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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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: 05 Civ. 8626 (JSR)
In re REFCO, INC. SECURITIES LITIGATION :
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 **[AMENDED] [PROPOSED] ORDER APPROVING
NOTICE OF PROPOSED SETTLEMENT WITH
SANDLER O'NEILL & PARTNERS L.P. AND SETTING SETTLEMENT HEARING**

WHEREAS, a consolidated class action is pending in this Court entitled In re Refco, Inc. Securities Litigation, No. 05 Civ. 8626 (JSR) (S.D.N.Y.) (the "Action");

WHEREAS, on October 10, 2008, Lead Plaintiffs RH Capital Associates LLC and Pacific Investment Management Company LLC ("Lead Plaintiffs"), on behalf of themselves and the Settlement Class, and defendant Sandler O'Neill & Partners L.P. ("Sandler O'Neill") reached an agreement to the settle the Action as against Sandler O'Neill (the "Sandler O'Neill Settlement" or the "Settlement") on the terms and conditions set forth in the Stipulation and Agreement of Settlement Between Lead Plaintiffs and Defendant Sandler O'Neill & Partners L.P., dated October 10, 2008 (the "Stipulation");

WHEREAS, on November 6, 2008, the Court (Hon. Gerard E. Lynch) entered an Order Preliminarily Approving Proposed Settlement with Sandler O'Neill & Partners L.P. (Dkt. No. 536) that (i) preliminarily certified a Settlement Class for purposes of the settlement (*id.* at ¶ 2); (ii) preliminarily approved the Settlement, as embodied in the Stipulation, "as being fair, reasonable and adequate to the Settlement Class members, subject to further consideration at the Settlement Hearing" (*id.* at ¶ 3); and held that "[i]n the interests of conserving expenses to the Settlement Class, the Court shall defer until a later date the preliminary approval of a proposed

notice and notice procedures for the Settlement, and the scheduling of a hearing for final approval of the Settlement” (*id.* at ¶ 4);

WHEREAS, Lead Plaintiffs have now reached an agreement to settle the Action as against the remaining underwriter defendants (the “Other Settling Underwriter Defendants Settlement”) on the terms and conditions set forth in the Stipulation and Agreement of Settlement Between Lead Plaintiffs and the Settling Underwriter Defendants, dated April 20, 2010 and Lead Plaintiffs will provide notice of that settlement to the Settlement Class, which notice will also inform the Settlement Class of the Sandler O’Neill Settlement and their rights with respect thereto including the date of the Settlement Hearing at which the Court will consider, among other things, whether the settlements with Sandler O’Neill and the Other Settling Underwriter Defendants should be finally approved as fair, reasonable and adequate to the Settlement Class;

WHEREAS, the Court has read, considered and approved, with respect to the Other Settling Defendants Settlement, the proposed notice program set forth in [Revised Proposed] Order Preliminarily Approving Proposed Settlement with the Settling Underwriter Defendants (“Other Settling Defendants Preliminary Approval Order”) and the (a) Notice of (I) Proposed Settlement of Class Action With the Underwriter Defendants, (II) Hearing on Proposed Settlements and (III) Motion for Award of Attorneys’ Fees and Reimbursement of Expenses (“Notice”); (b) Proof of Claim and Release (“Proof of Claim”); (c) Summary Notice of (I) Proposed Settlements of Class Action With the Underwriter Defendants, (II) Hearing on Proposed Settlement, and (III) Motion for Award of Attorneys’ Fees and Reimbursement of Expenses (“Publication Notice”); and (d) the proposed plan of allocation (“Plan of Allocation”) attached thereto as Exhibits 1-4, respectively;

WHEREAS, the Court finds that the Notice, Proof of Claim, Publication Notice and Plan of Allocation also fairly apprise Settlement Class Members of the Sandler O'Neill Settlement and their rights with respect thereto, and

WHEREAS, unless otherwise defined herein, all capitalized words contained herein shall have the same meanings as they have in the Stipulation;

NOW THEREFORE, IT IS HEREBY ORDERED:

1. **Settlement Hearing** – At the settlement hearing (the “Settlement Hearing”) to be held by the Court on October 27, 2010 at 4:00 p.m. in Courtroom 14B of the United States District Court for the Southern District of New York, United States Courthouse, 500 Pearl Street, New York, NY, 10007, the Court will, among other things: (a) determine whether the proposed Sandler O'Neill Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, adequate and in the best interests of the Settlement Class and should be approved by the Court; (b) determine whether the Settlement Class should be finally certified for purposes of the Sandler O'Neill Settlement; (c) determine whether a Judgment substantially in the form attached as Exhibit B to the Stipulation should be entered dismissing the Action with prejudice against Sandler O'Neill; (d) determine whether the proposed Plan of Allocation is fair and reasonable and should be approved; (e) determine whether the motion by Co-Lead Counsel for an award of attorneys' fees and reimbursement of litigation expenses should be approved; and (f) consider any other matters that may properly be brought before the Court in connection with the Settlement.

