

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE REFCO, INC. SECURITIES LITIGATION : No. 05 CV 8626 (JSR)

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**STIPULATION AND AGREEMENT OF SETTLEMENT  
BETWEEN LEAD PLAINTIFFS AND  
THE SETTling UNDERWRITER DEFENDANTS**

This stipulation and agreement of settlement, dated April 20, 2010 (the “Stipulation”) is made and entered into, through their respective undersigned counsel, 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 defendants Credit Suisse Securities (USA) 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., BMO Capital Markets Corp. (f/k/a Harris Nesbitt Corp.), Samuel A. Ramirez & Company, Inc., Muriel Siebert & Co., Inc., and The Williams Capital Group, L.P. (collectively, the “Settling Underwriter Defendants”). Subject to the terms and conditions set forth herein and the Court’s approval pursuant to Rule 23 of the Federal Rules of Civil Procedure, the settlement embodied in this Stipulation is intended by the Settling Parties: (a) to be in full and final disposition of the Action with respect to the Settling Underwriter Defendants, CMG Institutional Trading, LLC, and Utendahl Capital Partners, L.P., and (b) fully, finally and forever to resolve, discharge, dismiss and settle the Settled Claims against the Released Persons.<sup>1</sup>

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<sup>1</sup> All capitalized words or terms, not otherwise defined herein, shall have the meaning as set forth below in Paragraph 1 hereof, entitled “Definitions.”

**WHEREAS:**

A. Commencing in October 2005, multiple securities class action complaints were filed against Refco, certain of Refco's former officers and directors, Refco's auditors, initial purchasers of certain Refco 144A bonds, underwriters of Refco's initial public offering, and others;

B. By Order dated February 8, 2006, the Court: (i) consolidated the class actions under the caption In re Refco, Inc. Securities Litigation, No. 05 CV 8626 (S.D.N.Y.); (ii) appointed RH Capital Associates LLC and Pacific Investment Management Company LLC as co-lead plaintiffs, and (iii) appointed the law firms of Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A. to serve as co-lead counsel for the plaintiffs;

C. On April 3, 2006, Lead Plaintiffs filed a Consolidated Class Action Complaint that, inter alia, asserted claims against defendants Credit Suisse Securities (USA) LLC, Banc of America Securities LLC, and Deutsche Bank Securities Inc. (the "Initial Purchaser Defendants") and others pursuant to the Securities Act of 1933 ("Securities Act") arising out of the offering of Refco Group Ltd., LLC/Refco Finance Holdings 9% Senior Subordinated Notes due 2012 ("144A Bonds"); and claims against the Settling Underwriter Defendants and others pursuant to the Securities Act arising out of the initial public offering of common stock of Refco, Inc. ("Refco Stock");

D. Discovery commenced thereafter, which included, inter alia, the exchange of initial disclosures, interrogatories, requests for production of documents and responses thereto, the production of a substantial volume of documents, fact depositions and the exchange of expert reports;

E. On April 30, 2007, the Court granted the motions of the Initial Purchaser Defendants to dismiss the claims in the Consolidated Class Action Complaint relating to the 144A Bonds;

F. On December 3, 2007, Lead Plaintiffs filed a Second Amended Consolidated Class Action Complaint (the "Complaint"). The Complaint alleges violations of the Securities Act of 1933 by the Settling Underwriter Defendants and others, and violations of the Securities Exchange Act of 1934 by parties other than the Settling Underwriter Defendants during the Class Period, including violations arising out of the IPO and the offering of Refco Group Ltd., LLC/Refco Finance Inc. 9% Senior Subordinated Notes due 2012;

G. On February 1, 2008, the Initial Purchaser Defendants moved to dismiss the claims asserted against them in the Complaint relating to the 144A Bonds and the exchange of the 144A Bonds for bonds registered pursuant to a Form S-4 Registration Statement (as amended) ("Registered Bonds"), and on August 14, 2008, the Court granted that motion;

H. The Settling Parties have engaged in extensive arm's-length negotiations in an effort to determine whether a consensual resolution of the Action could be achieved prior to the expenditure of additional time and expense on the litigation, including participation by their counsel in mediation sessions on March 3 and 4, 2010 with an experienced mediator, the Hon. Layn R. Phillips (Ret.);

I. With the mediator's assistance, the Settling Parties reached an agreement-in-principle on March 4, 2010 to settle Lead Plaintiffs' claims against the Settling Underwriter Defendants on terms that include the payment of a total of \$49,500,000 (forty-nine million, five hundred thousand dollars) in cash to the Settlement Class;

J. The Settling Parties agree that the Settlement Amount and the other terms of the Settlement set forth herein were negotiated at arm's length, in good faith, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel;

K. Co-Lead Counsel state that they have undertaken an extensive factual investigation and legal analysis as to the claims against the Settling Underwriter Defendants in the Action and the Settling Underwriter Defendants' defenses to those claims and have analyzed potential damages that could be recovered from the Settling Underwriter Defendants if the Settlement Class were to prevail. In the course of their investigation, Co-Lead Counsel have reviewed hundreds of thousands of pages of documents, including emails and other internal records produced by the Settling Underwriter Defendants. In addition, Co-Lead Counsel participated in the depositions of numerous employees and other representatives of the Settling Underwriter Defendants. While Co-Lead Counsel believe that the claims asserted in the Action are meritorious and that the Settlement Class ultimately would prevail at trial, they have concluded, based on their investigation and recognizing the risks they face in connection with the Settling Underwriter Defendants' due diligence and related defenses as well as the delay and expense of further proceedings, that the terms and conditions of the Settlement provided for in this Stipulation are fair, reasonable, adequate and in the best interests of the Settlement Class. Co-Lead Counsel accordingly have recommended the Settlement to Lead Plaintiffs and the Settlement Class;

L. Each and all of the Settling Underwriter Defendants continue to deny any and all allegations of wrongdoing, fault, liability or damages to Lead Plaintiffs and/or the Settlement Class and believe that they acted at all times properly, in good faith and in a manner consistent with their legal duties and obligations. Although the Settling Underwriter Defendants believe

that the claims against them in the Action are without merit and that they would ultimately prevail either at summary judgment or at trial, to eliminate the burden and expense of further litigation, the Settling Underwriter Defendants wish to settle and resolve the Action on the terms and conditions stated in this Stipulation and to put these claims to rest finally and forever without in any way acknowledging any wrongdoing, fault, liability or damages to Lead Plaintiffs and/or the Settlement Class; and

M. Sandler O'Neill & Partners, L.P. entered into a separate settlement with Lead Plaintiffs on October 27, 2008 and is not, for the purpose of this Stipulation and the settlement provided for herein, a "Settling Underwriter Defendant."

**NOW THEREFORE**, without any concession by Lead Plaintiffs that the Action lacks merit, and without any concession by the Settling Underwriter Defendants of any liability or wrongdoing or lack of merit in their defenses, it is hereby

**STIPULATED AND AGREED**, by and between Lead Plaintiffs (on behalf of themselves and the Settlement Class Members) and the Settling Underwriter Defendants, through their respective attorneys, that, in consideration of the benefits flowing to the parties hereto, all Settled Plaintiffs' Claims as against the Settling Underwriter Defendants, CMG Institutional Trading, LLC, and Utendahl Capital Partners, L.P. shall be compromised, settled, released and dismissed with prejudice, and without costs, on the terms and conditions stated below, subject to Court approval following a Settlement Hearing to be held pursuant to Rule 23 of the Federal Rules of Civil Procedure.

#### **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 (JSR), pending in the United States District Court for the Southern District of New York.

b. “Authorized Claimant” means a Settlement Class Member who submits a timely and valid Proof of Claim to the Claims Administrator and is not otherwise excluded from the Settlement Class.

c. “Barred Claims” means (i) any claim for contribution or indemnity (whether by contract, by operation of law or equitable principles, or based on any other source) arising out of or related to the claims or allegations asserted by Lead Plaintiffs in the Action, or (ii) any other claim of any type, whether arising under state, federal, common, or foreign law, for which the injury claimed is that person’s or entity’s actual or threatened liability to Lead Plaintiffs and/or members of the Settlement Class.

d. “Bernstein Litowitz” means the law firm of Bernstein Litowitz Berger & Grossmann LLP, Co-Lead Counsel for Lead Plaintiffs and the Settlement Class.

e. “Claims Administrator” means The Garden City Group, Inc., the firm retained by Co-Lead Counsel, subject to Court approval, which shall process Proofs of Claim and administer the Settlement Fund and the distribution of the Net Settlement Fund to Authorized Claimants in accordance with the terms and conditions set forth in this Stipulation, the Class Distribution Order and any other orders of the Court relating thereto.

f. “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, 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.

g. “Class Period” means the period from July 1, 2004 through and including October 17, 2005.

h. “Co-Lead Counsel” means the law firms of Bernstein Litowitz and Grant & Eisenhofer.

i. “Complaint” means the Second Amended Consolidated Class Action Complaint filed by Lead Plaintiffs in this Action on December 3, 2007.

j. “Controlling Interest” means a majority interest.

k. “Court” means the United States District Court for the Southern District of New York.

l. “Defendants” means, collectively, the Settling Underwriter Defendants and the Non-Settling Defendants.

m. “Effective Date” means the date upon which the Judgment becomes Final.

n. “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.

o. “Escrow Agent” means BNY Mellon, National Association, 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.

p. “Escrow Agreement” means the escrow agreement among Bernstein Litowitz, Grant & Eisenhofer and the Escrow Agent with respect to the Escrow Account.

q. “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 (a) Court approval of the Plan of Allocation; and/or (b) the Court's award of attorneys' fees, costs or expenses, shall not affect the time set forth above for the Judgment to become Final.

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

s. "Investment Vehicle" means any investment company or pooled investment fund, including but not limited to mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which any Settling Underwriter Defendant or affiliate has or may have a direct or indirect interest or act as an investment advisor, but in which the Settling Underwriter Defendant or affiliate is not a majority owner and does not hold a majority beneficial interest. This definition does not bring into the Settlement Class any of the Settling Underwriter Defendants, CMG Institutional Trading, LLC, or Utendahl Capital Partners L.P.

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. “Non-Settling Defendants” means 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, Robert C. Trosten, Dennis A. Klejna, Joseph J. Murphy, Gerald M. Sherer, William M. Sexton, Santo C. Maggio, Phillip Silverman, Tone N. Grant, Ronald L. O’Kelley, Leo R. Breitman, Nathan Gantcher, Mayer Brown LLP, Joseph P. Collins, Grant Thornton LLP, Thomas H. Lee Partners, L.P., THL Refco Acquisition Partners, THL Refco Acquisition Partners II, THL Refco 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, BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft, CMG Institutional Trading, LLC, Utendahl Capital Partners, L.P., and Sandler O’Neill & Partners, L.P.

x. “Notice” means the notice of the proposed partial Settlement, substantially in the form attached hereto as Exhibit A-1, which shall be sent to members of the Settlement Class.

y. “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.

z. “Plan of Allocation” means the plan that Co-Lead Counsel will submit to the Court for approval upon notice to the Settlement Class to be utilized for distribution of the Net Settlement Fund to Authorized Claimants.

