

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re REFCO, INC. SECURITIES LITIGATION :
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05 Civ. 8626 (JSR)

**JUDGMENT APPROVING CLASS ACTION
SETTLEMENT WITH SANDLER O'NEILL & PARTNERS, L.P.**

WHEREAS, Lead Plaintiffs and defendant Sandler O'Neill & Partners, L.P. ("Sandler O'Neill") entered into a Stipulation and Agreement of Settlement dated October 10, 2008 (the "Stipulation"), which provides for a settlement of this action as against Sandler O'Neill only (the "Sandler O'Neill 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 Orders dated November 5, 2008 and July 30, 2010 (the "Preliminary Approval Orders") that preliminarily certified, for settlement purposes only, a Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (ii) ordered that notice be provided to potential members of the Settlement Class; (iii) scheduled a Settlement Hearing; and (iv) provided those persons and entities identified as members of the putative Settlement Class with an opportunity either to exclude themselves from the proposed Sandler O'Neill Settlement or to object to the proposed Sandler O'Neill Settlement; and

WHEREAS, the Court held a Settlement Hearing on October 27, 2010 to determine, among other things, (i) whether the terms and conditions of the Sandler O'Neill Settlement are fair, reasonable and adequate and should therefore be approved; and (ii) whether judgment should be entered dismissing the Action on the merits and with prejudice as against Sandler O'Neill; 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 Sandler O'Neill & Partners, L.P. incorporates and makes a part hereof:

- (a) the Stipulation filed with this Court; and
- (b) the Notice and the Publication Notice, both of which were filed with the Court on April 20, 2010.

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 Sandler O'Neill Settlement, grant final certification of the Settlement Class, and dismiss the Action as against Sandler O'Neill on the merits and with prejudice. The Court has personal jurisdiction over Sandler O'Neill for purposes of enforcing the Sandler O'Neill 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 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: (i) Refco; (ii) the defendants to the Action (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 are the persons and entities set forth in Exhibit A hereto, who or which properly excluded themselves 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 Sandler O'Neill Settlement and have fully and adequately represented the Settlement Class for purposes of entering into and implementing the Sandler O'Neill Settlement and have satisfied the requirements of Federal Rule of Civil Procedure 23(a)(4). For purposes of the Sandler O'Neill Settlement only, the Lead Plaintiffs are certified as class representatives on behalf of all Settlement Class Members and the law firms of Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A. are certified as Settlement Class counsel.

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 Notice 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 Sandler O'Neill Settlement including the releases, of their right to object to the proposed Sandler O'Neill 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 Sandler O’Neill Settlement is hereby fully and finally approved as fair, reasonable and adequate, and Lead Plaintiffs and Sandler O’Neill are directed to implement and consummate the Sandler O’Neill 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 Sandler O’Neill Settlement.

8. **Releases.** The releases as set forth in paragraphs 3 and 4 of the Stipulation (the “Releases”), together with the definitions of Settled Claims, Sandler O’Neill Claims, Sandler O’Neill Releasees, and Released Plaintiff Parties are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date and forever discharges, among other things, the Sandler O’Neill Releasees from any and all 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 Sandler O’Neill Claims. The Settled Claims are hereby compromised, settled, released, discharged and dismissed as against the Sandler O’Neill Releasees on the merits and with prejudice by virtue of the proceedings herein and this Judgment. The Sandler O’Neill 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. **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) Sandler O'Neill 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 Sandler O'Neill Claims.

10. **Bar Order.** The Court hereby permanently bars, enjoins, and restrains (a) Refco, Refco Group Ltd., LLC, New Refco Group Ltd., LLC, Refco Finance Holdings LLC, Refco Finance Inc., Refco Capital Markets Ltd., Refco Group Holdings, Inc., The Phillip R. Bennett Three Year Annuity Trust, Refco Managed Futures LLC, Westminster-Refco Management LLC, Lind-Waldock Securities LLC, Phillip R. Bennett, Gerald M. Sherer, William M. Sexton, Santo C. Maggio, Phillip Silverman, Tone N. Grant, Ronald L. O'Kelley, Leo R. Breitman, Nathan Gantcher, Thomas H. Lee Partners, L.P., THL Refco Acquisition Partners, THL Refco Acquisition Partners II, THL Acquisition Partners III, 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., THL Equity Advisors V, LLC, Thomas H. Lee Investors Limited Partnership, 1997 Thomas H. Lee Nominee Trust, Thomas H. Lee, David V. Harkins, Scott L. Jaeckel, Scott A. Schoen, Grant

Thornton LLP, Credit Suisse Securities (USA) LLC (formerly known as Credit Suisse First Boston LLC), Banc of America Securities LLC, Deutsche Bank Securities Inc., Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities Inc., 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., Utendahl Capital Partners, L.P., Mayer Brown LLP, Joseph P. Collins and Robert C. Trosten (collectively, the “Non-Settling Defendants”) and BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft, Dennis A. Klejna, and Joseph J. Murphy (together the “Prior Settling Defendants”) from commencing, prosecuting, or asserting any claim for contractual or other indemnity or contribution against the Sandler O’Neill Releasees, arising out of or related to the claims or allegations asserted by Plaintiffs in the above-captioned litigation, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in the above-captioned litigation, 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. Provided, however, that this paragraph shall not apply to claims that may be asserted by the Non-Settling Defendants in cases of persons who timely opt out of this settlement and do not revoke their request for exclusion within the applicable time period; and (b) the Sandler O’Neill Releasees from commencing, prosecuting, or asserting any claim for contractual or other indemnity or contribution against any person or entity arising out of or related to the claims or allegations asserted by Plaintiffs in the above-captioned litigation, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in the above-captioned litigation, 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, other than a person whose liability has been extinguished by the Sandler O'Neill Settlement.

11. **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 be reduced by the greater of: (i) an amount that corresponds to the percentage of responsibility of the Sandler O'Neill for common damages; or (ii) the amount paid by or on behalf of the Sandler O'Neill to the Class for common damages.

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 Sandler O'Neill as evidence of and/or deemed to be evidence of any presumption, concession, or admission by the Sandler O'Neill 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 Sandler O'Neill;

(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 Sandler O'Neill may refer to it to effectuate the liability protection granted them hereunder; or

(e) described as or construed against the Sandler O'Neill 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. **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.

16. **Modification of Settlement Agreement.** Without further approval from the Court, Lead Plaintiffs and Sandler O'Neill 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.


17. **Extensions of Time.** Without further order of the Court, Lead Plaintiffs and Sandler O'Neill may agree to reasonable extensions of time to carry out any provisions of the Stipulation.

18. **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 Sandler O'Neill 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.

19. **Dismissal of Action.** The Action, which the Court finds was filed on a good faith basis against Sandler O'Neill 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 Sandler O'Neill only, on the merits and with prejudice as of the Effective Date, without fees or costs except as otherwise provided in this Judgment.

20. **Entry of Final Judgment.** Because the Sandler O'Neill Settlement resolves all claims as to Sandler O'Neill 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 Sandler O'Neill. Accordingly, the Court expressly directs the immediate entry of final judgment by the Clerk of Court, as against Sandler O'Neill only, pursuant to Federal Rule of Civil Procedure 54(b).

SO ORDERED this 27th day of October, 2010.



THE HONORABLE JED S. RAKOFF
United States District Judge

EXHIBIT A

Douglas Bragan
Chicago, IL