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November 28, 2006

By Hand

Honorable Gerard E. Lynch
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *In re Refco, Inc. Securities Litigation, No. 05 Civ. 8626 (GEL)*

Dear Judge Lynch:

Following the argument on November 15 and as suggested by Your Honor, counsel for Lead Plaintiffs had discussions with counsel for BAWAG and counsel for Grant Thornton LLP and the Underwriter Defendants in an attempt to resolve some of the issues raised at the argument. The results of those discussions are as follows.

We have reached agreement with BAWAG on an amendment to the Settlement Stipulation which resolves the issue of the scope of the bar order. As set forth in the enclosed letter agreement between the parties, we have agreed on an amendment to the Settlement Stipulation and proposed final judgment that clarifies that BAWAG receives a complete bar order as to all claims arising out of or related to Lead Plaintiffs' claims in this action.

The letter agreement also provides that the final judgment now would include, as the objecting defendants had advocated, a judgment reduction provision. The judgment reduction provision is based on the PSLRA provision, 15 U.S.C. § 78u-4(f)(7)(B), and provides:

Any final verdict or judgment that may be obtained by or on behalf of the Class or a Class Member against a Non-Settling Defendant or Non-Settling Defendants shall be reduced in the aggregate by the greater of: (i) an amount that corresponds to the percentage of responsibility of the Settling Defendants for the damages



awarded to the Class or a Class Member on the claim on which Judgment is entered against any of the Non-Settling Defendants; or (ii) the amount paid by or on behalf of the Settling Defendants to the Class that is allocated to the claim (pursuant to the Allocation Plan) on which Judgment is entered against any of the Non-Settling Defendants. The Allocation Plan shall be proposed by Lead Plaintiffs and subject to approval by the Court.

The Underwriter Defendants do not agree with this provision and we expect them to object. Their position appears to be that the credit that the Underwriter Defendants receive should not be based on how the BAWAG settlement is allocated between the 1933 Act and 1934 Act claims. Instead, their position is that 100% of the BAWAG settlement should be a credit against the 1933 Act claim against the Underwriter Defendants. Lead Plaintiffs disagree for the following reasons. The Underwriter Defendants have been sued only under the 1933 Act, whereas BAWAG has been sued under both the 1933 Act and the 1934 Act. Suppose it were to be determined by the Court or the jury that BAWAG had no liability at all with respect to some or all class members for the 1933 Act claims but significant responsibility for the 1934 Act claims. In that event, how could it be that 100% of the settlement should be a credit against the 1933 Act claims asserted against the Underwriter Defendants? At this point in time, however, such determination cannot be made. At some point in the future, when the facts as to liability, damages and other aspects have been clarified through discovery, Lead Plaintiffs will propose a plan of allocation of the BAWAG settlement between the 1933 Act and 1934 Act claims, which will be subject to Court approval. The approach reflected in the language proposed by Lead Plaintiffs, whereby the credit depends on the amount of the settlement allocated to the specific claim asserted against the non-settling defendant, was adopted by Judge Cote in *In re WorldCom, Inc. Sec. Litig.*, No. 02 Civ. 3288 (DLC), 2004 WL 2591402, at *13-14 (S.D.N.Y. Nov. 12, 2004), and we respectfully submit it should be approved here as well.

We have agreed with Defendants that any further papers on this topic will be submitted on the following schedule: Defendants' objections on December 18; Plaintiffs' response on January 5.

Copies of the letter agreement with BAWAG, revised proposed final judgment and preliminary approval order, are enclosed.

Respectfully,



James J. Sabella

cc(by E-Mail): Max Berger, Esq.
John P. Coffey, Esq.
Stuart M. Grant, Esq.
All defense counsel (via E-Mail)

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
ATTORNEYS AT LAW

NEW YORK • CALIFORNIA • NEW JERSEY • LOUISIANA

Salvatore J. Graziano
SGraziano@blbgllaw.com
212-554-1538

November 20, 2006

Andrew Levander, Esq.
Dechert LLP
30 Rockefeller Plaza
New York, NY 10122

Re: In re Refco, Inc. Securities Litigation, No. 05 Civ. 8626 (GEL)

Dear Andrew:

Reference is made to the Stipulation and Agreement of Settlement (“Stipulation”) entered into on September 7, 2006 by and among Lead Plaintiffs and BAWAG (the “Parties”). Capitalized terms used in this letter but not otherwise defined shall have the meanings set forth in the Stipulation.