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

bb. “Proof of Claim” means the form substantially in the form attached hereto as Exhibit A-2 that 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.

cc. “Publication Notice” means the notice of the proposed Settlement substantially in the form attached hereto as Exhibit A-3 to be published as set forth in the Preliminary Approval Order.

dd. “Refco” means Refco, Inc. and its predecessors, subsidiaries, and affiliates 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.

ee. “Released Persons” means the Released Defendant Persons and the Released Plaintiff Persons collectively.

ff. “Released Defendant Persons” means, the Settling Underwriter Defendants, CMG Institutional Trading LLC, Utendahl Capital Partners, L.P., and each of their past or present parents, subsidiaries, affiliates, investment funds, predecessors, successors, and

any of their respective past, present, or future officers, directors, partners, members, managing directors, principals, employees, agents, advisors, insurers, and attorneys.

gg. “Released Plaintiff Persons” means, the Lead Plaintiffs, the Settlement Class Members, and each of their past or present parents, subsidiaries, affiliates, investment funds, predecessors, successors, and any of their respective past, present or future officers, directors, partners, members, managing directors, principals, employees, agents, advisors, insurers, and attorneys.

hh. “Settled Claims” means the Settled Defendants’ Claims and the Settled Plaintiffs’ Claims, collectively.

ii. “Settled Defendants’ Claims” means all claims, debts, demands, rights, or causes of action or liabilities whatsoever, known or Unknown (as defined herein), whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, against any of the Released Plaintiff Persons, which arise from the institution, prosecution, defense, or settlement of this litigation.

jj. “Settled Plaintiffs’ Claims” means all claims, debts, demands, rights, or causes of action or liabilities whatsoever, known or Unknown (as defined herein), whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, against the Released Defendant Persons and each of them that (i) were or could have been asserted in the Action, or (ii) relate to the subject matter of the Action and/or the allegations of the Complaint, and (iii) relate to the

purchase, ownership or acquisition during the Class Period of Refco Stock, 144A Bonds, or Registered Bonds.

kk. "Settlement" or "Settling Underwriter Defendants Settlement" means the resolution of the Action as against the Settling Underwriter Defendants in accordance with the terms and provisions of this Stipulation.

ll. "Settlement Amount" means \$49,500,000 (forty-nine million, five hundred thousand dollars) in cash, as described more fully in ¶¶ 6-7 below.

mm. "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 period July 1, 2004 through and including October 17, 2005 and who were damaged thereby. Excluded from the Settlement Class are: (a) Refco; (b) the Defendants; (c) any person or entity who was a partner, executive officer, director, controlling person, subsidiary, or affiliate of Refco or of any Defendant during the Class Period; (d) immediate family members of the individual Defendants; (e) entities in which Refco or any Defendant has a Controlling Interest; and (f) the legal representatives, heirs, estates, administrators, predecessors, successors or assigns of any of the foregoing excluded persons and entities; provided however that any Investment Vehicle (as defined herein) shall not be deemed an excluded person or entity by definition. Also excluded from the Settlement Class will be any person and/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 set forth herein and in the Notice.

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

oo. “Settlement Fund” means the Settlement Amount and any interest earned on any monies held in the Escrow Account.

pp. “Settlement Hearing” means the hearing to be held by the Court to determine whether the proposed Settling Underwriter Defendants Settlement is fair, reasonable and adequate and should be approved.

qq. “Settling Parties” means Lead Plaintiffs acting on behalf of themselves and the Settlement Class, and the Settling Underwriter Defendants, collectively

rr. “Settling Underwriter Defendants’ Counsel” means the law firm of Wilmer Cutler Pickering Hale and Dorr LLP.

ss. “Stipulation” means this Stipulation and Agreement of Settlement.

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

uu. “Termination Notice” shall have the meaning set forth in ¶ 34 below.

vv. “Unknown Claims” means (i) any and all Settled Plaintiffs’ Claims which Lead Plaintiffs or any Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Persons, and (ii) any and all Settled Defendants’ Claims which any Settling Underwriter Defendant does not know or suspect to exist in its favor at the time of the release of the Released Plaintiff Persons, which if known or suspected by it might have affected its decision with respect to the Settlement. With respect to any and all Settled Claims, the parties stipulate and agree that upon the Effective Date, Lead

Plaintiffs, the Settling Underwriter Defendants, 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 the Settling Underwriter Defendants 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 Plaintiffs’ Claims and Settled Defendants’ 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 the Settling Underwriter Defendants, CMG Institutional Trading, LLC, Utendahl Capital Partners, L.P., and any and all Settled Claims.

3. As of the Effective Date, Lead Plaintiffs on behalf of themselves, and each Settlement Class Member by operation of the Judgment, shall be deemed to have released and forever discharged each and every Settled Plaintiffs’ Claim as against the Released Defendant Persons and shall forever be barred and enjoined from filing, commencing, instituting, prosecuting, intervening in any proceeding to assert, or maintaining any of the Settled Plaintiffs’ Claims against any of the Released Defendant Persons. The releases described in this paragraph do not operate to preclude any plaintiff or claimant from making any claims (other than against

the Released Defendant Persons) 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 against any Non-Settling Defendant other than CMG Institutional Trading, LLC and Utendahl Capital Partners, L.P.

4. As of the Effective Date, the Settling Underwriter Defendants by operation of the Judgment, shall be deemed to have released and forever discharged each and every Settled Defendants' Claim as against the Released Plaintiff Persons, and shall forever be barred and enjoined from filing commencing, instituting, prosecuting, intervening in any proceeding to assert, or maintaining any of the Released Defendants' Claims against any of the Released Plaintiff Persons.

#### **CLASS CERTIFICATION**

5. Solely for purposes of this Settlement, the Settling Underwriter Defendants stipulate 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 the Settling Underwriter Defendants shall not oppose, entry of the Preliminary Approval Order, substantially in the form annexed hereto as Exhibit A, 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, and such appointments had not been made.

**THE SETTLEMENT CONSIDERATION**

6. In full settlement of the claims asserted in the Action against the Settling Underwriter Defendants and in consideration of the releases specified in ¶¶ 3-4, above, the Settling Underwriter Defendants shall pay the Settlement Amount of \$49,500,000 (forty-nine million, five hundred thousand dollars) in cash into the Escrow Account for the benefit of the Settlement Class.

7. The Settling Underwriter Defendants shall pay the Settlement Amount within thirty (30) calendar days after the later of (i) the preliminary approval by the Court of the Settlement, and (ii) the date on which the Settling Underwriter Defendants' Counsel receives wire instructions for the Escrow Account and the taxpayer identification number and IRS Form W-9 for the recipient of the funds.

**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 the Settlement Class will have no recourse against the Settling Underwriter Defendants 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 ¶¶ 17-20 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 parties hereto agree that the Settlement fund is intended to be 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. The Settling Underwriter Defendants, as transferors, agree 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 hereby indemnifies and holds the Settling Underwriter Defendants harmless for Taxes and related expenses (including without limitation, taxes payable by reason of any such indemnification), if any, payable by the Settling Underwriter Defendants by reason of the income earned on the Settlement Fund. The Settling Underwriter Defendants shall notify

the Escrow Agent promptly if they receive any notice of any claim for Taxes relating to the Settlement Fund.

11. Co-Lead Counsel may pay from the Settlement Fund all reasonable costs and expenses associated with the administration of the Settlement, including, without limitation, the actual costs of identifying and notifying Settlement Class Members, 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 the Settling Underwriter Defendants into the Settlement Fund shall be returned to the Settling Underwriter Defendants, with net interest actually earned, except that amounts used to pay for Notice and Administration Expenses and the amounts used to pay Taxes, shall not be returned.

12. Co-Lead Counsel will apply to the Court for a Class Distribution Order, on notice to the Settling Underwriter Defendants' Counsel, approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the claims submitted 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 the Settling Underwriter Defendants nor any person paying the Settlement Amount or any portion of the Settlement Amount on behalf of the Settling Underwriter Defendants 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. The Settling Underwriter Defendants 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 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. Prior to the distribution of the Net Settlement Fund to Authorized Claimants, upon reasonable notice to Settlement Class Members, Co-Lead Counsel intend to apply to the Court for an award of: (a) attorneys' fees; and (b) the costs and expenses incurred in connection with the Action; plus (c) interest on both amounts. The Settling Underwriter Defendants will take no position on any request for attorneys' fees and litigation expenses 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, 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 against the Settling Underwriter Defendants. —

16. Lead Plaintiffs and Co-Lead Counsel may not cancel or terminate the Stipulation or the Settlement in accordance with ¶ 34 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. The Settling Underwriter Defendants shall have 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, subject to notice to Settlement Class Members. The Settling Underwriter Defendants 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, 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 ¶ 34 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. The Settling Underwriter Defendants shall have no responsibility or liability for allocation of the Net Settlement Fund.

20. Each Authorized Claimant, whose claim is approved for payment by the Court, shall be allocated a *pro rata* share of the Net Settlement Fund based on the Plan of Allocation. The Settling Underwriter Defendants 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 Settled Plaintiffs' Claims against any of the Released Defendant Persons.

22. Co-Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund. The Settling Underwriter Defendants shall have no liability, obligation or responsibility for the administration of the Settlement.

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 Co-Lead Counsel, in their 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, as set forth in ¶ 21. 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 indicating 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 (20) calendar 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 claim 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 the Settling Underwriter Defendants' 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, as set forth in ¶ 21.

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. No person or entity shall have any claim against Lead Plaintiffs, Lead Plaintiffs' Counsel, the Settling Underwriter Defendants, the Released Defendant Persons or Settling Underwriter Defendants' Counsel based on the administration of the Settlement, including, without limitation, the processing of claims and distributions made in accordance with this Stipulation, the Settlement, the Plan of Allocation and/or the implementation of the Class Distribution Order.

#### **TERMS OF THE PRELIMINARY APPROVAL ORDER**

28. Promptly after execution of this Stipulation, Co-Lead Counsel shall apply to the Court for entry of an order preliminarily approving the proposed Settlement, 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 Settling Underwriter Defendants' Counsel shall jointly request that the Court enter a Judgment substantially in the form annexed hereto as Exhibit B.

30. 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 the Settling Underwriter Defendants substantially in the form set forth in Exhibit B. Nothing herein is intended to broaden the language of the Private Securities Litigation Reform Act of 1995.

31. The Judgment shall also contain a Bar Order substantially in the form set forth in Exhibit B that: (a) permanently bars, enjoins, and restrains the Non-Settling Defendants and any other person or entity from commencing, prosecuting, or asserting any Barred Claims against any of the Released Defendant Persons, whether as claims, cross-claims, counterclaims, third-party claims, or otherwise, and whether asserted in the Action or any other proceeding, 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; and (b) permanently bars, enjoins, and restrains the Released Defendant Persons from commencing, prosecuting, or asserting any Barred Claims against any person or entity, other than a person or entity whose liability to the Settlement Class has been extinguished pursuant to this Settlement, whether as claims, cross-claims, counterclaims, third-party claims or otherwise, and whether asserted in the Action or any other proceeding, 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 (i) Barred Claims shall not be subject to the Bar Order if they seek to

recover for alleged liability to a person or entity who timely opts out of this Settlement and does not revoke that request for exclusion within the applicable time period; and (ii) nothing in the Bar Order alters the rights between and among the Settling Underwriter Defendants, CMG Institutional Trading, LLC, and Utendahl Capital Partners, L.P. under the Master Agreement Among Underwriters dated January 17, 2003, as to which claims are not barred, released or discharged.

32. The Judgment shall also contain a provision substantially in the form set forth in Exhibit B 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 the Settling Underwriter Defendants for common damages; or (ii) the amount paid by or on behalf of the Settling Underwriter Defendants to the Settlement Class or Settlement Class Member for common damages.

33. The Settlement, including the certification of the Action as a class action, is conditioned upon final court approval; payment in full of the Settlement Amount; dismissal of the Action as to the Settling Underwriter Defendants, CMG Institutional Trading, LLC, and Utendahl Capital Partners, L.P. 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**

34. The Settling Underwriter Defendants (acting as a group on whatever group decision basis they deem appropriate) 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 Settling Parties 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.

35. In addition to the grounds set forth in ¶ 34 above, the Settling Underwriter Defendants (acting as a group on whatever group decision basis they deem appropriate) shall have the unilateral unconditional option to withdraw from the Settlement and terminate the Stipulation if persons requesting exclusion from the Settlement Class meet or exceed the conditions set forth in a confidential supplemental agreement that is being executed concurrently with this Stipulation (the “Supplemental Agreement”). The Supplemental Agreement shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Notice) unless and until the Court requires the Settling Parties to file the Supplemental Agreement or disclose its terms or a dispute arises between Lead Plaintiffs and the Settling Underwriter Defendants concerning its interpretation or application.

