

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re REFCO, INC. SECURITIES LITIGATION	:	05 Civ. 8626 (JSR)
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**LEAD PLAINTIFFS’ REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
(A) LEAD PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF SETTLEMENTS
WITH THE THL AND AUDIT COMMITTEE DEFENDANTS AND WITH THE
UNDERWRITER DEFENDANTS, FINAL APPROVAL OF PLAN OF ALLOCATION
OF SETTLEMENT PROCEEDS AND FINAL CERTIFICATION OF A CLASS FOR
SETTLEMENT PURPOSES AND (B) LEAD COUNSEL’S MOTION FOR AN AWARD
OF ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES**

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*Co-Lead Counsel for Lead Plaintiffs Pacific Investment
Management Company, LLC and RH Capital Associates LLC and the Putative Class*

Lead Plaintiffs RH Capital Associates LLC (“RH Capital”) and Pacific Investment Management Company LLC (“PIMCO”) and Lead Counsel respectfully submit this reply memorandum of law in further support of their motions for (i) final approval of the proposed Settlements with the THL Defendants¹ and Audit Committee Defendants, the Underwriter Group, and Sandler O’Neill; (ii) final approval of the proposed Plan of Allocation of the settlement proceeds; (iii) final certification of the Settlement Class for purposes of the proposed Settlements and (iv) for an award of attorneys’ fees and reimbursement of litigation expenses.

PRELIMINARY STATEMENT

Lead Plaintiffs and Lead Counsel are pleased to advise the Court that there is *not a single objection* to the proposed Settlements, the proposed Plan of Allocation or to Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of expenses.² Additionally, there is only one request for exclusion by a Settlement Class Member who purchased 300 shares of Refco common stock during the Class Period. The request for exclusion represents a miniscule portion of the eligible Refco Securities.³

As set forth in the October 20, 2010 Affidavit of Stephen J. Cirami Regarding (A) Mailing of the Notices and Proof Claim and Release Concerning Settlements with the THL

¹ Unless otherwise noted, capitalized terms shall have the meanings set out in Lead Plaintiffs’ initial memoranda of law in support of these motions. *See* Dkt .Nos. 736 and 737.

² One objection was filed to the proposed Plan of Allocation that was subsequently withdrawn after it was explained to the objector that his objection was premised on a mistaken understanding of the facts. *See* Declaration of James J. Sabella, dated October 20, 2010.

³ As set forth in the Notices sent to Settlement Class Members pursuant to the Orders of the Court, Lead Plaintiffs’ damages expert estimates that approximately 30,475,000 shares of Refco common stock and approximately 390,000 Refco Notes purchased during the relevant could have been affected by the conduct at issue in the Action. The 300 shares purchased by the class member requesting exclusion represents approximately 0.00098% of the estimated eligible shares of common stock.

and Audit Committee Defendants, the Settling Underwriter Defendants and Sandler O’Neill & Partners L.P.; (B) Publication of the Summary Notices Concerning the Settlements with the THL and Audit Committee Defendants, the Settling Underwriter Defendants and Sandler O-Neill & Partners L.P.; and (C) Report on Requests for Exclusion (the “Cirami Affidavit”), the Claims Administrator, The Garden City Group, Inc. (“GCG”), provided notice of the proposed Settlements in accordance with the directions set forth in the Court’s Preliminary Approval Orders. *See* Cirami Affidavit ¶¶ 3-6. As of October 18, 2010, 40,204 copies of the Notice Packet – consisting of a notice relating to the THL and Audit Committee Settlement (the “THL Notice”), a notice relating to the Underwriter Group Settlement and the Sandler O’Neill Settlement (the “Underwriters Notice”), the Plan of Allocation, and the Proof of Claim form – were mailed to potential members of the Settlement Class and nominees. *Id.* ¶ 6 In addition, the Summary Notices were published in *Investors Business Daily* in accordance with the Preliminary Approval Orders. *Id.* ¶ 7.

The Notices set out the essential terms of the Settlements and informed potential Settlement Class members of their rights to opt out of the Settlement Class or object to the Settlements, the proposed Plan of Allocation and/or Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of expenses. *See* Notices attached as Exhibit A to the Cirami Affidavit. As set forth in the Notices and as directed by the Court in the Preliminary Approval Orders, any objections to the Settlements, the Plan of Allocation or Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of expenses or requests for exclusion from the Settlements were required to be submitted so as to be received no later than 20 calendar days prior to the October 27, 2010 final approval hearing, *i.e.*, by October 7, 2010. *Id.* That deadline has now passed. As set forth above, there are no objections to the Settlements, the Plan of

Allocation or Lead Counsel's motion for an award of attorneys' fees and reimbursement of expenses and there is only one request for exclusion by a Settlement Class Member who purchased a tiny fraction of the eligible Refco Securities.

