

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE REFCO, INC. SECURITIES LITIGATION : No. 05 CV 8626 (JSR)
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 **[PROPOSED] JUDGMENT AND ORDER
OF DISMISSAL WITH PREJUDICE**

WHEREAS, Lead Plaintiffs RH Capital Associates LLC and Pacific Investment LLC (“Lead Plaintiffs”), on behalf of themselves and the class of persons and entities defined below, and Defendants Ronald L. O’Kelley, Leo R. Breitman, Nathan Gantcher, 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 Partners, L.P., THL Equity Advisors V, LLC, Thomas H. Lee Investors Limited Partnership, The 1997 Thomas H. Lee Nominee Trust, Thomas H. Lee, David V. Harkins, Scott L. Jaeckel and Scott A. Schoen (the “Settling Defendants” and, together with the Lead Plaintiffs, the “Settling Parties”) have entered into a Stipulation and Agreement of Settlement dated March 29, 2010 and amended on May 3, 2010 (the “Stipulation”) that provides for a complete dismissal with prejudice of the claims asserted in the above-referenced litigation (the “Action”) against the Settling Defendants on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the “Settlement”);

WHEREAS, the capitalized words and terms shall have the same meaning as they have in the Stipulation (certain of which are repeated herein for ease of reference only);

WHEREAS, by Order dated July 30, 2010 (the “Preliminary Approval Order”), this Court: (a) preliminarily approved the Settlement and certified a Settlement Class

solely for purposes of effectuating the Settlement, (b) ordered that notice of the proposed Settlement be provided to potential Settlement Class Members, (c) provided Settlement Class Members with the opportunity either to exclude themselves from or to object to the proposed Settlement, and (d) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice having been given to the Settlement Class;

WHEREAS, this Court conducted a hearing on October 27, 2010 to consider, among other things, whether the terms and conditions of the Settlement are fair, reasonable and adequate and should therefore be approved, and whether a judgment should be entered dismissing the Action with prejudice as against the Settling Defendants (the "Settlement Hearing"); and

WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received regarding the proposed Settlement, and the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the Action and all matters relating to the Settlement, as well as personal jurisdiction over all of the Settling Parties and each of the Settlement Class Members.
2. **Incorporation of Settlement Documents** – This Final Order and Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on

May 11, 2010; and (b) the Notice and Summary Notice, both of which were filed with the Court on May 11, 2010.

3. **Settlement Class Findings** – With respect to the Settlement Class set forth below, this Court finds only for the purpose of effectuating this Settlement and only as pertains to the claims asserted against the Settling Defendants by Lead Plaintiffs and the Settlement Class that the prerequisites for a class action under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the members of the Settlement Class are so numerous that their joinder would be impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of Lead Plaintiffs in the Action are typical of the claims of the Settlement Class; (d) Lead Plaintiffs and their counsel, Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A. (“Lead Plaintiffs’ Counsel”) have fairly and adequately represented and protected the interests of all of the Settlement Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. **Final Settlement Class Certification** – Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finally certifies solely for the purpose of effectuating this Settlement, a class of all persons and entities who 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 July 1, 2004 through and including October 17, 2005, and who were damaged thereby. Excluded from the Settlement Class are: (a) Refco; (b) the Defendants; (c) any person or entity who was a partner, executive

officer, director, controlling person, subsidiary, or affiliate of Refco or of any Defendant during the Class Period; (d) members of the Defendants' immediate families; (e) entities in which Refco or any Defendant has a controlling interest; and (f) the legal representatives, heirs, estates, administrators, predecessors, successors or assigns of any of the foregoing excluded persons and entities; provided however that any Investment Vehicle shall not be deemed an excluded person or entity by definition. Also excluded from the Class are the persons and/or entities set forth in Exhibit A hereto who or which have properly excluded themselves from the Settlement Class in accordance with the requirements set forth in the Stipulation and in the Notice.

5. **Adequacy of Representation** – Pursuant to Rule 23 of the Federal Rules of Civil Procedure, for purposes of the Settlement only, this Court certifies Lead Plaintiffs as Settlement Class representatives and appoints Lead Plaintiffs' Counsel as Settlement Class counsel.