The Parties hereby agree to clarify, amend and modify the Stipulation by clarifying paragraph 35 and adding paragraphs 35.5 and 35.6 as follows:

35. If the Settlement contemplated by this Stipulation is approved by the Court, Co-Lead Counsel and BAWAG’s Counsel shall jointly request that the Court enter a Judgment substantially in the form annexed hereto as Exhibit A. The Judgment shall contain a provision barring claims for contribution to the fullest extent permitted by 15 U.S.C. § 78u-4(f)(7) and any other applicable law or regulation, by or against the Settling Defendants. Nothing herein is intended to broaden the language of the Private Securities Litigation Reform Act of 1995.
- 35.5 **Complete Contribution Bar Order.** The Judgment shall also contain a provision barring claims for contribution or indemnity (or any other claim against the Settling Defendants where the injury to the Non-Settling Defendant is the Non-Settling Defendant’s actual or threatened liability to the Lead Plaintiffs and other Class Members), arising out of or related to the claims or allegations asserted by Lead Plaintiffs in the Action, whether such claims arise under state, federal or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in the Action, in this Court, in any federal or state court, or in any other court,



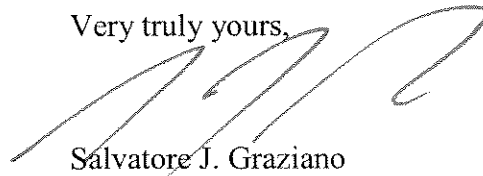
arbitration proceeding, administrative agency or other forum in the United States or elsewhere.

- 35.6 **Judgment Reduction.** The Judgment shall also contain a provision stating that any final verdict or judgment that may be obtained by or on behalf of the Class or a Class Member against a Non-Settling Defendant or Non-Settling Defendants shall be reduced in the aggregate by the greater of: (i) an amount that corresponds to the percentage of responsibility, if any, of the Settling Defendants for the common damages awarded to the Class or a Class Member on the claim on which Judgment is entered against such Non-Settling Defendant or Defendants; or (ii) the amount paid by or on behalf of the Settling Defendants to the Class that is allocated to the claim (pursuant to the Allocation Plan) on which Judgment is entered against such Non-Settling Defendant or Defendants. The Allocation Plan shall be proposed by Lead Plaintiffs and subject to approval by the Court.

The Parties further agree to submit for the Court's approval a Judgment in the form attached hereto as Exhibit A.

The Parties further agree that any changes or modifications to paragraph 35.6 above and paragraph 11.6 of the proposed Judgment in Exhibit A shall have no effect on the clarifications and amendments set forth in paragraphs 35 and 35.5 above (and paragraph 11.5 of the proposed Judgment in Exhibit A).

Very truly yours,



Salvatore J. Graziano

Agreed to by:

GRANT & EISENHOFER P.A.

DECHERT LLP

By Jones Rabellin /sco

By [Signature]

-and-

Counsel for BAWAG

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP

By [Signature]

Co-Lead Counsel for Lead Plaintiffs and the Class

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X
: 05 Civ. 8626 (GEL)
In re REFCO, INC. SECURITIES LITIGATION :
: :
: :
----- X

**ORDER PRELIMINARILY APPROVING
PROPOSED SETTLEMENT WITH DEFENDANT BAWAG**

WHEREAS, by Order dated February 8, 2006, Pacific Investment Management Company LLC and RH Capital Associates LLC were appointed by this Court to serve as Lead Plaintiffs on behalf of the Class in *In re Refco, Inc. Securities Litigation*, No. 05 Civ. 8626 (GEL) (S.D.N.Y.) (the “Action”);

WHEREAS, the parties have made an application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order preliminarily approving the partial settlement (“Settlement”) of the Action in accordance with the Stipulation and Agreement of Settlement dated September 7, 2006 between Lead Plaintiffs and defendant BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft (“BAWAG”), as clarified and modified by a letter agreement between counsel for Lead Plaintiffs and BAWAG, dated November 20, 2006 (collectively, the “Stipulation”), which sets forth the terms and conditions for a proposed Settlement and for the release of certain claims and the dismissal of the Action against BAWAG with prejudice upon the terms and conditions set forth therein;

