

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re REFCO, INC. SECURITIES
LITIGATION

: MASTER FILE NO.
: 05 Civ. 8626 (GEL)
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**STIPULATION AND AGREEMENT OF SETTLEMENT
BETWEEN LEAD PLAINTIFFS AND
DEFENDANT SANDLER O'NEILL & PARTNERS, L.P.**

This stipulation and agreement of settlement is made and entered into by and between Lead Plaintiffs RH Capital Associates LLC and Pacific Investment Management Company LLC, on behalf of themselves and the class of persons defined below (the "Settlement Class"), and defendant Sandler O'Neill & Partners, L.P. ("Sandler O'Neill").

WHEREAS:

A. All capitalized words or terms not otherwise defined herein shall have the meaning for those words or terms as set forth in the section below entitled "Definitions" at ¶ 1 hereof.

B. Commencing in October 2005, multiple securities class action complaints were filed against Refco, certain of Refco's former officers and directors, Refco's auditors, Refco's underwriters, and others.

C. By Order dated February 8, 2006, the Court consolidated the class actions and appointed RH Capital Associates LLC and Pacific Investment Management Company LLC as Lead Plaintiffs, and appointed the law firms of Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A. to serve as Co-Lead Counsel;

D. On May 5, 2006, Lead Plaintiffs filed in the Action the Amended Complaint, which, *inter alia*, named Sandler O'Neill as a defendant, and asserted claims against Sandler O'Neill pursuant to Sections 11 and 12(a)(2) of the Securities Act of 1933;

E. By Order dated April 30, 2007, the Court denied Sandler O'Neill's motion to dismiss the Amended Complaint;

F. On December 3, 2007, Lead Plaintiffs filed the Second Amended Complaint, again naming Sandler O'Neill as a defendant and again asserting claims against Sandler O'Neill pursuant to Sections 11 and 12(a)(2) of the Securities Act of 1933;

G. Co-Lead Counsel have conducted an investigation, pursued discovery, and analyzed the claims and researched the applicable law with respect to the claims against Sandler O'Neill and its potential defenses thereto;

H. Co-Lead Counsel and Sandler O'Neill's Counsel have engaged in arm's-length negotiations to resolve the claims by Lead Plaintiffs and the Class against Sandler O'Neill, and have now agreed to settle those claims on terms that include financial and non-financial benefits to the Settlement Class, including the payment of \$3,500,000 for the benefit of the Settlement Class;

I. Sandler O'Neill has made available for review by Co-Lead Counsel certain documents pertinent to the Settlement Class's claims and Sandler O'Neill's defenses to those claims, and Co-Lead Counsel reviewed those documents before Lead Plaintiffs agreed to this Settlement;

J. During the course of discovery in the Action, Co-Lead Counsel have received and analyzed millions of pages of documents that have been produced by the Defendants, including Sandler O'Neill, and various third parties.

K. Based upon their independent investigation and review of Sandler O'Neill's documents and documents produced in discovery, Co-Lead Counsel and Lead Plaintiffs have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Lead Plaintiffs and the Settlement Class, and are in the Settlement Class's best interests, and have agreed to settle the claims raised in the Action with Sandler O'Neill pursuant to the terms and provisions of this Stipulation, after considering (a) the substantial benefits that the Settlement Class will receive from the Settlement, (b) the attendant risks of litigation, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation; and

L. Sandler O'Neill continues to deny that it committed any acts or omissions giving rise to any liability and/or violation of law, and is entering into this Settlement solely to avoid the burden and expense of further litigation.

NOW THEREFORE, without any concession by Lead Plaintiffs that the Action lacked merit, and without any concession by Sandler O'Neill of any liability or wrongdoing or lack of merit in its defenses, it is hereby **STIPULATED AND AGREED**, by and among the parties to this Stipulation, through their respective attorneys, subject to approval by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the parties hereto, that all Settled Claims as against Sandler O'Neill shall be compromised, settled, released and dismissed with prejudice, and without costs, upon and subject to the following terms and conditions:

DEFINITIONS

1. As used hereinafter in this Stipulation, the following terms shall have the following meanings:

- a. “Action” means *In re Refco, Inc. Securities Litigation*, No. 05 Civ. 8626 (GEL) (S.D.N.Y.), pending in the United States District Court for the Southern District of New York.
- b. “Amended Complaint” means the amended complaint filed by Lead Plaintiffs in this Action on May 5, 2006.
- c. “Authorized Claimant” means a Settlement Class Member who submits a timely and valid Proof of Claim to the Claims Administrator and does not opt out.
- d. “Bankruptcy Court” means the United States Bankruptcy Court in *In re Refco Inc., et. al.*, Case No. 05-60006 (S.D.N.Y.) (RDD).
- e. “Bernstein Litowitz” means the law firm of Bernstein Litowitz Berger & Grossmann LLP, Co-Lead Counsel for Lead Plaintiffs and the Settlement Class.
- f. “Claims Administrator” means The Garden City Group, Inc., the firm retained by Co-Lead Counsel, subject to Court approval, which shall mail and publish the Notices, process Proofs of Claim and administer the Settlement Amount to Authorized Claimants.
- g. “Class Distribution Order” means an order of the Court approving the Claims Administrator’s administrative determinations concerning the acceptance and rejection of the claims submitted herein, and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.
- h. “Class Period” means the period from July 1, 2004 through and including October 17, 2005.

- i. “Co-Lead Counsel” means the law firms of Bernstein Litowitz and Grant & Eisenhofer.
- j. “Complaint” means the consolidated class action complaint filed by Lead Plaintiffs in this Action on April 3, 2006.
- k. “Court” means the United States District Court for the Southern District of New York.
- l. “Creditors Committee” means Refco’s Official Committee of Unsecured Creditors in the Refco Bankruptcy Proceeding.
- m. “Defendants” means all defendants named in the Amended Complaint and the Second Amended Complaint.
- n. “Effective Date” means the date upon which the Judgment becomes Final.
- o. “Escrow Account” means the interest-bearing account maintained by the Escrow Agent into which the Settlement Amount shall be deposited. The Escrow Account shall be controlled and maintained jointly by Bernstein Litowitz and Grant & Eisenhofer, on behalf of Lead Plaintiffs and the Settlement Class.
- p. “Escrow Agent” means Mellon – Bank, N.A., the financial institution selected by Co-Lead Counsel to receive, hold, invest and disburse the Settlement Amount pursuant to the terms of this Stipulation and the Escrow Agreement.
- q. “Escrow Agreement” means the escrow agreement among Bernstein Litowitz, Grant & Eisenhofer and the Escrow Agent with respect to the Escrow Account.
- r. “Final,” with respect to the Judgment, means the later of: (i) if there is an appeal from the Judgment (other than an appeal pertaining solely to the Court’s approval of a Plan of Allocation and/or the Court’s award of attorneys’ fees, costs or expenses), the date of

final affirmance on appeal and the expiration of the time for any further judicial review whether by appeal, reconsideration or a petition for a writ of certiorari and, if certiorari is granted, the date of final affirmance of the Judgment following review pursuant to the grant; or (ii) the expiration of the time for the filing or noticing of any appeal from the Judgment, which shall be thirty (30) days after the Judgment is entered in the Court's docket. Any appeal or proceeding seeking judicial review pertaining solely to (i) Court approval of the Plan of Allocation of the Net Settlement Fund; and/or (ii) the Court's award of attorneys' fees, costs or expenses, shall not affect the time set forth above for the Judgment to become Final.

s. "Grant & Eisenhofer" means Grant & Eisenhofer P.A., Co-Lead Counsel for Lead Plaintiffs and the Settlement Class.

t. "Judgment" means the proposed judgment to be entered approving the Settlement substantially in the form attached hereto as Exhibit B.

u. "Lead Plaintiffs" means RH Capital Associates LLC and Pacific Investment Management Company LLC.

v. "Net Settlement Fund" means the Settlement Fund less (i) Court awarded attorneys' fees and expenses; (ii) Notice and Administration Expenses; (iii) any required Taxes; and (iv) any other fees or expenses approved by the Court.

w. "Notice" means the notice of the proposed Settlement, which shall be sent to members of the Settlement Class at a later date.

x. "Notice and Administration Expenses" means all expenses incurred in connection with the preparation and printing of the Notice; providing notice to the Settlement Class by mail, publication and other means; receiving and reviewing claims; applying the Plan of

Allocation; corresponding with Settlement Class Members; and the costs of the Claims Administrator.

y. "Plan of Allocation" means the plan that Lead Plaintiffs will submit to the Court at a later date and upon notice to the Settlement Class that shall be utilized for distribution of the Net Settlement Fund to Authorized Claimants in a manner consistent with the terms of this Stipulation, and as approved by the Court.

z. "Preliminary Approval Order" means the proposed order preliminarily approving the Settlement, which shall be substantially in the form attached hereto as Exhibit A.

aa. "Proof of Claim" means the form substantially in the form to be approved by the Court and disseminated to Settlement Class Members at a future date, which Settlement Class Members shall be required to complete and return to the Claims Administrator in order to substantiate their entitlement to a share of the Net Settlement Fund.