2. The Court may adjourn the Settlement Hearing and approve the proposed Settlement with such modifications as the Lead Plaintiffs and Sandler O'Neill may agree to, if appropriate, without further notice to the Settlement Class.

3. **Approval of Form and Content of Notice** – The Court (a) approves, as to form and content, the Notice, the Proof of Claim, the Publication Notice, and the Plan of Allocation, and (b) finds that the mailing and distribution of the Notice, Proof of Claim and Plan of Allocation and the publication of the Publication Notice in the manner and form set forth in the Other Settling Defendants Preliminary Approval Order at paragraph 6 (i) is the best notice practicable of the Sandler O’Neill Settlement under the circumstances, (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, of the effect of the proposed Sandler O’Neill Settlement (including the releases contained therein) and of their rights to object to the proposed Sandler O’Neill Settlement, exclude themselves from the Settlement Class and appear at the Settlement Hearing; (iii) constitutes due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Sandler O’Neill Settlement; and (iv) satisfies 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. § 77z-1(a)(7), and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Notice and Publication Notice before they are mailed and published, respectively. Notice of the Settlement and the Settlement Hearing shall be given by Co-Lead Counsel as set forth in the Other Settling Defendants Preliminary Approval Order.

4. **Retention of Claims Administrator and Manner of Notice** – Co-Lead Counsel are hereby authorized to retain The Garden City Group, Inc. (the “Claims Administrator”) to supervise and administer the notice procedure as well as the processing of claims as set forth in the Other Settling Defendants Preliminary Approval Order at paragraph 6.

5. **Nominee Procedures** – Brokers and other nominees who purchased or acquired Refco Group Ltd., LLC/Refco Finance Inc. 9% Senior Subordinated Notes Due 2012 or Refco, Inc. common stock during the Class Period for the benefit of another person or entity shall be requested to provide the Notice, Proof of Claim and Plan of Allocation to all such beneficial owners as set forth in Other Settling Defendants Preliminary Approval Order at paragraph 8.

6. **Participation in Settlement** – Settlement Class Members who wish to participate in the Settlement and receive a distribution from the proceeds of the Settlement maintained in the Settlement Fund must complete and submit a Proof of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim must be postmarked no later than ninety (90) calendar days after the Notice Date. Notwithstanding the foregoing, Co-Lead Counsel may, at their discretion, accept for processing late claims provided such acceptance does not delay the distribution of the Net Settlement Fund to the Settlement Class. By submitting a Proof of Claim, a person or entity shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its claim and the subject matter of the Settlement.

7. Any Settlement Class Member that does not timely and validly submit a Proof of Claim or whose claim is not otherwise approved by the Court: (a) shall be deemed to have waived his, her or its right to share in the Net Total Settlement Fund, as defined in the Notice; (b) shall forever be barred from participating in any distributions therefrom; (c) shall be bound by the provisions of the Stipulation and the Settlement and all proceedings, determinations, orders and judgments in the Action relating thereto, including, without limitation, the Judgment and the releases provided for therein, whether favorable or unfavorable to the Settlement Class;

and (d) will be barred from commencing, maintaining or prosecuting any of the Settled Claims against each and all of the Sandler O'Neill Releasees, as more fully described in the Notice.

8. **Exclusion From the Class** – Any member of the Settlement Class who wishes to exclude himself, herself or itself from the Settlement Class shall request exclusion in writing within the time and in the manner set forth in the Notice. Any such request for exclusion shall be mailed or delivered such that it is received no later than twenty (20) calendar days prior to the Settlement Hearing, to: *Refco Securities Litigation*, c/o The Garden City Group, Inc., Claims Administrator, P.O. Box 9087, Dublin, Ohio 43017-0987, as provided in the Notice. Unless the Court orders otherwise, no request for exclusion shall be valid unless it is made within the time provided and in the manner specified in the Notice. Any request for exclusion that does not comply with the prerequisites for exclusion will be invalid.

9. Any person who timely and validly requests exclusion in compliance with the terms stated in this Order (as more fully described in the Notice) and is excluded from the Settlement Class shall not be a Settlement Class Member, shall not be bound by the terms of the Settlement and shall have no right to participate in the distribution of the Net Total Settlement Fund, other than that portion of the fund that relates to the previously approved settlement.