WHEREAS, the Court has not certified the Action as a class action, but is being asked to preliminarily certify a Settlement Class, for purposes of this Settlement only, consisting of all persons and entities that purchased or otherwise acquired Refco Group Ltd., LLC/ Refco Finance Inc. 9% Senior Subordinated Notes due 2012 (CUSIP Nos. 75866HAA5 and/or 75866HAC1) 12440603. 211}

and/or common stock of Refco (CUSIP No. 75866G109) during the period August 5, 2004 through and including October 17, 2005 (the “Class Period”) and who were damaged thereby;

WHEREAS, Lead Plaintiffs’ proposed definition of the Settlement Class excludes (i) Refco; (ii) the Defendants; (iii) any person or entity who was a partner, executive officer, director, controlling person, subsidiary, or affiliate of Refco or any Defendant during the Class Period; (iv) members of the Defendants’ immediate families; (v) entities in which Refco or any Defendant has a controlling interest; and (vi) the legal representatives, heirs, predecessors, successors or assigns of any of the foregoing excluded persons or entities. Also excluded from the Class is any person or entity who or which properly excludes himself, herself or itself by filing a valid and timely request for exclusion in accordance with the requirements set forth in the Notice.

WHEREAS, the Court having (1) read and considered the First Amended Consolidated Class Action Complaint, filed in this Action on May 5, 2006; (2) read and considered Lead Plaintiffs’ Notice of Motion for (I) Preliminary Approval of Partial Settlement With Defendant BAWAG, (II) Preliminary Certification of Class for Purposes of Settlement (III) Preliminary Approval of Form and Manner of Notice, and (IV) Scheduling of a Final Approval Hearing, together with the accompanying Memorandum of Law; (3) read and considered the Stipulation between counsel for BAWAG and counsel for Lead Plaintiffs; and (4) heard and considered arguments by counsel for Lead Plaintiffs and BAWAG in favor of preliminary approval of the Settlement and preliminary certification of the Settlement Class for purposes of the Settlement;

WHEREAS, the Court finds, upon a preliminary evaluation, that the proposed Settlement falls within the range of possible approval criteria, as it provides a beneficial result for the

Settlement Class and appears to be the product of good faith, informed and non-collusive negotiations between experienced and able counsel for the settling parties;

WHEREAS, the Court also finds, upon a preliminary evaluation, that the Settlement Class should be apprised of the Settlement, allowed to file objections thereto and to appear at the Settlement Hearing, or alternatively, be afforded a reasonable opportunity to opt out of the Action;

WHEREAS, the Court finds, upon a preliminary evaluation, that the Notice and the Publication Notice attached hereto as Exhibits 1 and 2, respectively, and the methodology described in Paragraph 6 of this Order for the publication and dissemination of such Notice and Publication Notice: (i) are the best practicable notice; (ii) are reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and of their right to object or exclude themselves from the proposed Settlement and to object to Co-Lead Counsel's application for attorneys' fees; (iii) are reasonable and constitute due, adequate and sufficient notice to all persons and entities entitled to receive notice; and (iv) meet all applicable requirements of the Federal Rules of Civil Procedures, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. 78u-4, *et seq.*), the Rules of the Court and any other applicable law; and

WHEREAS, unless otherwise stated herein, all defined terms contained herein shall have the same meanings set forth in the Stipulation.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. **Class Findings** – For purposes of the Settlement of this Action as against BAWAG (and only for such purposes, and without an adjudication of the merits), the Court preliminarily finds that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the

Court and any other applicable law have been met as to the Settlement Class described in the paragraphs above in that:

- a. The identities of the Settlement Class members are likely to be ascertainable from records kept by Refco and/or its agents, and from other objective criteria, and the Settlement Class members are so numerous that their joinder before the Court would be impracticable.
- b. Lead Plaintiffs have alleged numerous questions of fact and law common to the Settlement Class.
- c. Based on allegations in the Action that BAWAG engaged in misconduct uniformly affecting members of the proposed Settlement Class, the Court preliminarily finds that the claims of the Lead Plaintiffs in the Action are typical of the claims of the proposed Settlement Class.
- d. The Court finds that Lead Plaintiffs will fairly and adequately protect the interest of the proposed Class in that (i) the interests of Lead Plaintiffs and the nature of their alleged claims are consistent with those of the members of the Settlement Class, (ii) there appear to be no conflicts between or among the Lead Plaintiffs and the Settlement Class, (iii) Lead Plaintiffs have been and appear to be capable of continuing to be active participants in both the prosecution and the settlement of the Action, and (iv) Lead Plaintiffs and the Settlement Class members are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complex securities fraud class actions.
- e. The Court preliminarily finds that, for settlement purposes in the Action as against BAWAG, questions of law or fact common to members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class and that a class-action resolution in the manner proposed by the Stipulation would be superior to other available methods for a fair and efficient adjudication of the Action. In making these preliminary findings, the Court has considered, among other factors, (i) the interest of the Settlement Class members in individually controlling the prosecution or defense of separate actions, (ii) the impracticability or inefficiency of prosecuting or defending separate actions, (iii) the extent and nature of any litigation concerning these claims already commenced, and (iv) the desirability of concentrating the litigation of the claims in a particular forum.