bb. "Publication Notice" means the notice of the proposed Partial Settlement which shall be published at a later date.

cc. "Refco" means Refco, Inc. and its predecessors and subsidiaries, including, but not limited to, Refco Group Ltd., LLC, New Refco Group Ltd., LLC, Refco Finance Holdings LLC, Refco Finance Inc., and Refco Capital Markets Ltd.

dd. "Refco Bankruptcy Proceeding" means the consolidated bankruptcy proceedings relating to Refco, currently pending in the Bankruptcy Court for the Southern District of New York.

ee. "Released Parties" means the Sandler O'Neill and the Released Plaintiff Parties collectively.

ff. “Released Plaintiff Parties” means the Lead Plaintiffs, their respective present and former parents, subsidiaries, divisions, and affiliates, Plaintiffs’ Co-Lead Counsel and assisting counsel, the present and former employees, officers, and directors of each of them, the present and former accountants, insurers, and agents of each of them, and the predecessors, heirs, successors, and assigns of each, and the members of the Class.

gg. “Second Amended Complaint” means the second amended complaint filed by Lead Plaintiffs in this Action on December 3, 2007.

hh. “Settled Claims” means any and all claims of every nature and description, including both known and Unknown Claims, asserted by or that could have been asserted by Plaintiffs arising out of or relating to investments in securities issued by Refco during the Class Period, or arising out of and relating to any disclosures, registration statements or other statements by Refco during the Class Period, including without limitation claims asserted by or that could have been asserted by Plaintiffs in the Complaint based on or related to the Securities Act of 1933, the Securities Exchange Act of 1934, or any state statute or common law, including without limitation any claims based on allegedly intentional, reckless, or negligent conduct, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in the Complaint, 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.

ii. “Settlement” or “Sandler O’Neill Settlement” means the resolution of the Action as against Sandler O’Neill in accordance with the terms and provisions of this Stipulation.

jj. "Settlement Amount" means \$3,500,000, as described more fully in ¶¶ 6-7 below.

kk. "Settlement Class" means 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 Class Period 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) entities in which Refco or any Defendant has a controlling interest; and (v) the legal representatives, heirs, predecessors, successors or assigns of any of the foregoing excluded persons or entities. Also excluded from the Settlement 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 to be set forth in the Notice.

ll. "Settlement Class Member" means any person or entity who or which is a member of the Settlement Class and not excluded therefrom.

mm. "Settlement Fund" means the Settlement Amount and any interest earned on any monies held in the Escrow Account.

nn. "Settlement Hearing" means the hearing to be held by the Court to determine whether the proposed Sandler O'Neill Settlement is fair, reasonable and adequate and should be approved.

oo. "Sandler O'Neill Claims" means any and all claims, rights, demands, obligations, controversies, debts, damages, losses, causes of action and liabilities of any kind or

nature whatsoever in law or in equity, including both known and Unknown Claims, held at any point from the beginning of time to the date of the execution of this Stipulation, which claims have been or could have been asserted by Sandler O'Neill against any of the Released Plaintiff Parties and which arise out of or relate in any way to the institution or prosecution of the Action.

pp. "Sandler O'Neill's Counsel" means the law firm of Sullivan & Cromwell LLP.

qq. "Sandler O'Neill Releasees" means Sandler O'Neill, its present and former parents, subsidiaries, divisions, and affiliates, including without limitation Sandler O'Neill & Partners, L.P. employees, officers, partners, principals, and directors, including without limitation, the insurers, and agents of each of them, and the predecessors, heirs, successors, and assigns of each, and any person or entity in which any Sandler O'Neill Releasee has or had a controlling interest or which is or was related to or affiliated with any Sandler O'Neill Releasee.

rr. "Stipulation" means this Stipulation and Agreement of Settlement.

ss. "Taxes" means all taxes on the income of the Settlement Fund and expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

tt. "Termination Notice" shall have the meaning set forth in ¶ 33 below.

uu. "Unknown Claims" means any and all Settled Claims which Lead Plaintiffs in the Action or any Settlement Class Member does not know to exist in his, her, or its favor at the time of the release of Sandler O'Neill Releasees, and any Sandler O'Neill Claims which Sandler O'Neill did not know to exist in its favor at the time of the release of the Released Plaintiff Parties, which if known by it might have affected its decision with respect to the

Settlement. With respect to any and all Settled Claims and Sandler O'Neill Claims, the parties stipulate and agree that upon the Effective Date, Lead Plaintiffs and Sandler O'Neill shall expressly, and each Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiffs and Sandler O'Neill acknowledge, and other Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settled Claims and Sandler O'Neill Claims was separately bargained for and was a key element of this Settlement.