36. In the event that the Settling Underwriter Defendants elect to terminate the Stipulation in accordance with the Supplemental Agreement and such termination is not nullified

in accordance with the terms of the Supplemental Agreement, the Stipulation shall be terminated and deemed null and void and the provisions of ¶ 37 hereof shall apply.

37. 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 March 3, 2010 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, except that the Settling Parties shall proceed in good faith to propose a revised pretrial schedule to the Court that allows for the fair and reasonable completion of discovery, submission and hearing of pretrial motions, and preparation for trial. In such event, the fact and terms of this Stipulation shall not be admissible in any trial of this Action.

38. 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 the Settling Underwriter Defendants, plus interest earned less any Taxes paid or due with respect to such interest income, and less any Notice and Administration Costs actually paid or incurred, shall be returned to the source of such payments.

**NO ADMISSION OF WRONGDOING**

39. 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 the Settling Underwriter Defendants as evidence of and/or deemed to be evidence of any presumption, concession, or admission by any Settling Underwriter Defendant 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 any Settling Underwriter Defendant;

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 in the Action would not have exceeded the Settlement Amount;

d. shall not be described as, construed as, offered or received against any of the Settling Parties 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 Released Defendant Persons may refer to it to effectuate the liability protection granted them hereunder; and

e. shall not be described as or construed against the Settling Underwriter Defendants, 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.

**MISCELLANEOUS PROVISIONS**

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

41. Each of the Settling Underwriter Defendants warrants as to itself 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 each of the respective Settling Underwriter Defendants and not by Settling Underwriter Defendants' Counsel.

42. If a case is commenced in respect of any Settling Underwriter Defendant (or any insurer contributing to the Settlement Amount on behalf of any of the Settling Underwriter Defendants) 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 any Settling Underwriter Defendant 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 collective election of Lead Plaintiffs, the parties shall jointly move the Court to vacate and set aside solely the releases given and the Judgment entered in favor of that Settling Underwriter Defendant pursuant to this Stipulation, which releases and Judgment shall be null and void, and Lead Plaintiffs and that Settling Underwriter Defendant shall be restored to their respective positions in the litigation as of March 3, 2010, and that Settling Underwriter Defendant shall be treated as a Non-Settling Defendant under the terms herein.

43. 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 and between Lead Plaintiffs, the Settlement Class Members, the Settling Underwriter Defendants and the Released Defendant Persons with respect to the Settled Claims. Accordingly, Lead Plaintiffs and the Settling Underwriter Defendants 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 Settling Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

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

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

46. 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.

47. The waiver by one Settling Party of any breach of this Stipulation by any other Settling Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

48. This Stipulation and its exhibits, together with the Supplemental Agreement, constitute the entire agreement among the Settling Parties concerning the Settlement of the Action as against the Settling Underwriter Defendants, and no representations, warranties, or inducements have been made by any Settling Party concerning this Stipulation and its exhibits and/or the Supplemental Agreement, other than those contained and memorialized in such documents.

49. 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 Settling Parties to this Stipulation shall exchange among themselves original signed counterparts.

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

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

52. 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.

53. 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.

54. 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.

55. Co-Lead Counsel and Settling Underwriter Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order, the Stipulation and the Settlement, and to agree promptly 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 the Settling Underwriter Defendants have caused this Stipulation to be executed, by their duly authorized attorneys, as of April 20, 2010.

**GRANT & EISENHOFER P.A.**

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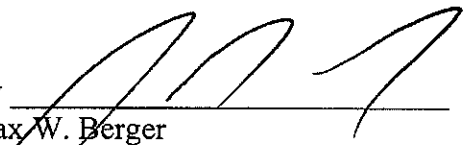
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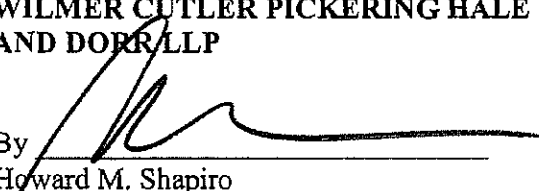
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# **Exhibit A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**EXHIBIT A**

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

**[PROPOSED] ORDER PRELIMINARILY APPROVING  
PROPOSED SETTLEMENT WITH  
THE SETTLING UNDERWRITER DEFENDANTS**

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”); and

WHEREAS, Lead Plaintiffs RH Capital Associates LLC and Pacific Investment Management Company LLC (“Lead Plaintiffs”), on behalf of themselves and the class of persons and entities defined below, and defendants Credit Suisse Securities (USA) 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., BMO Capital Markets Corp. (f/k/a Harris Nesbitt Corp.), Samuel A. Ramirez & Company, Inc., Muriel Siebert & Co., Inc., and The Williams Capital Group, L.P. (collectively, the “Settling Underwriter Defendants” and, together with the Lead Plaintiffs, the “Settling Parties”) have determined to settle all claims asserted against the Settling Underwriter Defendants, CMG Institutional Trading, LLC and Utendahl Capital Partners, L.P. in this Action with prejudice 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 (the “Stipulation”), subject to the approval of this Court (the “Settlement”); and

WHEREAS, the Settling Parties have made an application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order preliminarily approving the Settlement in

accordance with the Stipulation, preliminarily certifying a Settlement Class for purposes of the Settlement and allowing notice to the Settlement Class Members as more fully described herein; and

WHEREAS, the Court has read and considered (a) the Second Amended Consolidated Class Action Complaint, filed in this Action on December 3, 2007; (b) Lead Plaintiffs' motion for preliminary approval of the Settlement, and the papers filed and arguments made in support thereof; and (c) the Stipulation and the exhibits attached 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. **Preliminary Class Certification for Settlement Purposes** – Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court preliminarily certifies, solely for purposes of the Stipulation and effectuating the proposed Settlement, a Settlement Class 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: (a) Refco; (b) the Defendants; (c) any person or entity who was a partner, executive officer, director, controlling person, subsidiary, or affiliate of Refco or of any Defendant during the Class Period; (d) members of the Defendants' immediate families; (e) entities in which Refco or any Defendant has a Controlling Interest; and (f) the legal representatives, heirs, estates, administrators, predecessors, successors or assigns of any of the foregoing excluded persons and entities; provided however that any Investment Vehicle shall not

be deemed an excluded person or entity by definition. Also excluded from the Settlement Class is any person and/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 set forth in the Notice to be sent to Settlement Class Members pursuant to this Order. If the proposed 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.

2. **Class Findings** – Solely for purposes of the proposed Settlement of this Action as against the Settling Underwriter Defendants (and without any adjudication on the merits), the Court preliminarily finds that each element required for certification of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met: (a) the members of the Settlement Class are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of Lead Plaintiffs in the Action are typical of the claims of the Settlement Class; (d) Lead Plaintiffs and their counsel, Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A. (“Co-Lead Counsel”) have fairly and adequately represented and protected the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

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 to be conducted as described below.

4. **Settlement Hearing** – The Court will hold a settlement hearing (the “Settlement Hearing”) on \_\_\_\_\_, 2010 at \_\_\_:\_\_\_ .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, for the following purposes: (a) to determine whether the proposed 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) to determine whether the Settlement Class should be finally certified for purposes of the Settlement; (c) to determine whether a Judgment substantially in the form attached as Exhibit B to the Stipulation should be entered dismissing the Action with prejudice against the Settling Underwriter Defendants, CMG Institutional Trading, LLC and Utendahl Capital Partners, L.P.; (d) to determine whether the motion by Co-Lead Counsel for reimbursement of litigation expenses should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Settlement Hearing shall be given to Settlement Class Members as set forth in Paragraph 6 of this Order.

5. The Court may adjourn the Settlement Hearing and approve the proposed Settlement with such modifications as the Settling Parties may agree to, if appropriate, without further notice to the Settlement Class.

6. **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 more fully set forth below. Notice of the Settlement and the Settlement Hearing shall be given by Co-Lead Counsel as follows:

(a) not later than \_\_\_\_\_, 2010 (the “Notice Date”), the Claims Administrator shall cause a copy of the Notice and the Proof of Claim substantially in the forms

attached hereto as Exhibits 1 and 2, respectively, to be mailed by first-class mail to all Settlement Class Members who can be identified with reasonable effort;

(b) not later than ten (10) business days after the Notice Date (the “Publication Notice Date”), the Claims Administrator shall cause the Publication Notice, substantially in form attached hereto as Exhibit 3, to be published once in the national edition of Investors’ Business Daily; and

(e) not later than seven (7) calendar days prior to the Settlement Hearing, Co-Lead Counsel shall serve on Settling Underwriter Defendants’ Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.

7. **Approval of Form and Content of Notice** – The Court (a) approves, as to form and content, the Notice, the Proof of Claim, and the Publication Notice, attached hereto as Exhibits 1, 2 and 3, respectively, and (b) finds that the mailing and distribution of the Notice and the publication of the Publication Notice in the manner and form set forth in Paragraph 6 of this Order (i) is the best notice practicable 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 Settlement (including the releases contained therein) and of their rights to object to the proposed 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 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. § 78u-4(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.

8. **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 forward the Notice and Proof of Claim to all such beneficial owners within seven (7) calendar days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within seven (7) calendar days of receipt thereof in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim to such beneficial owners. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with the terms of this Order shall be paid from the Settlement Fund.

9. **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.

10. 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 Settlement Fund; (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 Plaintiffs' Claims against each and all of the Released Defendant Persons, as more fully described in the Notice.

11. **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.

12. 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 Settlement Fund.

13. 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.

14. **Appearance and Objections at Fairness 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 Settling Underwriter Defendants' Counsel 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 and/or the motion for reimbursement of litigation expenses and appear and show cause, if he, she or it has any cause, why the proposed Settlement and/or the motion for 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 and/or the motion for 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:

Andrew B. Weissman  
Wilmer Cutler Pickering Hale and Dorr LLP  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006

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

15. 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.

16. 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 and the request for reimbursement of litigation expenses and shall forever be barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the proposed Settlement, or the requested reimbursement, or from otherwise being heard concerning the Settlement or the reimbursement request in this or any other proceeding.

17. **Stay** – Until otherwise ordered by the Court, the Court stays all proceedings in the Action involving the Settling Underwriter Defendants, CMG Institutional Trading, LLC, and Utendahl Capital Partners, L.P., other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending the Settlement Hearing, the Court enjoins Lead Plaintiffs and all Settlement Class Members from commencing or prosecuting, either directly, indirectly, representatively or in any other capacity, any and all of the Settled Plaintiffs' Claims against each and all of the Released Defendant Persons.

18. **Fees and Expenses** – All reasonable costs incurred in identifying and notifying Settlement Class Members as well as in administering the Settlement Fund shall be paid as set forth in the Stipulation.

19. **Settlement Fund** – The contents of the Settlement Fund held by BNY Mellon, National Association (which the Court approves as 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.

20. **Taxes** – Co-Lead Counsel are authorized and directed to prepare any tax returns and any other tax reporting form 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 without further order of the Court in a manner consistent with the provisions of the Stipulation.

21. **Termination of Settlement** – If the Stipulation is terminated, the Settlement is not approved or the Effective Date does not occur, this Order shall become null and void and be without prejudice to the rights of Lead Plaintiffs, the Settlement Class Members, the Settling

Underwriter Defendants, CMG Institutional Trading, LLC, and Utendahl Capital Partners, L.P., all of whom shall be restored to their respective positions in the Action as of March 3, 2010.

22. **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 any of the Settling Underwriter Defendants as evidence of and/or deemed to be evidence of any presumption, concession, or admission by the Settling Underwriter Defendants 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 the Settling Underwriter Defendants would not have exceeded the Settlement Amount.

23. **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.