2. **Preliminary Class Certification for Settlement Purposes With BAWAG** – Based on

the findings set out in paragraph 1 above, the Court preliminarily certifies the following Settlement

Class for settlement purposes only under Fed. R. Civ. P. 23(a) and (b)(3) in the Action: all persons and entities that purchased or otherwise acquired Refco Group Ltd., LLC/ Refco Finance Inc. 9% Senior Subordinated Notes due 2012 (CUSIP Nos. 75866HAA5 and/or 75866HAC1) and/or common stock of Refco (CUSIP No. 75866G109) during the Class Period and were damaged thereby. The Settlement Class excludes (i) Refco; (ii) the Defendants; (iii) any person or entity who was a partner, executive officer, director, controlling person, subsidiary, or affiliate of Refco or any Defendant during the Class Period; (iv) members of the Defendants' immediate families; (v) entities in which Refco or any Defendant has a controlling interest; and (vi) the legal representatives, heirs, predecessors, successors or assigns of any of the foregoing excluded persons or entities. Also excluded from the Class is any person or entity who or which properly excludes himself, herself or itself by filing a valid and timely request for exclusion in accordance with the requirements set forth in the Notice.

3. **Preliminary Approval of Settlement** – The Court hereby preliminarily approves the Settlement, as embodied in the Stipulation, as being fair, reasonable and adequate as to the Settlement Class members, subject to further consideration at the Settlement Hearing described below.

4. **Settlement Hearing** – A hearing (the “Settlement Hearing”) shall be held on _____, 2006 at _____ before the Honorable Gerard E. Lynch in the United States District Court for the Southern District of New York, United States Courthouse, 500 Pearl Street, New York, NY, 10007. The purpose of the Settlement Hearing will be to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate to the Class and should be approved by the Court; whether the Judgment as provided in the Stipulation should be entered herein; and whether Co-Lead Counsel’s application for attorneys’ fees should be granted.

5. **Approval of Form and Content of Notice** – The Court approves, as to form and content, the Notice and the Publication Notice, attached hereto as Exhibits 1 and 2, respectively, and finds that the mailing and distribution of the Notice and the publication of the Publication Notice in the manner and form set forth in Paragraph 6 of this Order meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Securities Exchange Act of 1934, as amended by Section 21D(a)(7) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons and entities entitled thereto.

6. **Retention of Claims Administrator and Manner of Notice** – Lead Counsel are hereby authorized to retain The Garden City Group, Inc. (“Claims Administrator”) to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

(a) Not later than _____, 2006 (the “Notice Date”), Lead Counsel shall cause a copy of the Notice substantially in the form attached to the Stipulation as Exhibit 1 to be mailed by first-class mail to all Class Members who can be identified with reasonable effort;

(b) Not later than _____, 2006, Lead Counsel shall cause the Publication Notice, substantially in form attached to the Stipulation as Exhibit 2, to be published on one occasion in the national edition of The Wall Street Journal; and

(c) Not later than _____, 2006, Lead Counsel shall serve on BAWAG’s Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.

7. **Nominee Procedures** – Nominees who purchased or acquired Refco Group Ltd., LLC/Refco Finance Inc. 9% Senior Subordinated Notes Due 2012 or Refco, Inc. common stock for the benefit of another person or entity during the Class Period shall be requested to send the Notice to all such beneficial owners within ten (10) days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) days of receipt thereof in which event the Claims Administrator shall promptly mail the Notice to such beneficial owners.

