitman and BAWAG  
(Based on Violations of Section 10(b) and Rule 10b-5 By Refco)**

690. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein. The remaining allegations contained in Paragraph 690 are not directed at the Answering Underwriter Defendants, who are not alleged to be control persons, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

691-706. The allegations contained in Paragraphs 691-706 are not directed at the Answering Underwriter Defendants, who are not alleged to be control persons, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

**COUNT FOURTEEN**

**Pursuant to Section 20A of the Exchange Act,  
On Behalf of Purchasers of Refco Stock,  
Against Bennett, Thomas H. Lee Equity Fund V., L.P.,  
Thomas H. Lee Parallel Fund V, L.P.,  
Thomas H. Lee Equity (Cayman) Fund V, L.P.,  
Thomas H. Lee Investors Limited Partnership**

707. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein. The remaining allegations contained in Paragraph 707 are not directed at the Answering Underwriter Defendants, who are not alleged to be insiders of Refco, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

708-712. The allegations contained in Paragraphs 708-712 are not directed at the Answering Underwriter Defendants, who are not alleged to be insiders of Refco, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

#### **COUNT FIFTEEN**

#### **Pursuant to Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) Promulgated thereunder on behalf of all Class Members against BAWAG**

713. The Answering Underwriter Defendants repeat and reallege each and every response set forth in the foregoing Paragraphs as if fully set forth herein. The remaining allegations contained in Paragraph 713 are not directed at the Answering Underwriter Defendants, as to whom the Complaint disclaims any claim of fraud or intentional misconduct, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

714-720. The allegations contained in Paragraphs 714-720 are not directed at the Answering Underwriter Defendants, as to whom the Complaint disclaims any claim of fraud or intentional misconduct, and therefore the Answering Underwriter Defendants are not required to answer such allegations.

#### **JURY DEMAND**

721. The Answering Underwriter Defendants deny the allegations of Paragraph 721, except admit that Plaintiffs purport to demand a jury trial.

#### **PRAYER FOR RELIEF**

The Answering Underwriter Defendants deny that Plaintiffs are entitled to relief against the Answering Underwriter Defendants.

#### **FIRST AFFIRMATIVE DEFENSE**

1. The Complaint fails to state a claim upon which relief may be granted.

## **SECOND AFFIRMATIVE DEFENSE**

2. Plaintiffs have failed to plead their claims against the Answering Underwriter Defendants with particularity.

## **THIRD AFFIRMATIVE DEFENSE**

3. The Answering Underwriter Defendants are not liable to Plaintiffs because they did not make any false or misleading statements of material fact or omission of material fact, bespoke caution about the risks of investing in the Company, and the Answering Underwriter Defendants are not responsible in law or fact for any alleged false or misleading statement or omission of material fact by others.

## **FOURTH AFFIRMATIVE DEFENSE**

4. The Answering Underwriter Defendants are not liable to Plaintiffs because any alleged misstatements by the Answering Underwriter Defendants were forward-looking statements and/or contained sufficient cautionary language and risk disclosure.

## **FIFTH AFFIRMATIVE DEFENSE**

5. The Answering Underwriter Defendants are not liable to Plaintiffs because they had no duty to disclose any facts allegedly not disclosed.

## **SIXTH AFFIRMATIVE DEFENSE**

6. The Answering Underwriter Defendants are not liable to Plaintiffs because any alleged misrepresentations or omissions for which the Answering Underwriter Defendants are allegedly responsible were not material.

## **SEVENTH AFFIRMATIVE DEFENSE**

7. Plaintiffs and others alleged to be members of the putative class lack standing to maintain some or all of their claims. Specifically, Plaintiffs who did not purchase Refco

securities from the Answering Underwriter Defendants lack standing to assert claims against the Answering Underwriter Defendants.

#### **EIGHTH AFFIRMATIVE DEFENSE**

8. The Answering Underwriter Defendants acted at all times in good faith and had no knowledge, and were not reckless in not knowing, that any alleged statement or omission was false or misleading.

#### **NINTH AFFIRMATIVE DEFENSE**

9. The Answering Underwriter Defendants are not liable to Plaintiffs because they had, after reasonable and diligent investigation, reasonable grounds to believe, and did believe, at the time the Refco IPO Registration Statement became effective, that the statements in the Registration Statement and IPO Prospectus were true and that there were no misstatements of material fact or omissions of material fact that were necessary to make the statements therein not misleading.