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

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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The Honorable Jed S. Rakoff  
United States District Judge

# 440920

# **Exhibit A-1**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**EXHIBIT A-1**

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

**NOTICE OF (I) PROPOSED SETTLEMENTS OF CLASS ACTION WITH THE UNDERWITER DEFENDANTS, (II) HEARING ON PROPOSED SETTLEMENTS AND (III) MOTION FOR REIMBURSEMENT OF LITIGATION EXPENSES**

**If you 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, you might be a member of the settlement class in this action making you eligible for relief in connection with partial settlements of the action.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

- This notice relates to a securities class action brought by investors who claim that the prices of Refco, Inc. common stock and Refco Group Ltd., LLC/ Refco Finance Inc. 9% Senior Subordinated Notes due 2012 (“Refco Notes”) were artificially inflated as a result of false statements, non-disclosures, and fraudulent conduct in violation of the federal securities laws.
- The Court has preliminarily approved two partial settlements of this class action (the “Settlements”) between the Court-appointed Lead Plaintiffs RH Capital Associates LLC and Pacific Investment Management Company LLC (“Lead Plaintiffs”) and (i) defendant Sandler O’Neill & Partners, L.P. (“Sandler O’Neill”) and (ii) defendants Credit Suisse Securities (USA) 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., BMO Capital Markets Corp. (f/k/a Harris Nesbitt Corp.), Samuel A. Ramirez & Company, Inc., Muriel Siebert & Co., Inc., and The Williams Capital Group, L.P. (the “Other Settling Underwriter Defendants” and, together with Sandler O’Neill, the “Settling Defendants”).
- The Settlements, if approved, will resolve all claims between the members of the proposed Settlement Class and the Settling Defendants, but they are only partial settlements of this Action. The Settlements do not resolve the claims against Grant Thornton LLP and certain other individual defendants against whom the Action remains pending (the “Remaining Defendants”).
- The Settlements provide that the Settling Defendants will cause a total of \$53,000,000 in cash to be paid to the Settlement Class.<sup>1</sup>

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<sup>1</sup> The Settlements are in addition to (i) a previous partial settlement with BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft (“BAWAG”) that has already been

After payment of attorneys' fees, costs and expenses, the proceeds of the settlements achieved will be distributed to investors who are members of the Settlement Class and who submit timely and valid Proof of Claim forms.

- If you request to be excluded from the Settlement Class, you will not be eligible to share in the proceeds of the Settlements, the settlement with the Audit Committee Defendants and THL Defendants, or any other recoveries that might be obtained in the Action, other than the recovery from the prior settlement with BAWAG that has already been finally approved by the Court.
- The amount that a Settlement Class Member will recover from the Settlements will be based on the plan of allocation that the Court approves. Lead Plaintiffs will propose a plan to the Court at a future date on notice to the Settlement Class. Settlement Class Members will have the opportunity to comment on the proposed plan before it is approved by the Court.
- Lead Plaintiffs and the Settling Defendants disagree as to both liability and damages and do not agree on the average amount of damages per share and per note that would be recoverable if Lead Plaintiffs were to have prevailed on each claim alleged. The issues on which the parties disagree include: (i) whether the Settling Defendants engaged in conduct that would give rise to liability under the federal securities laws; (ii) whether the Settling Defendants have valid defenses to any of the claims against them; and (iii) the amount, if any, by which the prices of Refco's securities were artificially inflated as a result of the Settling Defendants' alleged violations of the federal securities laws. The Settlements were reached because they provide significant benefits to Settlement Class Members and avoid the costs and risks of continuing the lawsuit against Settling Defendants.
- Lead Plaintiffs' Counsel, who have been prosecuting this Action on a wholly contingent basis since its inception in 2005, are not asking the Court to award them attorneys' fees from the funds recovered from the Settling Defendants at this time. They intend to do so in the future after providing further notice to the Settlement Class and giving the class an opportunity to be heard with respect to the fee application.
- Lead Plaintiffs' Counsel, who have advanced the costs of the litigation since its inception, are asking the Court to grant their motion for reimbursement of expenses incurred in connection with the prosecution of the action in an amount not to exceed \$ \_\_\_\_\_ with interest thereon at the same rate as earned by the Settlement Fund to be paid from the settlement funds recovered in the Action.<sup>2</sup> If the Court approves Lead Plaintiffs' Counsel's expense application, the average cost will be approximately \$ \_\_\_\_ per outstanding share or

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finally approved by the Court in which \$140 million in cash was recovered; and (ii) a concurrently proposed partial settlement with the Audit Committee Defendants and THL Defendants providing for a payment of \$130 million in cash with the possible payment of an additional \$10 million. Notice of the BAWAG settlement was disseminated in March 2007. Details of that settlement can be found at [www.refcosecuritieslitigation.com](http://www.refcosecuritieslitigation.com). The proposed settlement with the Audit Committee Defendants and THL Defendants is the subject of a separate notice enclosed with this notice.

<sup>2</sup> When the BAWAG settlement was presented to the Court for approval, Lead Plaintiffs' Counsel did not apply for fees or expenses. Thus, to date they have received neither attorneys' fees nor reimbursement for the amounts they have advanced to pay for the expenses incurred."

note of Refco.<sup>3</sup> The expense application includes reimbursement for expenses that were reasonably incurred and necessary to the prosecution of this Action.

Lead Plaintiffs and the Settlement Class are being represented by Salvatore J. Graziano, Esq., of Bernstein Litowitz Berger & Grossmann LLP, and Megan D. McIntyre, Esq., of Grant & Eisenhofer P.A., the Court-appointed Lead Counsel (“Lead Plaintiffs’ Counsel”). Any questions regarding the Settlements should be directed to Mr. Graziano at Bernstein Litowitz Berger & Grossmann LLP, 1285 Avenue of the Americas, New York, NY 10019, (800) 380-8496, [blbg@blbglaw.com](mailto:blbg@blbglaw.com), or Ms. McIntyre, at Grant & Eisenhofer P.A., 1201 N. Market Street, Wilmington, DE 19801, (302) 622-7000, [mmcintyre@gelaw.com](mailto:mmcintyre@gelaw.com).

- **If you are a member of the Settlement Class and the Settlements are approved, your legal rights will be affected whether you act or not. Read this notice carefully and in its entirety to see what your options are in connection with the Settlements.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT</b>	
<p><b>Submit a Proof of Claim Form by _____ 2010.</b></p>	<p>If the Settlement(s) are approved and you are a member of the Settlement Class, you may be entitled to receive a payment from the Settlement(s). You must submit a Proof of Claim form to share in the proceeds of the Settlements. A copy of the Proof of Claim form is enclosed, and is also available at <a href="http://www.refcosecuritieslitigation.com">www.refcosecuritieslitigation.com</a>.</p> <p>If you remain in the Settlement Class, you will be bound by the Settlements and will give up any “Settled Claims” (as defined below) you may have against the Settling Defendants and the other “Released Defendant Persons” (as defined below), so, if you remain in the Settlement Class, it is in your interest to submit a Proof of Claim form.</p>
<p><b>Exclude Yourself from the Settlement Class by submitting a written request for exclusion so that it is received no later than _____, 2010.</b></p>	<p>If you exclude yourself, you will not be eligible to get a payment from the Settlements. This is the only option that allows you to ever be part of any other lawsuit against any of the Settling Defendants or other Released Defendant Persons concerning the claims that were, or could have been, asserted in this case.</p> <p>If you exclude yourself, you also will not be eligible to participate in the recoveries from any other settlements that are presented to the Court for its consideration at the Settlement</p>

<sup>3</sup> If the Court approves all of the settlements being presented, based on the total recoveries achieved by Lead Plaintiffs to date (including the previously approved BAWAG settlement, the proposed settlement with the Audit Committee Defendants and THL Defendants, and the Settlements described herein), the percentage of the recoveries represented by the requested expenses will be \_\_\_\_\_%.

	<p>Hearing or in any future recoveries that may be obtained from any of the Remaining Defendants; and you may jeopardize your right to receive any portion of any amounts that Lead Plaintiffs receive from the United States government on behalf of the class in connection with the criminal proceedings arising from Refco's bankruptcy.</p>
<p><b>Object to the Settlement(s) by submitting a written objection so that it is received no later than _____, 2010.</b></p>	<p>If you do not exclude yourself, but you wish to object to any part of the Settlement(s) and/or Lead Plaintiffs' Counsel's motion for reimbursement of litigation expenses, you may write to the Court about your objections.</p>
<p><b>Attend the Hearing on _____, 2010 and file a Notice of Intention to Appear so that it is received no later than _____, 2010.</b></p>	<p>Filing a written objection and notice of intention to appear by _____, allows you to speak in Court about the fairness of the proposed Settlement(s) and/or the request for reimbursement of litigation expenses. If you have submitted a written objection to the Settlement(s) or the expense application to the Court, you may (but do not have to) attend the hearing and speak to the Court about your objections.</p>

- These rights and options -- **and the deadlines to exercise them** -- are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlements. The Settlement Funds will be available for distribution to the Settlement Class only if the Settlements are approved and that approval is upheld following any appeals. As noted above, these are only partial settlements of the Action and no plan of allocation is being presented to the Court at this time. Distribution of the proceeds of the Settlements will not be made until a plan of allocation is approved by the Court. You will have the opportunity to review and comment on the proposed plan before it is approved by the Court.

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**SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER**

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## **BASIC INFORMATION**

### **1. Why did I get this Notice?**

You or someone in your family may have purchased or 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 Court caused this Notice to be sent to you because, if you purchased or acquired those securities during that period, the Class Period, you have a right to know about the proposed Settlements and about all of your options before the Court decides whether to approve the Settlements.

This Notice describes the lawsuit, the Settlements, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of this case is the United States District Court for the Southern District of New York. The case is known as *In re Refco Inc. Securities Litigation*, Case Number 05 Civ. 8626 (JSR).

### **2. What is a class action?**

In a class action, one or more plaintiffs, called “lead plaintiffs” or “class representatives”, sue on behalf of people who have similar claims. All of the individuals and entities on whose behalf the class representatives are suing are known as class members. One court resolves the issues in the case for all class members, except for those who choose to exclude themselves from the class if exclusion is permitted by applicable rules of procedure.

### **3. What is this lawsuit about?**

This lawsuit (the “Action”) is a class action alleging violations of the federal securities laws by various persons, including those affiliated with Refco, Inc. and its predecessors and affiliates (including, but not limited to, Refco Group Ltd., LLC, Refco Finance Holdings LLC, and Refco Finance Inc.) (Refco, Inc. and its predecessors and affiliates are referred to collectively as the “Company” or “Refco” in this Notice). The Court has appointed Pacific Investment Management Company LLC and RH Capital Associates LLC to serve as Lead Plaintiffs in the Action, and has appointed the law firms of Grant & Eisenhofer P.A. and Bernstein Litowitz Berger & Grossmann LLP to serve as Lead Plaintiffs’ Counsel on behalf of the class. The Action was brought against more than forty individuals and entities, including certain current and former executive officers of Refco (including Phillip Bennett, Santo Maggio and Robert Trosten), the members of Refco’s audit committee, Refco’s outside auditing firm (Grant Thornton LLP), the private equity firm of Thomas H. Lee Partners, L.P., certain affiliates and certain other persons associated with them, Refco’s outside law firm (Mayer Brown) and one of its partners (Joseph Collins), the Austrian bank BAWAG and the Settling Defendants, CMG Institutional Trading LLC (“CMG”) and Utendahl Capital Partners, L.P. (“Utendahl”) (collectively, the “Defendants”). Lead Plaintiffs allege that Defendants are liable for violations of the federal securities laws because they actively participated in the Company’s manipulative accounting practices and misstatements during the Class Period, knew or should have known about them in the exercise of due diligence or are otherwise responsible for misstatements and/or omissions made by the Company.

Lead Plaintiffs alleged that a little more than two months after completing an Initial Public Offering, Refco admitted that its financial statements “should no longer be relied upon” given a previously undisclosed receivable owed to the Company by an entity owned by its Chief Executive Officer, Phillip Bennett (“Bennett”). They further alleged that while this admission only partially revealed the true extent of the problems at the Company, it set into motion a chain of events and subsequent disclosures that led to Refco’s bankruptcy filing.