8. **Exclusion From the Class** – All Settlement Class members who do not timely and validly request exclusion from the Settlement Class shall be bound by all proceedings, determinations, orders and judgments in the Action relating to the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable to the Settlement Class. Settlement Class members who wish to exclude themselves from the Settlement Class shall request exclusion within the time and in the manner set forth in the Notice, including mailing or delivering a written request for exclusion such that it is postmarked no later than _____, 2006, to: *In re Refco, Inc. Securities Litigation*, c/o The Garden City Group, Inc., Claims Administrator, P.O. Box 9087, Merrick, NY 11566, as provided in the Notice.

9. **Appearance and Objections at Fairness Hearing** – Any Settlement Class member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice, in which case such counsel must file with the Clerk of Court and deliver to Co-Lead Counsel and BAWAG’s Counsel a notice of appearance such that it is received by _____, 2006, or as the Court may otherwise direct. Any Settlement Class member who does not enter an appearance will be represented by Co-Lead Counsel. Any Settlement Class member may appear and show cause, if he, she or it has any such cause, why

the proposed Settlement of the Action should or should not be approved as fair, reasonable and adequate, or why a Judgment should or should not be entered thereon; or why Co-Lead Counsel's application for attorneys' fees should not be granted; provided, however, that no Settlement Class member or any other person or entity shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Final Judgment to be entered thereon approving the same or the award of attorneys' fees to Co-Lead Counsel, unless that person or entity has filed written objections and copies of any such papers and briefs with the Clerk of the Court for the United States District Court for the Southern District of New York, on or before _____, 2006, and unless copies of such written objection papers and briefs are received by each of the following:

Attorney for BAWAG:

Andrew Levander, Esquire
DECHERT LLP
30 Rockefeller Plaza
New York, NY 10112-2200

Co-Lead Counsel:

Megan D. McIntyre, Esquire
GRANT & EISENHOFER, P.A.
Chase Manhattan Centre
1201 N. Market Street, Suite 2100
Wilmington, DE 19801

John P. Coffey, Esquire
BERNSTEIN LITOWITZ BERGER & GROSSMANN, LLP
1285 Avenue of the Americas
New York, NY 10019

The Claims Administrator:

In re Refco Inc. Securities Litigation
c/o The Garden City Group, Inc.

Claims Administrator
P.O. Box 9087
Merrick, NY 11566

The objections and/or briefs filed by the objecting Settlement Class member must contain a statement of his, her or its objection, as well as the specific reasons, if any, for each objection, including the legal support the Settlement Class member wishes to bring to the Court's attention and any evidence the Settlement Class member wishes to introduce in support of his, her or its objection. Any Settlement Class member who does not make his, her or its objection in the manner provided herein shall be deemed to have waived such objection and shall be forever barred and foreclosed from making any objection to the fairness, reasonableness or adequacy of the proposed Settlement, or to the approval of Co-Lead Counsel's fee application.

10. **Fees and Expenses** – All reasonable costs incurred in identifying and notifying Settlement Class members, as well as in administering the Settlement, shall be paid as set forth in the Stipulation. At or after the Settlement Hearing, the Court shall determine whether any application for attorneys' fees shall be approved. Neither BAWAG nor BAWAG's Counsel shall have any responsibility for any application for attorneys' fees submitted by Co-Lead Counsel, and such matters will be considered separately from the fairness, reasonableness and adequacy of the Settlement.

11. **Continuance of Hearing** – The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to Settlement Class members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the parties to the Stipulation, if appropriate, without further notice to the Settlement Class.

12. **Termination of Settlement** – This Order shall become null and void, and be without prejudice to the rights of Lead Plaintiffs, the Settlement Class members, and BAWAG, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (i) the proposed Settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Stipulation; or (ii) the proposed Settlement is terminated or does not become effective for any other reason. In such events, the Stipulation shall become null and void and of no further force and effect.

13. **Use of Order** – This Order shall not be construed or used as an admission, concession or declaration by or against BAWAG of any fault, wrongdoing, breach, or liability. Nor shall the Order be construed or used as an admission, concession or declaration by or against Lead Plaintiffs, or the Settlement Class members, that their claims lack merit, that their damages are in any way limited, or that the relief requested in the Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have.

IT IS SO ORDERED.