RELEASES

2. The obligations incurred pursuant to this Stipulation are in full and final disposition of the Action with respect to Sandler O'Neill and any and all Settled Claims.

3. As of the Effective Date, Lead Plaintiffs and each Settlement Class Member on behalf of themselves, and each of their respective predecessors, successors, parents, subsidiaries, affiliates, heirs, executors, trustees, and administrators, by operation of the Judgment, will release and forever discharge each and every Settled Claim, as against the Sandler O'Neill Releasees and shall forever be barred and enjoined from commencing, instituting or maintaining any of the Settled Claims against the Sandler O'Neill Releasees. The releases described in this paragraph do not operate to preclude any plaintiff or claimant from

making any claim with respect to any funds made available as a result of the Refco bankruptcy. Moreover, nothing in this paragraph is intended to release any claims asserted by the Class against the Non-Settling Defendants.

4. As of the Effective Date, Sandler O'Neill by operation of the Judgment, will release and forever discharge each and every Sandler O'Neill's Claim, and shall forever be barred and enjoined from commencing, instituting or maintaining any of Sandler O'Neill Claims against any of the Released Plaintiff Parties.

CLASS CERTIFICATION

5. Solely for purposes of this Settlement, Sandler O'Neill stipulates to (i) certification of the Action as a class action, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure; (ii) the appointment of Lead Plaintiffs as representatives of the Settlement Class; and (iii) the appointment of Co-Lead Counsel as Settlement Class Counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure. Lead Plaintiffs will move for, and Sandler O'Neill shall not oppose, entry of the Preliminary Approval Order, which will certify the Action to proceed as a class action solely for purposes of this Settlement. If the Settlement is terminated for any reason or not approved by the Court, the conditional certification of the Action as a class action shall be vacated, and the Action shall proceed as if the Settlement Class had never been certified.

THE SETTLEMENT CONSIDERATION

6. In full settlement of the claims asserted in the Action against Sandler O'Neill and in consideration of the releases specified in ¶¶ 2-4, above, Sandler O'Neill shall cause the Settlement Amount of \$3,500,000 to be paid into the Escrow Account for the benefit of

the Settlement Class.

7. Sandler O'Neill shall pay the Settlement Amount within 30 days after the date upon which the Preliminary Approval Order is entered.

USE AND ADMINISTRATION OF SETTLEMENT FUND

8. The Settlement Fund may be used: (i) to pay any Taxes; (ii) to pay Notice and Administration Expenses; (iii) to pay any attorneys' fees and expenses awarded by the Court; (iv) to pay any other fees and expenses approved by the Court; and (v) to pay claims of Authorized Claimants determined valid for payment. The Settlement Fund shall be the sole source of attorneys' fees, and plaintiffs will have no recourse against Sandler O'Neill for attorneys' fees.

9. The Net Settlement Fund shall remain in the Escrow Account until the Effective Date, whereafter the Net Settlement Fund shall be distributed to Authorized Claimants as provided in ¶¶ 18-21 hereof. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court, and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account in United States Treasury Bills or, if approved by each of the Co-Lead Counsel and Lead Plaintiffs, in money market funds with one or more of the fifty (50) largest banking institutions in the United States, and shall collect and reinvest all interest accrued thereon. The Lead Plaintiffs have structured the Escrow Account so that it will qualify as a "qualified settlement fund," as that term is defined in Treas. Reg. §1.468B-1, which has been promulgated under Section 468B of the Internal Revenue Code of 1986, as amended) and the parties hereto accordingly agree to treat the Settlement Fund as a Qualified Settlement Fund within the meaning of Treasury Regulation §1.468B-1, and that

Bernstein Litowitz and Grant & Eisenhofer, as administrators of the Settlement Fund within the meaning of Treasury Regulation §1.468B-2(k)(3), shall be responsible for timely filing tax returns and any relevant tax filings and documentation relating thereto for the Settlement Fund and timely paying from the Settlement Fund any Taxes owed with respect to the Settlement Fund. Sandler O'Neill's Counsel as transferor agrees to provide promptly to Bernstein Litowitz the required statement described in Treasury Regulation §1.468B-3(e).

10. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the Escrow Agent without prior Order of the Court. Any Tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph, and in all events shall reflect that all Taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Settlement Fund shall indemnify and hold Sandler O'Neill harmless for Taxes and related expenses (including without limitation, taxes payable by reason of any such indemnification), if any, payable by Sandler O'Neill by reason of the income earned on the Settlement Fund. Sandler O'Neill shall notify the Escrow Agent promptly if it receives any notice of any claim for Taxes relating to the Settlement Fund.