Lead Plaintiffs further alleged that the Settling Defendants are statutorily responsible for materially false and misleading statements that were made in connection with (i) a leveraged buyout in June 2004 in conjunction with which Refco issued and sold \$600 million in bonds; and (ii) Refco’s August 2005 Initial Public Offering, and that these false and misleading statements caused the price of Refco securities to be artificially inflated, causing investors who purchased such securities during the Class Period to suffer damages. Claims were asserted under Sections 11 and 12(a)(2) of the Securities Act of 1933 (the “Securities Act”) against the Settling Defendants.

The Settling Defendants moved to dismiss certain of the claims asserted against them in the Consolidated Class Action Complaint filed on April 3, 2006. By Order dated April 30, 2007, the Court dismissed the claims asserted against certain of the Settling Defendants under Sections 12(a)(2) and 11 that were related to unregistered Refco bonds (“Rule 144A Bonds”). Lead Plaintiffs replead their claims in the Second Amended Consolidated Class Action Complaint (the “Complaint”), which was filed in the Action on December 3, 2007. Certain of the Settling Defendants again moved to dismiss the claims relating to the Rule 144A Bonds and the exchange of those bonds for bonds registered pursuant to a Form S-4 Registration Statement. On August 14, 2008, the Court granted that motion. The remaining claims against the Settling Defendants are pending but will be dismissed with prejudice if the Settlements are approved.

While the Court has ruled that certain of Lead Plaintiffs’ claims should not be dismissed at this stage of the litigation, the Court has made no substantive determination on the merits of the claims against the Settling Defendants or against any other Defendant. The Settling Defendants continue to deny any allegations of fault, wrongdoing or liability with respect to the allegations in the Complaint.

**4. What should I do if my address changes, or if this notice was sent to the wrong address?**

If this Notice was sent to you at the wrong address, or if your address changes in the future, please send prompt written notification of your correct address to the Claims Administrator at the following address:

Refco Securities Litigation  
c/o The Garden City Group, Inc.  
Claims Administrator  
P.O. Box 9087  
Dublin, Ohio 43017-0987

**WHO IS IN THE SETTLEMENT CLASS**

**5. How do I know whether I am part of the Settlement Class?**

The Court has preliminarily certified, for purposes of the Settlements, a Settlement Class that consists of, subject to certain exceptions identified below, the following individuals and entities:

*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.*

**6. Are there exceptions to being included?**

Even if you fall within the Settlement Class definition, you are not a member of the Settlement Class if you are a Defendant in the Action; if you were a partner, executive officer, director, controlling person, subsidiary, or affiliate of Refco or any Defendant during the Class Period; if you are an immediate family member of any of the individual Defendants; if you are an entity in which Refco or any Defendant has a controlling interest; or if you are a legal representative, heir, estate, administrator, predecessor, successor, or assign of any of these excluded persons or entities.<sup>4</sup>

**7. I am still not sure whether I am included.**

If you are still not sure whether you are included, you can ask for help, which will be provided to you at no cost. You can call the Claims Administrator toll free at (888) 212-5574, or write to the Claims Administrator at the address stated in the answer to Question 4 above.

**SUMMARY OF SETTLEMENTS**

**8. How and when were the Settlements reached?**

Lead Plaintiffs reached an agreement-in-principle to settle with Sandler O’Neill on August 11, 2008. Thereafter, the terms and conditions of the settlement between Lead Plaintiffs and Sandler O’Neill (the “Sandler O’Neill Settlement”) were formalized in a Stipulation and Agreement of Settlement between Lead Plaintiffs and Defendant Sandler O’Neill & Partners, L.P., dated October 10, 2008 (the “Sandler O’Neill Stipulation”).

Lead Plaintiffs reached an agreement-in-principle to settle with the Other Settling Underwriter Defendants on March 4, 2010. Thereafter, the terms and conditions of the settlement between Lead Plaintiffs and the Other Settling Underwriter Defendants (the “Other Settling Underwriter Defendants Settlement”) were formalized in a Stipulation and Agreement of Settlement between Lead Plaintiffs and the Settling Underwriter Defendants, dated April 20, 2010 (the “Other Settling Underwriter Defendants Stipulation”).

Both of the Settlements were reached only after arms’-length negotiation between Lead Plaintiffs’ Counsel and counsel for Sandler O’Neill and the Other Settling Underwriter Defendants, respectively. The Sandler O’Neill Settlement was reached only after Lead Plaintiffs’ Counsel had (i) obtained access to, and reviewed, extensive documentation pertinent to the claims and the Sandler

<sup>4</sup> Any investment company or pooled investment fund, including but not limited to mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which any Settling Underwriter Defendant or affiliate has or may have a direct or indirect interest or act as an investment advisor, but in which the Settling Underwriter Defendant or affiliate is not a majority owner and does not hold a majority beneficial interest is not excluded from the Settlement Class by definition.

O'Neill's defenses to those claims, (ii) taken multiple depositions; (iii) investigated and analyzed all available evidence; and (iv) researched the applicable law with respect to the claims against Sandler O'Neill and the potential defenses thereto. When Lead Plaintiffs reached an agreement to settle with the Other Settling Underwriter Defendants, they had (i) obtained access to, and reviewed, additional extensive documentation pertinent to the claims and the Other Settling Underwriter Defendants' defenses to those claims, (ii) taken a significant number of additional depositions (at the time this Settlement was reached more than one hundred people, including current and former employees of the Other Settling Underwriter Defendants and attorneys currently or formerly employed by the Other Settling Underwriter Defendants' outside counsel had been deposed); (iii) conducted a mediation with the Other Settling Underwriter Defendants before the Hon. Layn R. Phillips, a retired judge; (iv) investigated and analyzed all available evidence; and (v) researched the applicable law with respect to the claims against the Other Settling Underwriter Defendants and the potential defenses thereto.

#### **9. What do the Settlements provide?**

The Settlements provide for the Settling Defendants to cause a total of \$53,000,000 in cash to be paid to the Settlement Class. Specifically, (i) the Other Settling Underwriter Defendants Settlement provides for the payment of \$49,500,000 in cash, and (ii) the Sandler O'Neill Settlement provides for the payment of \$3,500,000 in cash. The Sandler O'Neill Settlement Amount has been deposited in an interest bearing escrow account for the benefit of the Settlement Class and the Other Settling Underwriter Defendants Settlement Amount will be deposited in an interest bearing escrow account for the benefit of the Settlement Class no later than \_\_\_\_\_.

If the Settlements are approved by the Court, then as of the Effective Date, all members of the Settlement Class will be deemed to have released all claims against the Released Defendant Persons (as defined below) that arise out of or relate to, among other things, the allegations in the Complaint and the acquisition or disposition of Refco common stock or Refco Notes between July 1, 2004 and October 17, 2005, as further described in Question 16 below. This means, among other things, that, upon the Effective Date, all Settlement Class Members will be permanently barred from asserting any of the Settled Claims (as defined below in Question 16) against the Settling Defendants and other Released Defendant Persons. In addition, upon the Effective Date, the Settling Defendants will be precluded from suing the Lead Plaintiffs, members of the Settlement Class, or Lead Plaintiffs' Counsel in connection with the Action.

#### **10. What are the reasons for the Settlements?**

Lead Plaintiffs agreed to the Settlements because of the substantial monetary benefits they will provide to the Settlement Class, compared to the risk that recovery might not be achieved after a contested trial. Even if the plaintiffs were successful at trial, Settling Defendants might well appeal the verdict, resulting in further uncertainty and delay.

Although the Settling Defendants believe that the claims in the Action are without merit and that they would ultimately prevail, they nevertheless recognize the uncertainty and the risk of the outcome of any litigation, especially complex securities litigation, and the difficulties and substantial burdens, expense and length of time necessary to defend this proceeding. To eliminate the burden and expense of further litigation, the Settling Defendants have agreed to settle and resolve the Action.

**11. What is the potential outcome of the lawsuit absent the Settlements?**

If there were no Settlements and Lead Plaintiffs failed to establish any essential legal or factual element of their claims, neither Lead Plaintiffs nor the other members of the Settlement Class would recover anything from the Settling Defendants. Also, if the Settling Defendants were successful in proving any of their defenses, the members of the Settlement Class likely would recover substantially less than the amount provided in the Settlements, or nothing at all.

**THE BENEFITS OF THE SETTLEMENTS– WHAT YOU GET**

**12. How much will be distributed to investors?**

The Settlements will create a cash settlement fund in the aggregate principal amount of \$53,000,000. If the Settlements are approved by the Court and the Effective Dates, as defined in the respective Stipulations occur, after deduction of the costs of notice and administration, taxes and tax-related expenses, and any attorneys' fees and expenses that are approved by the Court, the balance of the Settlement Funds, plus accrued interest, will be available for distribution to members of the Settlement Class (the "Net Settlement Fund").

Eligible members of the Settlement Class who submit timely and valid Proofs of Claim will be eligible to receive distributions, not only from the Net Settlement Fund created by the Settlements that are the subject of this Notice, but also from the net settlement funds created by (i) the previously approved settlement with BAWAG pursuant to which \$140 million was recovered; and (ii) a concurrently proposed settlement with the Audit Committee Defendants and THL Defendants that provides for a payment of \$130 to \$140 million to the Settlement Class, if that settlement is approved. The costs of notice and administration, taxes and tax-related expenses, and any attorneys' fees and expenses that are approved by the Court will be deducted from the settlement funds before the funds are distributed to eligible members of the Settlement Class.

**13. How much will my payment be?**

The amounts to be distributed to individual Settlement Class Members will depend on a variety of factors, including: the number of other Settlement Class Members who submit valid Proof of Claim forms; the number of shares of stock or number of notes you purchased; the prices and dates of those purchases; and the prices and dates of any sales of your stock or notes. The manner of dividing the Net Settlement Fund has not yet been determined. Depending upon which securities you purchased and the timing of your transactions, you may be entitled to recover from the Net Settlement Fund for all, none, or only some of the claims asserted in the Complaint.

The amount to be distributed to Settlement Class Members on a per share or per note basis will depend on future Court proceedings and factual and legal analysis, and it is therefore not possible to estimate the amount of any such distribution at the present time. Lead Plaintiffs will seek Court approval of a plan of allocation that will govern the calculation of Settlement Class Members' individual distributions from the Net Settlement Fund. The proposed plan will be disseminated to Settlement Class Members and they will have the opportunity to review it and to file any objections they may have to it before the Court determines whether the plan should be approved.

## **HOW TO GET A PAYMENT**

### **14. What do I have to do to receive a share of the Settlements?**

To be eligible for a payment from the proceeds of the Settlements, you **must** send in the Proof of Claim form. A Proof of Claim form is enclosed with this Notice. You also may get a claim form on the Internet at [www.refco securitieslitigation.com](http://www.refco securitieslitigation.com) or by calling the Claims Administrator. Read the instructions carefully, fill out the form, include all the documents the form asks for, sign the form, and mail it postmarked no later than \_\_\_\_\_, 2010. By submitting the Proof of Claim form, you will be making a claim to receive payment from the settlements achieved by Lead Plaintiffs in the Action. If you request exclusion from the Settlements, you will not be eligible to receive a payment from the Settlements with these Settling Defendants, the concurrently proposed settlement with the Audit Committee Defendants and THL Defendants, or from any other recoveries that might be obtained in the Action, other than the previously achieved \$140 million settlement with BAWAG. Please timely submit your Proof of Claim form.

### **15. When will I receive my payment?**

Lead Plaintiffs cannot, at this time, say when they will be able to distribute the proceeds of the Settlements to members of the Settlement Class. Distribution may be delayed in the interest of the Settlement Class in order to minimize the number and cost of distributions during the course of the Action, and to allow for the proceeds of the Settlements to be distributed in combination with future settlements or recoveries from other Defendants which are separate from these Settlements.

Any settlement payments from the settlement proceeds are also contingent upon the Court approving the Settlements and on such approval becoming final and no longer subject to any appeals. Even if the Court approves the Settlements, there still might be appeals, which can take more than a year to resolve.