6. **Notice** – The Court finds that the distribution of the Notice and publication of the Summary Notice: (a) were implemented in accordance with the Court's July 30, 2010 Preliminary Approval Order; (b) constituted the best notice reasonably practicable under the circumstances; (c) 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 Settlement (including the releases provided for therein), of Lead Plaintiffs' Counsel's motion for reimbursement of litigation expenses incurred in connection with the prosecution of the Action, of their right to object to the Settlement and/or Lead Plaintiffs' Counsel's motion for reimbursement of litigation expenses, of their right to exclude themselves from the Settlement Class, and of their right to appear at

the Settlement Hearing; (d) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 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”), and all other applicable law and rules.

7. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation, the amount of the Settlement, the releases provided for therein and the dismissal with prejudice of any and all of the Released Claims against each and every one of the Released Persons) and finds that the Settlement is, in all respects, fair, reasonable and adequate and is in the best interests of Lead Plaintiffs and the Settlement Class.

8. The Action and all of the claims against the Settling Defendants by the Settlement Class Members and the Lead Plaintiffs are hereby dismissed on the merits and with prejudice, as of the Effective Date. The Settling Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

9. **Binding Effect** – The terms of the Stipulation and of this Final Order and Judgment shall forever be binding on Lead Plaintiffs and every Settlement Class Member (regardless of whether or not any individual Settlement Class Member submits a Proof of Claim Form or seeks or obtains a distribution from the Net Settlement Fund) each and all of their respective predecessors, successors, representatives, affiliates, agents, heirs,

executors, trustees, personal representatives, estates, administrators, and assigns; and any other person or entity who has the right, ability, standing or capacity to assert, prosecute or maintain any of the Released Plaintiffs' Claims belonging to a Settlement Class Member to obtain the proceeds of any recovery therefor but only with respect to those claims. The Settling Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

10. **Releases** – The releases as set forth in Paragraphs 8.2 and 8.3 of the Stipulation (the “Releases”) together with the definitions contained in Section 1 of the Stipulation relating thereto are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that, as of the Effective Date:

(a) each and every one of the Releasing Plaintiffs (regardless of whether any individual Settlement Class Member ever seeks to obtain any distribution from the Net Settlement Fund) by operation of this Final Order and Judgment shall: (i) have and be deemed to have fully, finally and forever released, relinquished and discharged each and every one of the Released Defendant Persons from any and all of the Released Plaintiffs' Claims; (ii) have and be deemed to have covenanted not to sue any of the Released Defendant Persons with respect to any and all of the Released Plaintiffs' Claims; and (iii) forever be barred and enjoined from filing, commencing, prosecuting intervening in, participating in (as class member 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 and all of the Released Plaintiffs' Claims against any of the Released Defendant Persons. Nothing herein shall

prohibit a Settlement Class Member from obtaining a recovery in the Refco Chapter 11 case based on a currently existing claim that exists solely by reason of their status as a creditor and that is not based on the purchase or sale of a Refco security (this sentence shall not be construed as or be deemed to create any new right of recovery or cause of action on behalf of any Person); nor is anything in this Paragraph intended to release any claims asserted by Lead Plaintiffs (or the Settlement Class) against any of the Non-Settling Defendants in the Action;

(b) each and every one of the Settling Defendants by operation of this Final Order and Judgment shall: (i) have and be deemed to have fully, finally and forever released, relinquished and discharged each and every one of the Released Plaintiff Persons from any and all of the Released Defendants' Claims; (ii) have and be deemed to have covenanted not to sue any of the Released Plaintiff Persons with respect to any and all of the Released Defendants' Claims; and (iii) forever be barred and enjoined from filing, commencing, prosecuting, intervening in, participating in (as class member 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 the Released Defendants' Claims against any of the Released Plaintiff Persons; and

(c) The Released Plaintiffs' Claims shall be compromised, settled, discharged and dismissed as against the Released Defendant Persons on the merits and with prejudice by virtue of this Final Order and Judgment. The Released Defendants' Claims shall be compromised, settled, released discharged and dismissed as against the Released Plaintiff Persons on the merits and with prejudice by virtue of this Final Order and Judgment.