11. Co-Lead Counsel may pay from the Settlement Amount all reasonable costs and expenses associated with the administration of the Settlement, including, without limitation, the actual costs of identifying and notifying Class Members and printing and mailing the Notice and Proof of Claim, publication of the Publication Notice, reimbursement to nominee owners for forwarding the Notice and Proof of Claim to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with mailing notices and processing the submitted claims, and any other Notice and Administration Expenses. In the

event that the Settlement is terminated, all monies paid by Sandler O'Neill into the Settlement Fund shall be returned to the Sandler O'Neill, with interest actually earned, except that amounts used to pay for Notice, up to \$100,000.00, shall not be returned.

12. Co-Lead Counsel will apply to the Court for a Class Distribution Order, on notice to Sandler O'Neill's Counsel, approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the claims submitted herein and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing the payment of the Net Settlement Fund to Authorized Claimants.

13. This is not a claims-made settlement. As of the Effective Date, neither Sandler O'Neill nor any person paying the Settlement Amount or any portion of the Settlement Amount on behalf of Sandler O'Neill shall have any right to the return of the Settlement Fund or any portion thereof irrespective of the number of Proofs of Claim filed, the collective amount of losses of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

14. The Claims Administrator will administer the Settlement under Co-Lead Counsel's supervision and subject to the jurisdiction of the Court. Sandler O'Neill will have no responsibility for the administration of the Settlement, and shall have no liability to the Settlement Class in connection with such administration. On a schedule to be set by the Court, Co-Lead Counsel will cause the Claims Administrator to mail the Notice and the Proof of Claim to those members of the Settlement Class whose addresses may be identified through reasonable effort. Co-Lead Counsel will publish the Publication Notice of the proposed Settlement on one

occasion in *Investor's Business Daily* within ten (10) days of the mailing of the Notice, or in such other form or manner as may be ordered by the Court.

ATTORNEYS' FEES AND EXPENSES

15. At any time prior to distribution to the Settlement Class, upon reasonable notice to Settlement Class Members, Co-Lead Counsel, on behalf of all plaintiffs' counsel in the Action, may apply to the Court for an award from the Settlement Fund of attorneys' fees not to exceed 18% of the Settlement Amount. Sandler O'Neill will take no position on any request for attorneys' fees by Co-Lead Counsel. Any attorneys' fees as are awarded by the Court shall be paid from the Settlement Fund to Co-Lead Counsel within five business days of the entry of the Order awarding such attorneys' fees, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to the obligation of Co-Lead Counsel and each such plaintiffs' counsel to refund to the Settlement Fund, within ten business days, the amount received by each plus accrued interest at the rate paid on the Escrow Account by the financial institution holding it, to the extent necessary if: as a result of any appeal and/or further proceeding on remand, or successful collateral attack, the fee or cost award is reduced or reversed; the award order does not become final; the Settlement itself is voided by any party as provided herein; or the Settlement is later reversed or modified by any court. Co-Lead Counsel shall allocate the attorneys' fees among plaintiffs' counsel, in a manner in which they in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Action with Sandler O'Neill.

16. Lead Plaintiffs and Co-Lead Counsel may not cancel or terminate the Stipulation or the Settlement in accordance with ¶ 33 or otherwise based on this Court's or any appellate court's ruling solely with respect to any application for attorneys' fees and expenses or

other fee and expense award in the Action. Sandler O'Neill has no responsibility or liability for the allocation of attorneys' fees.

DISTRIBUTION TO AUTHORIZED CLAIMANTS

17. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund in accordance with ¶¶ 21-27 below and the Plan of Allocation.

18. The distribution of the Net Settlement Fund to Settlement Class Members shall be subject to the Plan of Allocation, which Lead Plaintiffs shall propose in their discretion, at a later point and subject to notice to Settlement Class Members. Sandler O'Neill will take no position with respect to such Plan of Allocation; such Plan of Allocation is a matter separate and apart from the proposed Settlement between Lead Plaintiffs and Sandler O'Neill, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement.

19. The Plan of Allocation is not a necessary term of this Stipulation and it is not a condition of this Stipulation that any particular plan of allocation be approved by the Court. Lead Plaintiffs and Co-Lead Counsel may not cancel or terminate the Stipulation or the Settlement in accordance with ¶ 33 or otherwise based on this Court's or any appellate court's ruling solely with respect to the Plan of Allocation or any plan of allocation in the Action. Sandler O'Neill has no responsibility or liability for allocation of the Net Settlement Fund.

20. Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on the Plan of Allocation. Sandler O'Neill will have no involvement or responsibility in reviewing or challenging claims.

ADMINISTRATION OF THE SETTLEMENT

21. Any member of the Settlement Class who fails to timely submit a valid Proof of Claim will not be entitled to receive any of the proceeds from the Net Settlement Fund but will otherwise be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against Sandler O'Neill concerning the Settled Claims.

22. Co-Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund. Sandler O'Neill shall have no liability, obligation or responsibility for the administration of the Settlement, the allocation of the Settlement proceeds or the reviewing or challenging of claims of members of the Settlement Class.

23. For purposes of determining the extent, if any, to which a Settlement Class Member shall be entitled to be treated as an "Authorized Claimant," the following conditions shall apply:

a. Each Settlement Class Member shall be required to submit a Proof of Claim signed under penalty of perjury, and supported by such documents as are designated therein, including proof of the claimant's loss, or such other documents or proof as Lead Counsel, in its discretion, may deem acceptable, subject to the approval of the Court;

b. All Proofs of Claim must be submitted by the date specified thereon unless such period is extended by Order of the Court. Any Settlement Class Member who fails to submit a Proof of Claim by such date shall be forever barred from receiving any payment pursuant to this Stipulation (unless, by Order of the Court, a later submitted Proof of Claim by such Settlement Class Member is approved), but shall in all other respects be bound by all of the

terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against Sandler O'Neill concerning the Settled Claims. A Proof of Claim shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope and if mailed first-class postage prepaid and addressed in accordance with the instructions thereon, provided that it is received before the motion for the Class Distribution Order is filed. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator;

c. Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, who shall determine in accordance with this Stipulation and under the supervision of Co-Lead Counsel, the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below;

d. Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the claimant in order to afford the claimant the opportunity to remedy curable deficiencies in the Proof of Claim submitted. The Claims Administrator, under supervision of Co-Lead Counsel, shall notify, in a timely fashion and in writing, all claimants whose Proofs of Claim they propose to reject in whole or in part, setting forth the reasons therefore, and shall indicate in such notice that the claimant whose claim is to be rejected in whole or in part has the right to a review by the Court if such claimant so desires and if such claimant complies with the requirements of subparagraph (e) below;

e. If any claimant who is notified by the Claims Administrator that the Claims Administrator intends to reject his, her or its claim in whole or in part desires to contest

such rejection, such claimant must, within twenty days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation, and specifically requesting a review thereof by the Court. If the dispute concerning the claim cannot be otherwise resolved, Co-Lead Counsel shall thereafter present the request for review to the Court; and

f. The administrative determinations of the Claims Administrator accepting and rejecting claims shall be presented to the Court, on notice to Sandler O'Neill's Counsel, for approval by the Court in the Class Distribution Order.

24. Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that claimant's status as a Settlement Class Member and the validity and amount of the claimant's claim. In connection with the processing of the Proofs of Claim, no discovery shall be allowed on the merits of the Action or of the Settlement.

25. Payment pursuant to this Stipulation shall be deemed final and conclusive against all Settlement Class Members. All Settlement Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against Sandler O'Neill concerning the Settled Claims.

26. All proceedings with respect to the administration, processing and determination of claims described in this Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

27. The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator only after the Effective Date and after all claims have been processed and all claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to communicate with the Claims Administrator concerning such rejection or disallowance; provided, however, that a distribution may occur pending any appellate court's ruling solely with respect to the scope of the bar order provisions of the Judgment, as set forth in ¶¶ 29-32 herein.

TERMS OF THE PRELIMINARY APPROVAL ORDER

28. Concurrently with their application for preliminary Court approval of the Settlement contemplated by this Stipulation, and promptly after execution of this Stipulation, Co-Lead Counsel shall apply to the Court for entry of an Order Preliminarily Approving Settlement of the Action, substantially in the form of the Preliminary Approval Order annexed hereto as Exhibit A.

TERMS OF THE JUDGMENT

29. If the Settlement contemplated by this Stipulation is approved by the Court, Co-Lead Counsel and Sandler O'Neill's Counsel shall jointly request that the Court enter a Judgment substantially in the form annexed hereto as Exhibit B. 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 Sandler O'Neill. Nothing herein is intended to broaden the language of the Private Securities Litigation Reform Act of 1995.

30. The Judgment shall also contain a provision that permanently bars, enjoins, and restrains 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.

31. The Judgment shall also contain a provision requiring that 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 Sandler O'Neill for common damages; or (ii) the amount paid by or on behalf of Sandler O'Neill to the Class for common damages.