**THE SETTLEMENT CLASS'S REACTION SUPPORTS APPROVAL
OF THE SETTLEMENTS, THE PLAN OF ALLOCATION, AND
THE REQUESTED ATTORNEYS' FEE AND EXPENSE AWARD**

Lead Plaintiffs and Lead Counsel respectfully submit that their opening papers in support of the proposed Settlements, the proposed Plan of Allocation, and the application for attorneys' fees and reimbursement of expenses demonstrate why approval of each motion is warranted. Now that the time for objecting or requesting exclusion from the Settlement Class has passed, the reaction of the class powerfully buttresses that conclusion. The fact that there are no objections and that only one potential Settlement Class member has requested exclusion from the Settlements is an exceptionally strong indication that the Settlements are fair and in the best interests of the class, that the proposed Plan of Allocation of the proceeds of the Settlements is equitable, and that Lead Counsel's fee request is reasonable.

In considering approval of a proposed class action settlement, the reaction of the class is the second factor listed by the Court of Appeals in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). As stated in *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005), "the favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in our *Grinnell* inquiry." See also *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115809, at *7 (S.D.N.Y. Nov. 7, 2007) ("The strong favorable reaction of the class is overwhelming evidence that the Settlement is fair, reasonable and adequate."); *Maley v. Del. Global Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) (the "overwhelmingly positive response by the Class attests to the approval of the Class with respect to the Settlement and the fee and expense application").

Courts are particularly inclined to approve a class action settlement when, as here, not a single objection is received. *See Maley*, 186 F. Supp. 2d at 362 (the fact that “not a single objection to the Settlement was received” and that there were very few exclusions from the class was “strong evidence that the Settlement is fair, reasonable, and adequate”); *Veeco*, 2007 WL 4115809, at *7 (“The lack of objections provides effective evidence of the fairness of the Settlement.”); *In re EVCI Career Colls. Holdings Corp. Sec. Litig.*, No. 05-cv-10240, 2007 WL 2230177, at *6 (S.D.N.Y. July 27, 2007) (approving settlement with no objections).

With respect to the motion for approval of the proposed Plan of Allocation, courts give great weight to the opinion of experienced counsel. *See* Lead Plaintiffs’ Memorandum of Law in Support of Motion for Approval of Settlements with the THL and Audit Committee Defendants and with the Underwriter Defendants, Final Approval of Plan of Allocation of Settlement Proceeds and Final Certification of a Class for Settlement Purposes at 19. However, the uniform approval of the Settlement Class here is additional strong support for approval of the proposed Plan of Allocation. *See EVCI*, 2007 WL 2230177, at *11 (noting that courts should “consider the reaction of a class to a plan of allocation” and that, where no objections are received “the Plan of Allocation should be approved”); *Maley*, 186 F. Supp. 2d at 367 (finding that “the favorable reaction of the Class supports approval of the proposed Plan of Allocation” where “no Class member ha[d] objected to the Plan”); *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 430 (S.D.N.Y. 2001) (“the lack of any objections suggests that approval of the Plan of Allocation is warranted”).

Finally, with respect to Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of litigation expenses, in addition to the bases for approval set forth in Lead Counsel’s opening memorandum and in Lead Counsel’s Joint Declaration in support of the

motions before the Court (Dkt. No. 738), the fact that there are no objections from Settlement Class Members to the requested attorneys' fees or expense reimbursement strongly supports approval. The reaction of class members to a fee and expense request "is entitled to great weight by the Court" and the absence of any objection "suggests that [a] fee request is fair and reasonable." *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007); *see also Maley*, 186 F. Supp. 2d at 374 (the lack of any objection to the fee request or expense reimbursement represented an "overwhelmingly positive response by the Class" and supported approval of fee and expense applications).

CONCLUSION

For the reasons set forth herein and in Lead Plaintiffs' and Lead Counsel's initial memoranda of law, Lead Plaintiffs and Lead Counsel respectfully request that the Court approve the proposed Settlements as fair, reasonable and adequate, approve the proposed Plan of Allocation, finally certify the Settlement Class for purposes of the proposed Settlements and approve Lead Counsel's request for attorneys' fees and reimbursement of expenses.

Dated: New York, New York
October 20, 2010

Respectfully submitted,

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