Notwithstanding anything to the contrary above, the Released Claims do not include claims: (a) to enforce this Final Order and Judgment and the Settlement, and any or all of their terms, including but not limited to the releases provided for in this Final Order and Judgment; or (b) claims by Settlement Class Members pending on January 19, 2010 that do not arise out of the acquisition or sale of Refco debt or equity securities, including but not limited to the claims asserted, and/or recoveries sought, by plaintiffs and putative class members in : (i) *Capital Management Select Fund Ltd. v. Bennett*, No. 08-6166-cv (2d Cir. 2008); (ii) *In re Refco Capital Markets, Ltd. Brokerage Customer Securities Litigation*, No. 08-6167-cv (2d Cir. 2008); (iii) *VR Global Partners LP. v. Bennett, et al.*, No. 08-6230-cv (2d Cir. 2008); and (iv) *Capital Management Select Fund Ltd. et al. v. Bennett et al.*, 08 Civ. 09810 (JSR)(S.D.N.Y.).

11. **Contribution Bar Order** -- The Court hereby:

(a) permanently bars, enjoins and restrains any and all Persons from commencing, prosecuting or asserting against any of the Released Defendant Persons any claim for contribution or indemnity arising out of the Action (or any other claim where the injury to the claiming Person is the claiming Person's actual or threatened liability to the Lead Plaintiffs or any Settlement Class Member arising out of the Action);

(b) permanently bars, enjoins and restrains the Released Defendant Persons from commencing, prosecuting or asserting against any and all Persons (other than a Person whose liability has been extinguished by the Settlement) any claim for contribution or indemnity arising out of the Action (or any other claim where the injury to the Released Defendant Person is the Released Defendant Persons' actual or threatened liability to the Lead Plaintiffs or any Settlement Class Member arising out of the Action);

(c) provides that nothing in subparagraphs (a) and (b) above, the Stipulation or this Final Order and Judgment shall limit, impact or otherwise affect in any respect, the following claims that do not seek recovery for the Settling Defendant's actual or threatened liability to the Lead Plaintiffs or any Settlement Class Member in connection with the Action: (1) the claims asserted, and/or recoveries sought, by the THL Funds in the following actions: (i) Thomas H. Lee Equity Fund V., L.P., et al. v. Philip R. Bennett, et al., 05 Civ. 9608 (JSR) (S.D.N.Y), (ii) Thomas H. Lee Equity Fund V., L.P., et al. v. Mayer Brown Rowe and Maw LLP, 07 Civ. 6767 (JSR) (S.D.N.Y), and (iii) Thomas H. Lee Equity Fund V., L.P., et al. v. Grant Thornton LLP, 07 Civ. 8663 (JSR) (S.D.N.Y); and/or (2) any other claim for any other injury to a Settling Defendant that any of the Settling Defendants have, may have or may assert against any Person relating to Refco other than the Released Plaintiff Persons;

(d) provides that nothing in subparagraphs (a) and (b) above, the Stipulation or this Final Order and Judgment shall limit, impact or otherwise affect in any respect, any claim of any Person against any of the Settling Defendants that does not seek recovery for that Person's actual or threatened liability to the Lead Plaintiffs or any Settlement Class Member in connection with the Action in any of the actions that have been, or might be, brought by a Settling Defendant as identified in subparagraphs (c)(1) and (c)(2) herein; and

(e) provides that nothing in subparagraphs (a) and (b) shall apply to claims that may be asserted by or against any of the Released Defendant Persons in cases of persons or entities who timely and validly opt out of this Settlement and do not revoke their request for exclusion within the applicable time period.

12. **Judgment Reduction** – Any final verdict or judgment that may be obtained by or on behalf of the Settlement Class or a Settlement Class Member against a Non-Settling Defendant or Non-Settling Defendants shall be reduced by the greater of:

(a) an amount that corresponds to the percentage of responsibility of the Settling Defendants for common damages; or (b) the amount paid by or on behalf of the Settling Defendants to the Settlement Class for common damages.