32. The Settlement, including the certification of the Action as a class action, is conditioned upon final court approval; payment in full of the Settlement Payment; dismissal of the Action as to Sandler O'Neill with prejudice; and the Judgment becoming Final. Should those conditions not be met, the Settlement and the conditional certification of the Action as a class action shall be null and void.

TERMINATION

33. Sandler O'Neill and Lead Plaintiffs shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so ("Termination Notice") to all other parties hereto within thirty days of: (a) the Court's declining

to enter the Preliminary Approval Order in any material respect; (b) the Court's refusal to approve this Stipulation or any material part of it; (c) the Court's declining to enter the Judgment in any material respect; (d) the date upon which the Judgment is modified or reversed in any material respect by the United States Court of Appeals or the Supreme Court of the United States; or (e) in the event that the Court enters a judgment in a form other than the Judgment ("Alternative Judgment") and none of the parties hereto elects to terminate this Settlement, the date upon which such Alternative Judgment is modified or reversed in any material respect by the United States Court of Appeals or the Supreme Court of the United States. The award of attorneys' fees, if any, to Co-Lead Counsel is not a basis for termination of this Settlement Agreement.

34. Except as otherwise provided herein, in the event the Settlement is terminated or fails to become effective for any reason, then the Settlement shall be without prejudice and none of its terms shall be effective or enforceable except as specifically provided herein, the parties to this Stipulation shall be deemed to have reverted to their respective status in the Action as of August 11, 2008 and, except as otherwise expressly provided, the parties in the Action shall proceed in all respects as if this Stipulation and any related orders had not been entered. In such event, the fact and terms of this Stipulation shall not be admissible in any trial of this Action.

35. If the Settlement Amount, or any portion thereof, is to be returned pursuant to the provisions of this Stipulation, any portion of the Settlement Amount previously paid by or on behalf of Sandler O'Neill, plus interest earned less any Taxes paid or due (in which case the deducted funds will be used to pay such Taxes) with respect to such interest income, and less any

Notice and Administration Costs actually paid or incurred up to \$100,000, shall be returned to the source of such payments.

NO ADMISSION OF WRONGDOING

36. This Stipulation, whether or not consummated, and any negotiations, proceedings or agreements relating to the Stipulation, the Settlement, and any matters arising in connection with settlement negotiations, proceedings, or agreements:

a. shall not be admissible in any action or proceeding for any reason, other than an action to enforce the terms hereof;

b. shall not be 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 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 Sandler O'Neill;

c. shall not be 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. shall not be 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, Sandler O'Neill may refer to it to effectuate the liability protection granted it hereunder; and

e. shall not be described as or construed against Sandler O'Neill or the Lead Plaintiffs and 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.

MISCELLANEOUS PROVISIONS

37. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

38. Sandler O'Neill warrants that it is not insolvent, nor will the payment of the Settlement Amount render it insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This warranty is made by Sandler O'Neill and not by Sandler O'Neill's Counsel.

39. If a case is commenced in respect of Sandler O'Neill under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Sandler O'Neill to be a preference, voidable transfer, fraudulent transfer or similar transaction, and any portion thereof is required to be returned, and such amount is not promptly deposited to the Settlement Fund by others, then, at the election of Lead Plaintiffs, the parties shall jointly move the Court to vacate and set aside the releases given and the Judgment entered in favor of Sandler O'Neill pursuant to this Stipulation, which releases and Judgment shall be null and void,

and the parties shall be restored to their respective positions in the litigation as of August 11, 2008, and any cash amounts in the Settlement Fund shall be returned as provided above.

40. The parties to this Stipulation and Agreement of Settlement intend the Settlement of the Action to be a final and complete resolution of all disputes asserted or which could be asserted by Lead Plaintiffs and Settlement Class Members against Sandler O'Neill with respect to the Settled Claims. Accordingly, Lead Plaintiffs and Sandler O'Neill agree not to assert in any forum that the Action was brought or defended in bad faith or without a reasonable basis. The parties hereto shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the maintenance, defense or settlement of the Action. The parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length in good faith by the parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel. Sandler O'Neill represents that, to the best of its knowledge, it has already produced to Lead Plaintiffs all of its non-privileged documents relevant to the Settled Claims, and Lead Plaintiffs and Settlement Class Members agree not to seek any additional discovery of any form from Sandler O'Neill related to Settled Claims.

41. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all parties hereto or their successors-in-interest.

42. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

43. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the

purpose of entering orders providing for awards of attorneys' fees and expenses to Co-Lead Counsel and enforcing the terms of this Stipulation.

44. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

45. This Stipulation and its exhibits constitute the entire agreement among the parties hereto concerning the Settlement of the Action as against Sandler O'Neill, and no representations, warranties, or inducements have been made by any party hereto concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

46. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the parties to this Stipulation shall exchange among themselves original signed counterparts.

47. This Stipulation shall be binding when signed, but the Settlement shall be effective only on the condition that the Effective Date occurs.

48. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

49. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

50. This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arm's-length negotiations among

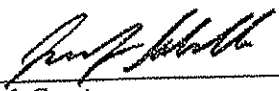
the parties, and all parties have contributed substantially and materially to the preparation of this Stipulation.

51. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so, and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

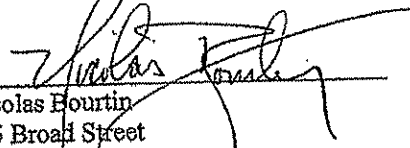
52. Co-Lead Counsel and Sandler O'Neill's Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order, the Stipulation and the Settlement, and to promptly agree upon and execute all such other documentation as reasonably may be required to obtain final approval by the Court of the Settlement.

IN WITNESS WHEREOF, Lead Plaintiffs and Sandler O'Neill have caused this Stipulation to be executed, by their duly authorized attorneys, as of October 10, 2008.

GRANT & EISENHOFER P.A.

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Co-Lead Counsel for Lead Plaintiffs and the Settlement Class

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By 
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Counsel for Defendant Sandler O'Neill & Partners, L.P.

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

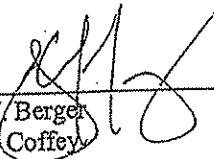
By 
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(212) 554-1400
Co-Lead Counsel for Lead Plaintiffs and the Settlement Class

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**ORDER PRELIMINARILY APPROVING
PROPOSED SETTLEMENT WITH
SANDLER O'NEILL & PARTNERS L.P.**

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 settlement ("Settlement") of the Action in accordance with the Stipulation and Agreement of Settlement Between Lead Plaintiffs and Defendant Sandler O'Neill & Partners, L.P. dated October __, 2008 (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 Sandler O'Neill & Partners, L.P. ("Sandler O'Neill") 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) and/or common stock of Refco (CUSIP No. 75866G109) during the period July 1, 2004 through and including October 17, 2005 (the "Class Period"), (the "Settlement Class");

WHEREAS, Lead Plaintiffs' proposed definition of the Settlement Class excludes (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 is any person or entity who or which properly excludes himself, herself or itself by filing a valid and timely request for exclusion.

WHEREAS, the Court having read and considered (1) the Second Amended Consolidated Class Action Complaint, filed in this Action on December 3, 2007; (2) Lead Plaintiffs' motion for preliminary approval of the Settlement, and the papers filed in support thereof; and (3) the Stipulation between Lead Plaintiffs and Sandler O'Neill;

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; 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 Sandler O'Neill (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 questions of fact and law common to the Settlement Class.
- c. The claims of the Lead Plaintiffs in the Action are typical of the claims of the proposed Settlement Class.
- d. Lead Plaintiffs will fairly and adequately protect the interest of the proposed Settlement 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. For settlement purposes in the Action as against Sandler O'Neill, 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 Sandler**

O'Neill – 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 Settlement Class is any person or entity who or which properly excludes himself, herself or itself by filing a valid and timely request for exclusion. For purposes of settlement only, the Lead Plaintiffs are appointed as class representatives on behalf of all Settlement Class Members. The law firms of Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A. are jointly appointed as Settlement Class counsel. If the Settlement is terminated for any reason or final approval is not granted by the Court, this preliminary certification of the Action as a class action shall be automatically vacated.

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. **Consideration of Other Matters Deferred** – In 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 (the "Settlement Hearing").

5. **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 and expenses to be paid from the Settlement Fund shall be approved. Neither Sandler O'Neill nor Sandler O'Neill'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.

6. **Taxes** – Co-Lead Counsel are authorized and directed to prepare any tax returns and any other tax reporting for or in respect of the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof as contemplated by the Stipulation, without further order of the Court.

7. **Settlement Fund** – The contents of the Settlement Fund held by the Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

8. **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 Sandler O'Neill, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (i) the Effective Date does not occur, 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.

9. **Use of Order** – This Order shall not be construed or used as an admission, concession or declaration by or against Sandler O’Neill 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: _____, 2008 BY THE COURT

Hon. Gerard E. Lynch

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**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 ____, 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 an Order dated _____, 2008 (the "Preliminary Approval Order") that (i) 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 _____, 2008 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 _____, 2008.

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 _____ day of _____, 2008.

THE HONORABLE GERARD E. LYNCH
United States District Judge