10. Any Settlement Class Member who does not timely and validly request exclusion from the Settlement Class in the manner stated in this Order: (a) shall be deemed to have waived his, her or its right to be excluded from the Settlement; (b) shall be forever barred from requesting exclusion from the Settlement Class in this or any other proceeding; (c) shall be bound by all proceedings, determinations, orders and judgments in the Action relating to the proposed Settlement, including, but not limited to, the Judgment and the releases provided for therein, whether favorable or unfavorable to the Settlement Class; and (d) will be barred from

commencing, maintaining or prosecuting any of the Settled Plaintiffs' Claims against any of the Released Defendant Persons, as more fully described in the Notice.

11. **Appearance and Objections at Settlement Hearing** – Any Settlement Class Member may enter an appearance in the Action, at his, her or its own expense, individually or through counsel of his, her or its own choice, by filing with the Clerk of Court and delivering a notice of appearance to both Co-Lead Counsel and counsel for Sandler O'Neill listed in the Notice such that it is received no later than twenty (20) calendar days prior to the Settlement Hearing, 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 member of the Settlement Class who does not request exclusion from the Settlement Class may file a written objection to the proposed Settlement, the proposed Plan of Allocation and/or the motion for an award of attorneys' fees and reimbursement of litigation expenses and appear and show cause, if he, she or it has any cause, why the proposed Settlement, the proposed Plan of Allocation and/or the motion for attorneys' fees and reimbursement of litigation expenses should not be approved; provided, however, that no Settlement Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the proposed Plan of Allocation and/or the motion for attorneys' fees and reimbursement of litigation expenses unless that person or entity has filed written objections with the Court and served copies of such objections in the manner provided in the Notice such that it is received no later than twenty (20) calendar days prior to the Settlement Hearing on:

Theresa Trzaskoma, Esq.
Brune & Richard LLP
80 Broad Street
New York, NY 10004

Megan D. McIntyre
Grant & Eisenhofer P.A.
1201 N. Market Street
Wilmington, DE 19801

Salvatore J. Graziano
Bernstein Litowitz Berger & Grossmann LLP
1285 Avenue of the Americas
New York, NY 10019

12. Any objections, filings and other submissions 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 and evidentiary support the Settlement Class Member wishes to bring to the Court's attention as well as documents sufficient to show the number of shares of Refco common stock and/or face value of the 9% Senior Subordinated Notes purchased and sold during the Class Period, as well as the dates and prices of each such purchase and sale.

13. Any member of the Settlement Class who does not make his, her or its objection in the manner provided herein shall be deemed to have waived his, her or its right to object to the Settlement, the Plan of Allocation and the request for attorneys' fees and reimbursement of litigation expenses and shall forever be barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the Settlement, the Plan of Allocation or the requested attorneys' fees and expense reimbursement, or from otherwise being heard concerning the Settlement, the Plan of Allocation or the attorneys' fees and expense reimbursement request in this or any other proceeding.

14. **Use of this Order** –This Order, the proposed Settlement, the Stipulation and any and all of their terms (and all negotiations, discussions and proceedings in connection therewith):
(a) shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum, or other tribunal other than as


may be necessary to enforce the terms of this Order and/or the proposed Settlement; (b) shall not be described as, construed as, interpreted as or offered or received against Sandler O'Neill as evidence of and/or deemed to be evidence of any presumption, concession, or admission by Sandler O'Neill as to any liability, negligence, fault, wrongdoing on their part or the validity of any claim by Lead Plaintiffs or the merits of any of their defenses; and (c) 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 the damages recoverable from Sandler O'Neill would not have exceeded the Settlement Amount.

15. **Supporting Papers** – Co-Lead Counsel shall file and serve papers in support of the proposed Settlement no later than thirty-five (35) calendar days prior to the Settlement Hearing; if reply papers are necessary, they are to be filed and served no later than seven (7) calendar days prior to the Settlement Hearing.

16. **Attorneys' Fees and Expenses** – Notwithstanding paragraph 15 of the Stipulation, the parties understand that the Court will authorize payment to Co-Lead Counsel of 50% of any attorneys' fees awarded and 100% of approved expenses immediately upon entry of an Order approving attorneys' fees and reimbursement of expenses, with payment of the 50% balance of the attorneys' fees awarded to be made to Co-Lead Counsel when distribution of the proceeds of the Net Total Settlement Fund to claimants has been very substantially completed.

17. The Court retains jurisdiction to consider all further applications arising out of the proposed Settlement.

SO ORDERED this 30~~th~~ day of July, 2010.



The Honorable Jed S. Rakoff
United States District Judge

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