#### **TENTH AFFIRMATIVE DEFENSE**

10. The Answering Underwriter Defendants are not liable to Plaintiffs to the extent that the acts or omissions alleged in the Complaint relate to portions of the IPO Registration Statement reviewed by experts retained to assist in preparing such documents, as to which the Answering Underwriter Defendants had no reasonable grounds to believe, and did not believe, that any statements contained therein were misleading.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

11. The Answering Underwriter Defendants are not liable to Plaintiffs because Plaintiffs' alleged losses were not actually or proximately caused by the Answering Underwriter Defendants.

#### **TWELFTH AFFIRMATIVE DEFENSE**

12. The conduct of persons and/or entities other than the Answering Underwriter Defendants was a superseding or intervening cause of any damage, loss, or injury sustained by Plaintiffs or the purported Class members.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

13. The Answering Underwriter Defendants are not liable to Plaintiffs to the extent that the alleged misstatements and omissions attributed to the Answering Underwriter Defendants in the Complaint were not made in connection with the purchase or sale of any securities by Plaintiffs.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

14. Plaintiffs' claims against the Answering Underwriter Defendants are barred in whole or in part because of the lack of loss causation. Plaintiffs have not suffered any injury or harm as a result of the actions of the Answering Underwriter Defendants alleged in the Complaint.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

15. Plaintiffs' claims against the Answering Underwriter Defendants are barred in whole, or in part, because the depreciation in the market price of Refco securities resulted from factors other than the misstatements or omissions alleged in the Complaint.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

16. Plaintiffs' claims against the Answering Underwriter Defendants are barred in whole or in part because of the lack of transaction causation.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

17. Other parties not named in the Complaint may be indispensable parties to this action.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

18. Plaintiffs' claims against the Answering Underwriter Defendants are barred in whole or in part because Plaintiffs did not reasonably rely on the issuer's relevant Registration Statements, Prospectuses, and Bond Offering documents, alleged in the Complaint to be materially false and misleading.

**NINETEENTH AFFIRMATIVE DEFENSE**

19. Plaintiffs' claims against the Answering Underwriter Defendants are barred in whole or in part by their own actions, omissions, and/or negligence.

**TWENTIETH AFFIRMATIVE DEFENSE**

20. Plaintiffs' claims against the Answering Underwriter Defendants are barred in whole or in part because of the contribution of or the comparative fault and contributory negligence of Plaintiffs or other entities or persons.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

21. Plaintiffs' claims against the Answering Underwriter Defendants are barred in whole or in part because the alleged damages or other injuries were caused solely by the acts or omissions of the Plaintiffs or others (including the non-underwriter defendants) over which the Answering Underwriter Defendants had no control.

**TWENTY- SECOND AFFIRMATIVE DEFENSE**

22. Plaintiffs' damages, if any, are due to the negligence, or other acts or omissions, of persons or entities other than the Answering Underwriter Defendants; however, in the event

that a finding is made that negligence exists on the part of Answering Underwriter Defendants, which proximately contributed to Plaintiffs' damages alleged in the Complaint, the Answering Underwriter Defendants' liability, if any, should be reduced, at least, by an amount proportionate to the amount by which the comparative negligence, or other acts or omissions, of such other persons or entities contributed to the happening of the incident and alleged damages upon which Plaintiffs seek recovery.

**TWENTY- THIRD AFFIRMATIVE DEFENSE**

23. If any false or misleading statement was made, or if any material fact required to be stated or necessary to make any statement made not misleading was omitted, which the Answering Underwriter Defendants deny, and if the Plaintiffs or any members of the putative class were aware of that statement or omission, then such Plaintiffs cannot prevail.

**TWENTY- FOURTH AFFIRMATIVE DEFENSE**

24. Plaintiffs' claims against the Answering Underwriter Defendants are barred in whole or in part by laches, equitable estoppel, waiver, or other related equitable doctrine.

**TWENTY- FIFTH AFFIRMATIVE DEFENSE**

25. Plaintiffs' claims against the Answering Underwriter Defendants are barred in whole or in part because of Plaintiffs' inequitable conduct and unclean hands.

**TWENTY- SIXTH AFFIRMATIVE DEFENSE**

26. The Answering Underwriter Defendants adopt by reference any applicable defense pled by any other defendant not expressly set forth herein.

**TWENTY- SEVENTH AFFIRMATIVE DEFENSE**

27. The Answering Underwriter Defendants reserve the right to assert such other additional defenses as may be appropriate at a later time.

Dated: New York, New York  
July 24, 2006

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 24, 2006, I caused to be served, by UPS, a true and correct copy of the Answer and Affirmative Defenses of Certain Underwriter Defendants to Lead Plaintiffs' First Amended Consolidated Class Action Complaint on the individuals listed below:

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Dated: July 24, 2006  
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