Dated: _____, 2006 BY THE COURT

Hon. Gerard E. Lynch

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X
: 05 Civ. 8626 (GEL)
In re REFCO, INC. SECURITIES LITIGATION :
: :
----- X

JUDGMENT APPROVING CLASS ACTION SETTLEMENT WITH BAWAG

WHEREAS, Lead Plaintiffs and Defendant BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft (“BAWAG”) entered into a Stipulation and Agreement of Settlement dated September 7, 2006, as clarified and modified by a letter agreement between counsel for Lead Plaintiffs and BAWAG, dated November 20, 2006 (collectively, the “Stipulation”) which provides for a settlement of this action as against BAWAG only (the “Partial Settlement”); and

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms in this Judgment shall have the same meaning as they have in the Stipulation; and

WHEREAS, the Court entered an Order dated _____, 2006 (the “Preliminary Approval Order”) preliminarily certifying, for settlement purposes only, an opt-out Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3); and

WHEREAS, the Preliminary Approval Order also (i) ordered that notice be provided to potential members of the Settlement Class; (ii) scheduled a Settlement Hearing; and (iii) provided those persons and entities identified as members of the putative Settlement Class with an opportunity either to exclude themselves from the proposed Partial Settlement or to object to the proposed Partial Settlement; and

WHEREAS, the Court held a Settlement Hearing on _____, 2006 to determine, among other things, (i) whether the terms and conditions of the Partial Settlement are fair, reasonable and adequate and should therefore be approved; (ii) whether judgment should be entered dismissing the Complaint on the merits and with prejudice as against BAWAG; and (iii) whether and in what amount to award attorneys' fees to Co-Lead Counsel; and

NOW, THEREFORE, based on the submissions of the parties, and on the arguments of counsel at the Settlement Hearing, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Incorporation of Settlement Documents.** This Judgment Approving Class Action Settlement With BAWAG incorporates and makes a part hereof:

- (a) the September 7, 2006 Stipulation and Agreement of Settlement filed with this Court;
- (b) the November 20, 2006 letter between counsel for BAWAG and Lead Plaintiffs filed with this Court; and
- (b) the Notice and the Publication Notice, both of which were filed with the Court on September 8, 2006 (as attachments to the Declaration of Megan D. McIntyre in Support of Lead Plaintiffs' Motion for Preliminary Approval of Partial Settlement with Defendant BAWAG).

2. **Jurisdiction.** The Court has personal jurisdiction over all Settlement Class members and has subject matter jurisdiction over the Action, including, without limitation, jurisdiction to approve the proposed Partial Settlement, grant final certification of the Settlement Class, and dismiss the Action as against BAWAG on the merits and with prejudice. The Court has personal jurisdiction over BAWAG for purposes of enforcing the Partial Settlement.

3. **Final Settlement Class Certification.** The Court finds that the Settlement Class preliminarily certified in the Preliminary Approval Order meets all of the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3) for the reasons set out in the Preliminary Approval Order. The Court therefore finally certifies the Settlement Class for settlement purposes consisting of all persons and entities that purchased or otherwise acquired Refco Group Ltd., LLC/Refco Finance Inc. 9% Senior Subordinated Notes due 2012 (CUSIP Nos. 75866HAA5 and/or 75866HAC1) and/or common stock of Refco (CUSIP No. 75866G109) during the period August 5, 2004 through and including October 17, 2005, and who were damaged thereby. Excluded from the Settlement Class are: (i) Refco; (ii) the Defendants; (iii) any person or entity who was a partner, executive officer, director, controlling person, subsidiary, or affiliate of Refco or any Defendant during the Class Period; (iv) members of the Defendants' immediate families; (v) entities in which Refco or any Defendant has a controlling interest; and (vi) the legal representatives, heirs, predecessors, successors or assigns of any of the foregoing excluded persons or entities. Also excluded from the Class is any person or entity who or which properly excludes himself, herself or itself by filing a valid and timely request for exclusion in accordance with the requirements set forth in the Notice.

4. **Adequacy of Representation.** The Co-Lead Counsel and Lead Plaintiffs adequately represented the Settlement Class for purposes of entering into and implementing the Partial Settlement and have fully and adequately represented the Settlement Class for purposes of entering into and implementing the Partial Settlement and have satisfied the requirements of Federal Rule of Civil Procedure 23(a)(4).

5. **Notice.** The Court finds that the distribution of the Notice, the publication of the Publication Notice, and the notice methodology: (i) were all implemented in accordance with

the Preliminary Approval Order; (ii) constituted the best practicable notice; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class members of the pendency of the Action, of the effect of the Partial Settlement including the releases, of their right to object to the proposed Partial Settlement, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Settlement Hearing; (iv) were reasonable and constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (v) met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution, (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. 78u-4, *et seq.*) (the “PSLRA”), the Rules of the Court, and any other applicable law.