In addition, as noted in Question 13 above, Lead Plaintiffs will submit to the Court for its approval a proposed plan of allocation that will determine how the proceeds of the Settlements will be divided among the eligible Settlement Class Members who submit timely and valid Proof of Claim forms. The settlement proceeds will not be distributed to the Settlement Class until a plan of allocation is approved by the Court and such approval is final and no longer subject to any appeals.

The settlement funds will be kept in interest-bearing accounts until they are ready for distribution, and the accrued interest will be added to the principal that will be distributed to the Settlement Class.

### **16. What am I giving up to get a payment or stay in the Settlement Class?**

If you remain a member of the Settlement Class and do not exclude yourself, you will be bound by the orders and judgments entered by the Court regarding the Settlements. If the Settlements are approved, you will not be able to sue, continue to sue, or be part of any other lawsuit involving any claims released in the Settlements. You will be bound by the orders of the Court whether or not you submit a Proof of Claim form and/or receive a payment.

The Judgments will dismiss with prejudice the claims against the Settling Defendants, CMG and Utendahl and will provide that Lead Plaintiffs and all other Settlement Class Members, by

operation of the Judgments, shall release and forever discharge each and every one of the Released Defendant Persons (as defined below) from any and all of the Settled Claims (as defined below).

“Released Defendant Persons” means each and all of the following:

- (a) the Other Settling Underwriter Defendants, CMG, Utendahl and each of their past or present parents, subsidiaries, affiliates, investment funds, predecessors, successors, and any of their respective past, present, or future officers, directors, partners, members, managing directors, principals, employees, agents, advisors, insurers, and attorneys; and
- (b) 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 such released person has or had a controlling interest or which is or was related to or affiliated with any such released person.

“Settled Claims” means:

- (a) as to the Other Settling Underwriter Defendants, CMG, Utendahl and their related Released Defendant Persons, all claims, debts, demands, rights, or causes of action or liabilities whatsoever, known or Unknown (as defined below), whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, that (i) were or could have been asserted in the Action, or (ii) relate to the subject matter of the Action and/or the allegations of the Complaint, and (iii) relate to the purchase, ownership or acquisition during the Class Period of Refco Stock, 144A Bonds, or Registered Bonds;
- (b) as to Sandler O’Neill and its related Released Defendant Persons, any and all claims of every nature and description, including both known and Unknown Claims (as defined below), 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.

“Unknown Claims” means any and all Settled Claims which Lead Plaintiffs or any Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Persons, which if known by him, her or it might have affected his, her or its decision with respect to the Settlement(s). With respect to any and all Settled Claims, the parties stipulate and agree that upon the Effective Date, Lead Plaintiffs and the Settling Defendants shall expressly, and each Settlement Class Member shall be deemed to have, and by operation of the Judgments 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 the Settling Defendants 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 was separately bargained for and was a key element of each Settlement.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

#### **17. What if I want to be excluded from the Settlements?**

To exclude yourself from the Settlements, you must send a letter by mail to the Claims Administrator saying that you want to be excluded from *In re Refco Inc. Securities Litigation*. You **must** include: (i) your name, address, telephone number; (ii) your Social Security Number or Taxpayer Identification Number; (iii) a list stating the par amount of Refco Notes and number of shares of Refco common stock purchased and sold during the period July 1, 2004 through and including October 17, 2005, and the dates and prices of each purchase and sale; (iv) a statement indicating whether you sold or disposed of any Refco Notes after October 17, 2005, and if you did, stating the amount of money you received for the Notes; (v) a statement indicating whether you received anything for your Refco Notes in connection with Refco's bankruptcy proceedings, and if so, how much; and (vi) your signature. Your exclusion request must be **received** no later than \_\_\_\_\_, 2010. Mail your request to:

Refco Securities Litigation  
c/o The Garden City Group, Inc.  
Claims Administrator  
P.O. Box 9087  
Dublin, Ohio 43017-0987

If you request exclusion on behalf of any person or entity other than yourself (such as, for example, a trust, a minor, or a pension fund), you also must state the basis of your legal authority to make a request for exclusion on behalf of that person or entity.

You cannot exclude yourself on the phone or by e-mail. If you do not follow the above procedures – including meeting the deadline for receipt of your request and including all of the information described above – you will not be excluded from the Settlement Class, and you will be bound by all of the orders and judgments entered by the Court regarding the Settlements. You must exclude yourself even if you already have a pending case against Settling Defendants based on the claims being released.

If you ask to be excluded, you will not be eligible to get any payment from these proposed Settlements, the concurrently proposed settlement with the Audit Committee Defendants and THL Defendants, or any other recoveries that might be obtained in the Action (other than the recovery from the prior settlement with BAWAG that has already been finally approved by the Court), you cannot object to the Settlements or the motion for reimbursement of expenses, and you will not be

legally bound by anything that happens in this lawsuit with respect to the Settling Defendants or with respect to the Remaining Defendants.<sup>5</sup> Additionally, if you exclude yourself from the Settlements, you may jeopardize your right to receive any portion of any amounts that Lead Plaintiffs receive from the United States government on behalf of the Settlement Class in connection with the criminal proceedings arising from Refco's bankruptcy brought in the Southern District of New York. If you exclude yourself from the Settlements, you might be able to sue the Settling Defendants and the Remaining Defendants in the future.

The Settling Defendants have the right to terminate the Settlements, if valid requests for exclusion are received from persons and entities entitled to be members of the Settlement Class in an amount that exceeds an amount agreed to by Lead Plaintiffs and the Settling Defendants.

**18. If I don't exclude myself, can I sue Settling Defendants for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Settling Defendants for the claims that the Settlements resolve. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from *this* Settlement Class to continue your own lawsuit.

**19. If I exclude myself, can I get money from the Settlements?**

No. Only Settlement Class Members who do not exclude themselves will be eligible to recover money in the Settlements.

**THE LAWYERS REPRESENTING YOU**

**20. Do I have a lawyer in this case?**

The Court has appointed the law firms of Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A. as Lead Plaintiffs' Counsel to represent Lead Plaintiffs and all other Settlement Class Members in the Action. If you have any questions about the proposed Settlements, you may contact Lead Plaintiffs' Counsel as follows: Megan D. McIntyre, Esq., Grant & Eisenhofer P.A., 1201 N. Market St., Wilmington, Delaware 19801, (302) 622-7000; or Salvatore J. Graziano, Esq., Bernstein Litowitz Berger & Grossmann, LLP, 1285 Avenue of the Americas, New York, New York 10019, (212) 554-1400.

If you want to be represented by your own lawyer, you may hire one at your own expense.

**21. How will the lawyers be paid?**

You will be not charged directly for the fees or expenses of the Lead Plaintiffs' Counsel appointed by the Court. Instead, those lawyers intend to apply to the Court for payment of fees and expenses out of the proceeds of any recoveries achieved in the Action.

Lead Plaintiffs' Counsel have not received any payment for their services in prosecuting this Action. A motion for an award of attorneys' fees from the settlement proceeds, however, will not be made at this time. A further notice relating to Lead Plaintiffs' Counsel's motion for attorneys' fees

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<sup>5</sup> PLEASE NOTE, the time to exclude yourself from the BAWAG settlement has passed. If you did not exclude yourself from that settlement, you are bound by the judgment entered by the Court with respect to BAWAG and you also may be eligible for a distribution from the \$140 million recovered. Please submit your Proof of Claim.

will be provided to the Settlement Class at a future date and Settlement Class Members will have an opportunity to comment on the motion before the Court determines whether and in what amount to award attorneys' fees to Lead Plaintiffs' Counsel.

Lead Plaintiffs' Counsel have not been reimbursed for any of their out-of-pocket litigation expenses incurred in connection with the prosecution of the Action. Before final approval of the Settlements, Lead Plaintiffs' Counsel intend to apply for reimbursement of their litigation expenses in an amount not to exceed \$ \_\_\_\_\_ with interest thereon at the same rate as earned by the Settlement Funds. The Court will determine the amount to be awarded to Lead Plaintiffs' Counsel. (PLEASE NOTE: While Lead Plaintiffs' Counsel have stated their intent to apply for reimbursement of litigation expenses in both this notice and the notice enclosed herewith concerning the proposed settlement with the Audit Committee Defendants and the THL Defendants, they are seeking only one reimbursement of their expenses to be paid out of the Court-approved settlements.)

**OBJECTING TO THE SETTLEMENTS OR THE EXPENSE APPLICATION**

**22. How do I tell the Court that I don't like the Settlement(s)?**

If you are a Settlement Class Member and you do not exclude yourself, you can object to the Settlement(s) or any part of them, including Lead Plaintiffs' Counsel's application for reimbursement of litigation expenses, and give reasons why you think the Court should not approve them. To object, you must send a letter or other filing saying that you object to the proposed Settlement(s) and/or Lead Plaintiffs' Counsel's application for reimbursement of litigation expenses in *In re Refco, Inc. Securities Litigation*, Case No. 05 Civ. 8626 (JSR). Be sure to include your name, address, telephone number, signature, and the reasons for your objection, as well as a list of your purchases and sales of Refco, Inc. common stock or Refco Notes made during the Class Period, including the dates, the number of securities purchased or sold, the price(s) paid or received per security for each such purchase or sale and whether you continue to hold the securities at the time your objection is submitted. Your written objection must be sent to Lead Plaintiffs' Counsel and counsel for the applicable Settling Defendants at the addresses set forth below so that the papers are *received* by them no later than \_\_\_\_\_, 2010:

**Lead Plaintiffs' Counsel**

Megan D. McIntyre, Esq.  
GRANT & EISENHOFER P.A.  
1201 N. Market Street  
Wilmington, DE 19801

-and-

Salvatore J. Graziano, Esq.  
BERNSTEIN LITOWITZ BERGER &  
GROSSMANN LLP  
1285 Avenue of the Americas  
New York, NY 10019

**Other Settling Underwriter Defendants’  
Counsel**

Andrew B. Weissman, Esq.  
WILMER CUTLER PICKERING HALE  
AND DORR LLP  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006

**Counsel for Sandler O’Neill**

Teresa Trzaskoma, Esq.  
BRUNE & RICHARD LLP  
80 Broad Street, 30th Floor  
New York, NY 10004

You must **also** file your objection with the clerk of the United States District Court for the Southern District of New York, so that it is **received** no later than \_\_\_\_\_, 2010. The address is:

Clerk of the U.S. District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing.

Any member of the Settlement Class who does not object in the manner provided above will be deemed to have waived all objections to the Settlements and to Lead Plaintiffs’ Counsel’s application for reimbursement of litigation expenses.

**23. What’s the difference between objecting and requesting exclusion?**

Objecting is simply telling the Court that you do not like something about the Settlement(s). You can object only if you are a Settlement Class Member.

Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object, because the case no longer affects you. If you do not exclude yourself, you will be bound by the Settlements and all orders and judgments entered by the Court regarding the Settlements, regardless of whether the Court accepts or denies your objection.

**24. When and where will the Court decide whether to approve the Settlements?**

The Court has scheduled a hearing on the proposed Settlements for \_\_\_\_\_, 2010 at \_\_\_\_\_, before the Honorable Jed S. Rakoff in the U.S. District Court for the Southern District of New York, United States Courthouse, 500 Pearl Street, New York, New York 10007 (the “Settlement Hearing”). At the Settlement Hearing, the Court will consider whether the Settlements are fair, reasonable, and adequate, and will consider Lead Plaintiffs’ Counsel’s application for reimbursement of litigation expenses. If there are objections, the Court will consider them. At or after the Settlement Hearing, the Court will decide whether to approve the Settlements and whether to approve the motion for reimbursement of litigation expenses.

Please note that the date of the Settlement Hearing is subject to change without further notice. If you plan to attend the hearing, you should check with Lead Plaintiffs’ Counsel to be sure no change to the date and time of the hearing has been made.

