

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re REFCO, INC. SECURITIES LITIGATION : 05 Civ. 8626 (GEL)  
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**LEAD PLAINTIFFS' NOTICE OF MOTION TO MODIFY  
THE PSLRA DISCOVERY STAY FOR THE LIMITED  
PURPOSE OF SERVICE OF A SUBPOENA ON REFCO'S  
TRANSFER AGENT FOR SETTLEMENT ADMINISTRATION PURPOSES**

TO: All counsel of record

PLEASE TAKE NOTICE that upon the accompanying Declaration of John C. Browne dated September 27, 2006; the accompanying Memorandum of Law; and all other papers and proceedings herein, Lead Plaintiffs will move this Court, at a place and time to be set by the Court, at the United States Courthouse at 500 Pearl Street, New York, New York, for an Order modifying the stay of discovery set forth in Section 21D(b)(3)(B) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(b)(3)(B), for the limited purpose of permitting Lead Plaintiffs to serve a subpoena in the form attached hereto as Exhibit A, directing the production of documents, in electronic form, by the transfer agent of Refco, Inc., the Bank of New York ("BONY"), sufficient to identify the names and addresses of all natural persons or business, legal or governmental entities or associations who or which owned 9% Senior Subordinated Notes due 2012 and/or the common stock of Refco, Inc., its predecessors and affiliates (including, but not limited to, Refco Group Ltd., LLC, Refco Finance Holdings LLC and Refco Finance Inc.) (collectively "Refco"), during the period from August 5, 2004 through October 17, 2005.

DATED: September 27, 2006

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

**GRANT & EISENHOFER P.A.**

By /s/ John P. Coffey  
Max W. Berger (MB-5010)  
John P. Coffey (JC-3832)  
Salvatore J. Graziano (SG-6854)  
John C. Browne (JB-0391)  
Jeremy P. Robinson  
1285 Avenue of the Americas  
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By /s/ Stuart M. Grant  
Stuart M. Grant (SG-8157)  
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- and -

Megan D. McIntyre  
Jeff A. Almeida  
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Wilmington, DE 19801  
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*Co-Lead Counsel for Lead Plaintiffs Pacific Investment  
Management Company, LLC and RH Capital LLC and the Prospective Class*

## **EXHIBIT A**

Issued by the  
UNITED STATES DISTRICT COURT

Southern

DISTRICT OF

New York

In re Refco, Inc Securities Litigation

V.

SUBPOENA IN A CIVIL CASE

CASE NUMBER: <sup>1</sup> 05 Civ. 8626 (GEL)

TO: Alexander Shapiro  
The Bank of New York  
101 Barclay Street  
New York NY 10286

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see Schedule A (attached).

PLACE Bernstein Litowitz Berger & Grossmann LLP, 1285 Avenue of the Americas, 38th Floor, New York, NY 10019	DATE AND TIME
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

**PROOF OF SERVICE**

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

**Rule 45, Federal Rules of Civil Procedure, Parts C & D:**

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance,
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that,

subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

## **SCHEDULE A**

Documents sufficient to identify the names and addresses of all natural persons or business, legal or governmental entities or associations who or which owned 9% Senior Subordinated Notes due 2012 and/or the common stock of Refco Inc., its predecessors and affiliates (including, but not limited to, Refco Group Ltd., LLC, Refco Finance Holdings LLC and Refco Finance Inc.) during the period from August 5, 2004 through October 17, 2005.