6. **Binding Effect.** The terms of the Stipulation and of this Judgment shall be forever binding on Lead Plaintiffs and all members of the Settlement Class, as well as all of their heirs, executors and administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns.

7. **Final Settlement Approval.** The Partial Settlement is hereby fully and finally approved as fair, reasonable and adequate, and Lead Plaintiffs and BAWAG are directed to implement and consummate the Partial Settlement in accordance with the terms and provisions of the Stipulation. The Court approves the documents submitted to the Court in connection with the implementation of the Partial Settlement.

8. **Releases.** The releases as set forth in paragraphs 2 through 4 of the Stipulation (the “Release”), together with the definitions of Settled Claims, Settling Defendants’ Claims, Settling Defendants, and Released Plaintiff Parties are expressly incorporated herein in all respects. The Release is effective as of the Effective Date and forever discharges, among other

things, the Settling Defendants from any claims of liability arising from or related to the Settled Claims, and the Released Plaintiff Parties from any claims of liability arising from or related to the Settling Defendants' Claims. The Settled Claims are hereby compromised, settled, released, discharged and dismissed as against the Settling Defendants on the merits and with prejudice by virtue of the proceedings herein and this Judgment. The Settling Defendants' Claims are hereby compromised, settled, released, discharged and dismissed as against the Lead Plaintiffs and the members of the Settlement Class on the merits and with prejudice by virtue of the proceedings herein and this Judgment.

9. **No Other Releases.** Notwithstanding any release or other language that may be contained in the Stipulation and Order of Settlement that may be entered by the Bankruptcy Court or in any other document (including, but not limited to, any order issued by the Bankruptcy Court for the Southern District of New York in connection with the separate settlement reached between BAWAG and the Creditors' Committee) which purports to release or otherwise extinguish or limit any claims that Lead Plaintiffs and/or members of the Settlement Class have asserted or could assert against BAWAG (collectively, the "Bankruptcy Releases"), the parties have agreed and this Court hereby orders that: (i) the Bankruptcy Releases shall be fully effective on their terms, provided however, the Bankruptcy Releases shall not release the claims of Lead Plaintiffs and/or members of the Class in this Action, which claims shall be released only through this Judgment, and (ii) nothing shall preclude members of the Settlement Class from receiving distributions from the Settlement or any future settlement in this Action and receiving distributions from settlements reached between BAWAG and others in the Bankruptcy Court, to the extent that those Settlement Class members have allowed claims as creditors or interest holders of Refco.

10. **Permanent Injunction.** The Court permanently bars and enjoins (i) all Settlement Class Members (and their heirs, executors and administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns) from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration or other proceeding or order in any jurisdiction that is based upon, arises out of or relates to any Settled Claims; and (ii) BAWAG and the Settling Defendants from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration or other proceeding or order in any jurisdiction that is based upon, arises out of or relates to any Settling Defendants' Claims.

11. **Contribution Bar Order.** The Court hereby bars all claims (a) by any person or entity against the Settling Defendants for contribution arising out of the Action, and (b) by the Settling Defendants against any person or entity for contribution arising out of the Action, other than a person whose liability has been extinguished by the Partial Settlement, each to the fullest extent permitted by 15 U.S.C. § 78u-4(f)(7) and any other applicable law or regulation. Nothing herein is intended to broaden the language of the Private Securities Litigation Reform Act of 1995.

11.5. **Complete Contribution Bar Order.** The Court hereby bars all claims (a) by any person or entity against the Settling Defendants for contribution or indemnity arising out of or related to the claims or allegations asserted by the Lead Plaintiffs in the Action (or any other claim against the Settling Defendants where the injury to the Non-Settling Defendant is the Non-Settling Defendant's actual or threatened liability to the Lead Plaintiffs and other Class Members), and (b) by the Settling Defendants against any person or entity for contribution or

indemnity arising out of or related to the claims or allegations asserted by the Lead Plaintiffs in the Action, whether such claims, as to (a) and (b) above, arise under state, federal or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in the Action, in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency or other forum in the United States or elsewhere.