**25. Do I have to come to the Settlement Hearing?**

No. Lead Plaintiffs' Counsel will answer any questions the Court might have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection so that it was received by the deadline, it will be before the Court when the Court considers whether to approve the Settlements. You may also pay your own lawyer to attend the hearing, but attendance is not necessary.

**26. May I speak at the Settlement Hearing?**

If you are a Settlement Class Member who has not asked to be excluded from the Settlement Class, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *In re Refco, Inc. Securities Litigation*." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be filed with the Clerk of the Court and sent to the counsel listed above in the answer to Question 22 so it is *received* by the Court and counsel no later than \_\_\_\_\_, 2010. You cannot speak at the hearing if you have asked to be excluded from the Settlement Class.

**IF YOU DO NOTHING**

**27. What happens if I do nothing at all?**

If you do nothing in response to this Notice, you will remain a member of the Settlement Class and will be bound by the Settlements. You will not be able to start, continue, or be part of any other lawsuit or arbitration against the Settling Defendants or the other Released Defendant Persons based on the claims in the Action. If you do not submit a Proof of Claim, you will not be eligible to receive payment from the Settlements.

**GETTING MORE INFORMATION**

**28. Are there more details about the Settlements?**

This Notice contains only a summary of the proposed Settlements. The complete terms of the Settlements are set out in (i) the Stipulation and Agreement of Settlement between Lead Plaintiffs and Defendant Sandler O'Neill & Partners, L.P., dated October 10, 2008 and (ii) the Stipulation and Agreement of Settlement between Lead Plaintiffs and the Settling Underwriter Defendants, dated April 20, 2010. You may request a copy of these stipulations in writing to *Refco, Securities Litigation*, c/o The Garden City Group, Inc., Claims Administrator, P.O. Box 9087, Dublin, Ohio 43017-0987. There may be a charge for copying and mailing the stipulations. Copies of the stipulations may be obtained for free at [www.refcosecuritieslitigation.com](http://www.refcosecuritieslitigation.com).

**29. How do I get more information?**

You can also call the Claims Administrator toll free at (888) 212-5574, write to the Claims Administrator at the above address, or visit the website at [www.refcosecuritieslitigation.com](http://www.refcosecuritieslitigation.com), where you will find copies of the Stipulations, the Complaint, and certain other documents relating to the Action and the Settlements. Anyone interested in more detail regarding the Action is invited to visit the Office of the Clerk of the United States District Court for the Southern District of New York at

the United States Courthouse, 500 Pearl Street, New York, NY, 10007, during regular business hours, to inspect the stipulations, the pleadings, and the other papers maintained there in Case No. 05 Civ. 8626 (JSR).

**PLEASE DO NOT CALL OR WRITE THE COURT OR  
THE OFFICE OF THE CLERK OF COURT REGARDING THIS NOTICE.**

**SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

If you purchased or otherwise acquired Refco Notes or common stock during the Class Period for the beneficial interest of a person or organization other than yourself, you must either (i) send a copy of this Notice and the Proof of Claim form to such beneficial owner, postmarked no later than seven (7) days after you receive this Notice, or (ii) provide the names and addresses of such persons no later than seven (7) days after you receive this Notice to Refco Securities Litigation, c/o The Garden City Group, Inc, P.O. Box 9087, Dublin, Ohio 43017-0987. If you choose the second option, the Claims Administrator will send a copy of the Notice and the Proof of Claim form to the beneficial owner. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and the Proof of Claim form can be obtained from the website maintained by the Claims Administrator, [www.refcosecuritieslitigation.com](http://www.refcosecuritieslitigation.com), or by calling toll-free 1-\_\_\_-\_\_\_\_\_, or from Lead Plaintiffs' Counsel's websites, [www.blbglaw.com](http://www.blbglaw.com) and [www.gelaw.com](http://www.gelaw.com).

Dated: \_\_\_\_\_

BY ORDER OF THE COURT

\_\_\_\_\_  
Hon. Jed S. Rakoff  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

#440924

# **Exhibit A-2**

Refco Securities Litigation  
 c/o The Garden City Group, Inc.  
 Claims Administrator  
 P.O. Box 9087  
 Dublin, Ohio 43017-0987  
[www.refcosecuritieslitigation.com](http://www.refcosecuritieslitigation.com)

**PROOF OF CLAIM AND RELEASE**

THIS PROOF OF CLAIM MUST BE POSTMARKED NO LATER THAN \_\_\_\_\_, 2010.

**I. GENERAL INSTRUCTIONS**

- A. It is important that you completely read and understand the notices of proposed settlements (“Settlement Notices”) that accompany this Proof of Claim and Release form (“Claim Form”). The Settlement Notices and the Proof of Claim Notice contain the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form, as well as a description of partial settlements reached to date and how they affect Settlement Class Members. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Settlement Notices, including the terms of the releases described therein and provided for herein.
- B. By submitting this Claim Form, you will be making a request to share in the proceeds of the settlements described in the Settlement Notices. This Proof of Claim will also be used for purposes of determining the amount that you may be eligible to receive from the prior recovery achieved in the Action and any future recoveries that might be obtained in the Action. If you request exclusion from either of the settlements described in the Settlement Notices, you will not be eligible to receive a payment from either of these Settlements or from any other recoveries that might be obtained in the Action, but you may still be eligible to receive a distribution from the previously achieved Court-approved settlement. You must submit a Claim Form in accordance with the instructions herein in order to be eligible to receive a distribution from the earlier settlement.
- C. TO BE ELIGIBLE TO RECEIVE A DISTRIBUTION, YOU MUST MAIL YOUR COMPLETED AND SIGNED CLAIM FORM TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL, POSTAGE PREPAID, POSTMARKED BY \_\_\_\_\_, 2010, ADDRESSED AS FOLLOWS:

Refco Securities Litigation  
 c/o The Garden City Group, Inc.  
 Claims Administrator  
 P.O. Box 9087  
 Dublin, Ohio 43017-0987

- D. This Proof of Claim is directed to 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, Inc. (CUSIP No. 75866G109) (collectively, “Refco Securities”) during the period July 1, 2004 through and including October 17, 2005 (the “Class Period”) and who were damaged thereby (the “Settlement Class”).
- E. “Settlement Class Members” means any persons and entities who purchased or otherwise acquired Refco Securities during the Class Period and are not excluded by definition from the Settlement Class and who do not timely submit a proper request for exclusion in accordance with the requirements set forth in the Settlement Notices. Persons and entities excluded from the Settlement Class by definition are (a) Refco; (b)

the Defendants in the Action; (c) any person or entity who was a partner, executive officer, director, controlling person, subsidiary, or affiliate of Refco or of any Defendant during the Class Period; (e) members of the Defendants' immediate families; (f) entities in which Refco or any Defendant has a controlling interest; and (g) the legal representatives, heirs, estates, administrators, predecessors, successors or assigns of any of the foregoing excluded persons and entities, except that any Investment Vehicle, as defined in the Stipulation with the Settling Underwriter Defendants, is not excluded.

- F. IF YOU ARE NOT A SETTLEMENT CLASS MEMBER, YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN ANY OF THE RECOVERIES OBTAINED IN THIS ACTION. IF YOU WOULD BE A SETTLEMENT CLASS MEMBER BUT FOR YOUR REQUEST TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN CONNECTION WITH THE SETTLEMENTS DESCRIBED IN THE ACCOMPANYING SETTLEMENT NOTICES, YOU MAY NOT DIRECTLY OR INDIRECTLY PARTICIPATE IN THE RECOVERIES OBTAINED IN THOSE SETTLEMENTS OR IN ANY OTHER RECOVERIES THAT MIGHT BE OBTAINED IN THE ACTION, BUT YOU MAY STILL BE ELIGIBLE TO PARTICIPATE IN THE EARLIER APPROVED SETTLEMENT IF YOU SUBMIT A TIMELY AND VALID CLAIM FORM.**
- G. All Settlement Class Members will be bound by the terms of the judgments entered in connection with the settlements described in the Settlement Notices WHETHER OR NOT A CLAIM FORM IS SUBMITTED, unless a valid request for exclusion from the Settlement Class is received by \_\_\_\_\_, 2010. The judgments will release and enjoin the filing or continued prosecution of Released Plaintiffs' Claims, Settled Claims and Settled Plaintiffs' Claims as defined in the respective Stipulations (collectively referred to herein as "Released Claims") against the Released Defendant Persons, as described in the respective Settlement Notices.**
- H. You may only participate in the settlements described in the Settlement Notices and the earlier \$140 million settlement if you are a member of the Settlement Class and if you complete and return this form as specified below. If you fail to file a timely, properly addressed, and completed Claim Form, your claim may be rejected and you may be precluded from receiving any proceeds from the settlements described in the Settlement Notices and the earlier settlement.**
- I. Submission of this Claim Form does not guarantee that you will share in the proceeds of the settlements described in the Settlement Notices, the earlier settlement, or any other recoveries in the Action. Distribution of those proceeds, after payment of attorneys' fees, expenses and other costs, will be governed by a plan of allocation to be submitted to the Court at a later date for approval, following further notice to the Settlement Class.**
- J. Use Section III of this Claim Form entitled "SCHEDULE OF TRANSACTIONS IN REFCO SECURITIES" to supply all required details of your transaction(s) in Refco Securities. On the schedules, provide all of the requested information with respect to all purchases and other acquisitions (including free receipts) of Refco Securities from July 1, 2004 through the date you submit this Claim Form, as well as all sales (including free deliveries) of Refco Securities from July 1, 2004 through the date you submit this Claim Form. You must also report any recoveries you obtained with respect to your Refco Notes in connection with Refco's bankruptcy proceedings. If you need more space, follow the instructions set forth in that section. **Failure to report all transactions during the requested periods may result in the rejection of your claim.****
- K. You are required to submit genuine and sufficient documentation for all your transactions in Refco Securities and any recovery in Refco's bankruptcy proceedings. Documentation may consist of copies of brokerage confirmations or monthly statements. IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OR EQUIVALENT CONTEMPORANEOUS DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN**

**REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS. Please keep a copy of all documents that you send to the Claims Administrator.**

- L.** Separate Claim Forms should be submitted for each separate legal entity (e.g., a claim from joint owners should not include separate transactions of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made solely in the individual's name). Conversely, a single Claim Form should be submitted on behalf of one legal entity including all transactions made by that entity on one Claim Form, no matter how many separate accounts that entity has (e.g., a corporation with multiple brokerage accounts should include all transactions made in all accounts on one Claim Form).
- M.** All joint beneficial owners must each sign this Claim Form. If you purchased or acquired Refco Securities during the Class Period and held the securities in your name, you are the beneficial owner as well as the record owner. If, however, you purchased or acquired Refco Securities during the Class Period and the securities were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial owner of these securities, but the third party is the record owner.
- N.** Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:
- (a) expressly state the capacity in which they are acting;
  - (b) identify the name, account number, Social Security Number (or taxpayer identification number) address and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the Refco Securities; and
  - (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade stock in another person's accounts.)
- O.** By submitting a signed Claim Form, you will be swearing that you:
- (a) own(ed) the Refco Securities you have listed in the Claim Form; or
  - (b) are expressly authorized to act on behalf of the owner thereof.
- P.** By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto, subject to penalties of perjury under the laws of the United States of America. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your claim and may subject you to civil liability or criminal prosecution.
- Q.** **NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. All claimants **MUST** submit a manually signed paper Claim Form, whether or not they also submit an electronic copy. If you wish to file your claim electronically, you must contact the Claims Administrator at 1-888-212-5574, or visit [www.refcosecuritieslitigation.com](http://www.refcosecuritieslitigation.com) to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a written paper acknowledgment of receipt and acceptance of electronically submitted data.

**R.** If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Notice, you may contact the Claims Administrator, The Garden City Group, Inc., at the above address or by toll-free phone at (888) 212-5574, or you may download the documents from [www.refcosecuritieslitigation.com](http://www.refcosecuritieslitigation.com).