13. **Rule 11 Findings** – The Court finds and concludes that the Settling Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the commencement, maintenance, prosecution, defense and/or settlement of the Action. The Court further finds that Lead Plaintiffs and Lead Plaintiffs' Counsel adequately represented the Settlement Class Members for purposes of entering into and implementing the Settlement.

14. **No Admissions** – This Final Order and Judgment, the facts and terms of the Settlement and Stipulation (including all exhibits thereto) as well as all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with the Settlement;

(a) shall not be described as, construed as, interpreted as, or offered or received against any of the Settling Defendants as evidence of and/or deemed to be evidence of any presumption, concession or admission by any of the Settling Defendants as to: (i) the truth of any fact alleged in the Complaint; (ii) the validity of any claim that has been or could have been asserted in the Action or in any other litigation; (iii) the deficiency of any defense that has been or could have been asserted in the Action or in

any other litigation; and/or (iv) any liability, negligence, fault, or wrongdoing on their part;

(b) shall not be described as, construed as, interpreted as or offered or received against Lead Plaintiffs or any Settlement Class Member as evidence of any infirmity in the claims of said Lead Plaintiffs and the Settlement Class or that damages recoverable from the Settling Defendants would not have exceeded the Settlement Amount;

(c) shall not be described as, construed as, interpreted as, offered or received against any of the Settling Defendants, Lead Plaintiffs and/or any Settlement Class Member as an admission or concession that the consideration to be given in the Settlement represents the amount which could be or would have been awarded to said Lead Plaintiffs or Settlement Class Members after trial; and

(d) shall not be offered or received against any of the Settling Parties in any other civil, criminal or administrative action or proceeding, except in connection with any action, litigation or proceeding to enforce the terms of the Stipulation.

15. Nothing in this Final Order and Judgment shall preclude any action to enforce the terms of the Stipulation or this Final Order and Judgment. Notwithstanding Paragraph 14, any of the Released Persons may file, cite and/or refer to the Stipulation and this Final Order and Judgment in any other action or proceeding that may be brought against them in any forum in order to effectuate the liability protection granted hereunder, or to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release and discharge, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

16. **Retention of Jurisdiction** – Without affecting the finality of this Final Order and Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Settling Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion for an award of attorneys’ fees and/or expenses by Lead Plaintiffs’ Counsel in the Action that will be paid from the Settlement Fund; (d) the Settlement Class Members for all matters relating to the Action; and (e) any motion to approve the Plan of Allocation and the Class Distribution Order.

17. Any plan of allocation submitted by Lead Plaintiffs’ Counsel or any order entered regarding any motion for attorneys’ fees and expenses filed by Lead Plaintiffs’ Counsel shall in no way affect or delay the finality of this Final Order and Judgment and shall not affect or delay the Effective Date of the Settlement.

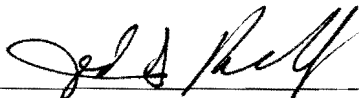
18. **Modifications of the Settlement Agreement** – Without further approval from the Court, Lead Plaintiffs and Settling Defendants are hereby authorized to agree to and adopt such amendments and modifications of the Stipulation or any exhibits attached thereto to effectuate this Settlement that: (a) are not materially inconsistent with this Final Order and Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Lead Plaintiffs and the Settling Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

19. **Entry of Final Judgment** – There is no just reason to delay the entry of this Final Order and Judgment as a final judgment as against the Settling Defendants. The Clerk of the Court is expressly directed to immediately enter final judgment as

against the Settling Defendants, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

20. **Termination** -- If the Effective Date does not occur or the Stipulation is terminated, then this Final Order and Judgment (and any orders of the Court relating to the Settlement) shall be vacated, rendered null and void and be of no further force or effect, except as otherwise provided by the Stipulation.

SO ORDERED this 27th day of October, 2010.



The Honorable Jed S. Rakoff
United States District Judge

EXHIBIT A

Douglas Bragan
Chicago, IL