11.6 Judgment Reduction. Any final verdict or judgment that may be obtained by or on behalf of the Class or a Class Member against a Non-Settling Defendant or Non-Settling Defendants shall be reduced in the aggregate by the greater of: (i) an amount that corresponds to the percentage of responsibility, if any, of the Settling Defendants for the common damages awarded to the Class or a Class Member on the claim on which Judgment is entered against such Non-Settling Defendant or Defendants; or (ii) the amount paid by or on behalf of the Settling Defendants to the Class that is allocated to the claim (pursuant to the Allocation Plan) on which Judgment is entered against such Non-Settling Defendant or Defendants. The Allocation Plan shall be proposed by Lead Plaintiffs and subject to approval by the Court.

12. No Admissions. Neither this Judgment, the Stipulation, nor any of their terms and provisions, nor any of the negotiations or proceedings connected therewith, nor any of the documents or statement referred to therein shall be:

(a) admissible in any action or proceeding for any reason, other than an action to enforce the terms of the Settlement or this Judgment;

(b) described as, construed as, offered or received against the Settling Defendants as evidence of and/or deemed to be evidence of any presumption, concession, or admission by the Settling Defendants of: the truth of any fact alleged by Lead Plaintiffs; the validity of any claim that has been or could have been asserted in the Action or in any litigation;

the deficiency of any defense that has been or could have been asserted in the Action or in any litigation; or any liability, negligence, fault, or wrongdoing of the Settling Defendants;

(c) described as, construed as, offered or received against Lead Plaintiffs or any Settlement Class members as evidence of any infirmity in the claims of said Lead Plaintiffs and the Settlement Class or that damages recoverable under the Amended Complaint would not have exceeded the Settlement Amount;

(d) described as, construed as, offered or received against any of the parties to this Stipulation, in any other civil, criminal or administrative action or proceeding, provided, however, that (i) if it is necessary to refer to this Stipulation to effectuate the provisions of this Stipulation, it may be referred to in such proceedings, and (ii) if this Stipulation is approved by the Court, the Settling Defendants may refer to it to effectuate the liability protection granted them hereunder; or

(e) described as or construed against the Settling Defendants or the Lead Plaintiffs or any Settlement Class members as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been awarded to said Lead Plaintiffs or Settlement Class members after trial.

13. **Enforcement of Settlement.** Nothing in this Judgment shall preclude any action to enforce the terms of the Stipulation.

14. **Claims Administrator's Fees and Expenses.** The Court retains jurisdiction to consider an application by or on behalf of the Claims Administrator for an award of fees and reimbursement of expenses relating to its implementation of the terms of the Stipulation and/or any orders of this Court.

15. **Attorneys' Fees.** Co-Lead Counsel are hereby awarded attorneys' fees equal to \$_____, which the Court finds to be fair and reasonable. Co-Lead Counsel are not seeking reimbursement of out-of-pocket expenses in connection with this Settlement.

16. **Rule 11 Findings.** The Court finds that all parties to the Stipulation and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

17. **Modification of Settlement Agreement.** Without further approval from the Court, Lead Plaintiffs and BAWAG are hereby authorized to agree to and adopt such amendments, modifications and expansions of the Stipulation or any exhibits attached to the Stipulation as: (i) are not materially inconsistent with this Judgment; and (ii) do not materially limit the rights of Settlement Class members under the Stipulation.

18. **Extensions of Time.** Without further order of the Court, Lead Plaintiffs and BAWAG may agree to reasonable extensions of time to carry out any provisions of the Stipulation.

19. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Judgment. Without in any way affecting the finality of this Judgment, the Court expressly retains continuing and exclusive jurisdiction over BAWAG and the Settlement Class members for purposes of the administration, interpretation, and enforcement of the Stipulation and of this Judgment. The Court further expressly retains continuing and exclusive jurisdiction over the Settlement Class members for all matters relating to the Action.

20. **Dismissal of Action.** The Action, which the Court finds was filed on a good faith basis against BAWAG in accordance with the PSLRA and Rule 11 of the Federal Rules of Civil Procedure based upon all publicly available information, is hereby dismissed as against BAWAG

only, on the merits and with prejudice as of the Effective Date, without fees or costs except as otherwise provided in this Judgment.

21. **Entry of Final Judgment.** Because the Partial Settlement resolves all claims as to BAWAG in the Action, the Court finds that there is no just reason to delay the entry of this Judgment as a final judgment as against BAWAG. Accordingly, the Court expressly directs the immediate entry of final judgment by the Clerk of Court, as against BAWAG only, pursuant to Federal Rule of Civil Procedure 54(b).

SO ORDERED this _____ day of _____, 2006.

THE HONORABLE GERARD E. LYNCH
United States District Judge