CLAIMS  
MUST BE POSTMARKED BY  
\_\_\_\_\_, 2010

PROOF OF CLAIM AND RELEASE  
IN RE REFCO, INC. SECURITIES LITIGATION  
No. 05-cv-8626 (JSR)  
PLEASE PRINT OR TYPE

\*RFX\*  
FOR INTERNAL USE ONLY

II. CLAIMANT IDENTIFICATION

LAST NAME (CLAIMANT)

FIRST NAME (CLAIMANT)

Last Name (Beneficial Owner if Different From Claimant)

First Name (Beneficial Owner)

Last Name (Co-Beneficial Owner)

First Name (Co-Beneficial Owner)

Company/Other Entity (If Claimant Is Not an Individual)

Trustee/Nominee/Other

Account Number (If Claimant Is Not an Individual)

Trust/Other Date (If Applicable)

Address Line 1

Address Line 2 (If Applicable)

City

State

Zip Code

Foreign Province

Foreign Zip Code

Foreign Country

Telephone Number (Day)

Telephone Number (Night)

( )

( )

Beneficial Owner's Employer Identification Number or Social Security Number<sup>1</sup>

E-Mail Address

IDENTITY OF CLAIMANT

- Individual
- Joint Owners
- Estate
- Corporation
- Trust
- Partnership
- Private Pension Fund
- IRA, Keogh, or other type of individual retirement plan (indicate type of plan, mailing address, and name of current custodian) \_\_\_\_\_
- Legal Representative
- Other (specify, describe on separate sheet)

<sup>1</sup> The taxpayer identification number (TIN), consisting of a valid Social Security number (SSN) for individuals or employer identification number (EIN) for business entities, trusts, estates, etc., and telephone number of the beneficial owner(s) may be used in verifying this claim.

**III. SCHEDULE OF TRANSACTIONS IN REFCO SECURITIES**

Failure to provide proof of all purchases, sales, and closing positions will impede proper processing of your claim. Please include proper documentation with your Claim Form as described in detail in Section I, Paragraph K, above.

**A. REFCO BONDS (CUSIP Nos. 75866HAA5 and/or 75866HAC1):**

**1. Purchases** – Separately list each and every purchase and/or acquisition, including free receipts, of Refco Group Ltd., LLC/Refco Finance Inc. 9% Senior Subordinated Notes due 2012 during the period **July 1, 2004 through the date you submit this Claim Form.**

**IF NONE, CHECK HERE**

Date(s) of original purchase or acquisition List chronologically MM DD YYYY			Par amount purchased/acquired	Original purchase price per unit (excluding interest, commissions, taxes, & fees)	Proof of purchase enclosed
/	/			\$ .	<input type="checkbox"/> Y <input type="checkbox"/> N
/	/			\$ .	<input type="checkbox"/> Y <input type="checkbox"/> N
/	/			\$ .	<input type="checkbox"/> Y <input type="checkbox"/> N
/	/			\$ .	<input type="checkbox"/> Y <input type="checkbox"/> N
/	/			\$ .	<input type="checkbox"/> Y <input type="checkbox"/> N

**2. Sales** – Separately list each and every sale, including free deliveries, of Refco Group Ltd., LLC/Refco Finance Inc. 9% Senior Subordinated Notes due 2012 during the period from July 1, 2004 through the date you submit this Claim Form.

**IF NONE, CHECK HERE**

Date(s) of sales List chronologically MM DD YYYY			Par amount sold	Sale price per unit (excluding interest, commissions, taxes, & fees)	Proof of sale enclosed
--	--	--	-----------------	---	------------------------

/	/	\$	.	Y N
/	/	\$	.	Y N
/	/	\$	.	Y N
/	/	\$	.	Y N
/	/	\$	.	Y N

**3. Balance** – State the par value of the Refco Group Ltd., LLC/Refco Finance Inc. 9% Senior Subordinated Notes due 2012 you held as of the date you submit this Claim Form. \$ . Y  
N

**4. Recovery obtained in Refco’s Bankruptcy Proceedings** - State The amount you recovered in Refco’s bankruptcy proceedings with respect to your Refco Notes. If none, write zero \$ \_\_\_\_\_

**B. REFCO COMMON STOCK (CUSIP No. 75866G109):**

**1. Purchases** – Separately list each and every purchase and/or acquisition, including free receipts, of Refco, Inc. common stock during the period **July 1, 2004 through the date you submit this Claim Form.** **IF NONE, CHECK  
HERE**

Date(s) of original purchase or acquisition List chronologically MM DD YYYY			Number of shares purchased/acquired	Original purchase price per share (excluding commissions, taxes, & fees)	Proof of purchase enclosed
/	/			\$ .	Y N
/	/			\$ .	Y N

/	/	\$	.	Y N
/	/	\$	.	Y N
/	/	\$	.	Y N

**2. Sales** – Separately list each and every sale, including free deliveries, of Refco, Inc. common stock during the period from **July 1, 2004 through the date you submit this Claim Form.** **IF NONE, CHECK HERE**

MM	DD	YYYY	Number of shares sold	Sale price per share (excluding commissions, taxes, & fees)	Proof of sale enclosed
/	/			\$ .	Y N
/	/			\$ .	Y N
/	/			\$ .	Y N
/	/			\$ .	Y N
/	/			\$ .	Y N

**3. Balance** – State the number of shares of Refco common stock you held as of the date you submit this Claim Form. \$ . Y  
N

IF YOU REQUIRE ADDITIONAL SPACE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT AS ABOVE. PRINT THE BENEFICIAL OWNER'S FULL NAME AND TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE.

**YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE \_\_ OF THIS CLAIM FORM.**

**IV. RELEASES**

A. I (we) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever settle, release, relinquish, and discharge each and every one of the Released Defendant Persons with respect to any and all of the Released Claims, as those terms are defined in the respective accompanying Settlement Notices.

B. I (we) hereby acknowledge that as of the Effective Date, I (we) shall (a) have and be deemed to have fully, finally and forever released, relinquished and discharged each and every one of the Released Defendant Persons from any and all of the Released Claims; (b) have and be deemed to have covenanted not to sue any of the Released Defendant Persons with respect to any and all of the Released Claims; and (c) forever be barred and enjoined from filing, commencing, prosecuting, intervening in, participating in (as a class member or otherwise) or receiving any benefits or other relief from any other lawsuit, arbitration or other proceeding or order in any jurisdiction that is based upon, arises out of or relates to any and all of the Released Claims against any of the Released Defendant Persons. Nothing in this Paragraph is intended to release any claims asserted by Lead Plaintiffs (or the Settlement Class) against any of the Non-Settling Defendants in the Action other than CMG Institutional Trading, LLC and Utendahl Capital Partners, L.P.

**V. CERTIFICATION**

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represents the claimant(s) certifies, as follows:

1. that I (we) have read and understand the contents of the Settlement Notices and the Claim Form, including the releases provided for in the Settlements;
2. that the claimant(s) is a (are) Settlement Class Member(s), as defined in the Notice, and is (are) not excluded from the Class;
3. that the claimant **has not** submitted a request for exclusion from the Settlement Class;
4. that I (we) own(ed) the Refco Securities identified in the Claim Form and have not assigned the claim against the Released Defendant Persons to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
5. that the claimant has not submitted any other claim covering the same purchases, sales, or holdings of Refco Securities and knows of no other person having done so on his/her/its behalf;
6. that the claimant submits to the jurisdiction of the Court with respect to his/her/its claim and for purposes of enforcing the releases set forth herein;
7. that I (we) agree to furnish such additional information with respect to this Claim Form as the parties, the Claims Administrator or the Court may require;
8. that the claimant waives the right to trial by jury, to the extent it exists, and agrees to the Court's summary disposition of the determination of the validity or amount of the claim made by this Claim Form;
9. that I (we) acknowledge that the claimant will be bound by and subject to the terms of any judgment that may be entered in the Action; and
10. that the claimant is NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (a) the claimant is exempt from backup withholding or (b) the claimant has not been notified by the IRS that he/she/it is subject to backup withholding as a result of a failure to report all interest or dividends or (c) the IRS has notified the claimant that he/she/it is no longer subject to backup withholding. **If the IRS has notified the claimant that it is subject to backup withholding, please strike out**

the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HEREWITH ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE.

---

Signature of claimant Date

---

Print your name here

---

Signature of joint claimant, if any Date

---

Print your name here

*If the claimant is other than an individual, or is not the person completing this form, the following also must be provided:*

---

Signature of person signing on behalf of claimant Date

---

Print your name here

---

Capacity of person signing on behalf of claimant, if other than an individual, e.g., executor, president, custodian, etc.

THIS PROOF OF CLAIM MUST BE SUBMITTED NO LATER THAN \_\_\_\_\_, 2010, AND MUST BE MAILED TO:

Refco Securities Litigation  
c/o The Garden City Group, Inc.  
Claims Administrator  
P.O. Box 9087  
Dublin, Ohio 43017-0987

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if mailed by \_\_\_\_\_, 2010 and if a postmark is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to prepare and submit a proposed plan of allocation and to fully process all of the Claim Forms after the plan of allocation is approved by the Court. Distribution of the settlement proceeds may be delayed pending the resolution of claims against other parties in the Action. Please notify the Claims Administrator of any change of address.

**REMINDER CHECKLIST:**

1. Please sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.
2. Remember to attach only **copies** of acceptable supporting documentation.
3. Please do not highlight any portion of the Claim Form or any supporting documents.
4. Do not send original stock certificates or documentation. These items cannot be returned to you by the Claims Administrator.
5. Keep copies of the completed Claim Form and documentation for your own records.
6. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll free at 1-888-212-5574 .
7. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, please send the Claims Administrator written notification of your new address. If you change your name, please inform the Claims Administrator.
8. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the above address or at 1-888-212-5574, or visit [www.refcosecuritieslitigation.com](http://www.refcosecuritieslitigation.com).

#437345

# **Exhibit A-3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**EXHIBIT A-3**

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

**SUMMARY NOTICE OF (I) PROPOSED SETTLEMENTS OF CLASS ACTION  
WITH THE UNDERWRITER DEFENDANTS,  
(II) HEARING ON PROPOSED SETTLEMENTS, AND  
(III) MOTION FOR REIMBURSEMENT OF LITIGATION EXPENSES**

**TO: ALL PERSONS OR ENTITIES WHO PURCHASED OR ACQUIRED REFCO GROUP LTD., LLC/REFCO FINANCE INC. 9% SENIOR SUBORDINATED NOTES DUE 2012 (CUSIP NOS. 75866HAA5 AND/OR 75866HAC1) AND/OR REFCO INC. COMMON STOCK (CUSIP NO. 75866G109) DURING THE PERIOD JULY 1, 2004 THROUGH AND INCLUDING AND OCTOBER 17, 2005 (THE "CLASS PERIOD"), AND WHO WERE DAMAGED THEREBY (THE "SETTLEMENT CLASS")**

YOU ARE HEREBY NOTIFIED that the Lead Plaintiffs in the above-captioned class action (the "Action") have proposed settlements with (i) defendant Sandler O'Neill & Partners, L.P. ("Sandler O'Neill") and (ii) defendants Credit Suisse Securities (USA) 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., BMO Capital Markets Corp. (f/k/a Harris Nesbitt Corp.), Samuel A. Ramirez & Company, Inc., Muriel Siebert & Co., Inc., and The Williams Capital Group, L.P. (collectively, the "Other Settling Underwriter Defendants"); and together with Sandler O'Neill, the "Settling Defendants"). The Settlements, which resolve the Action against some but not all defendants named in the Action, provide for total payments by the Settling Defendants of \$53,000,000 for the benefit of the Settlement Class. In return, the Settlement Class Members will dismiss with prejudice the claims asserted in this Action against the Settling Defendants and two other defendant underwriters (together, the "Underwriter Defendants") and

grant the releases specified and described in the respective Stipulations of Settlement. The claims against all remaining defendants in the Action will continue.

A hearing will be held on \_\_\_\_\_, 2010 at \_\_\_\_\_, before the Honorable Jed S. Rakoff in the U.S. District Court for the Southern District of New York, United States Courthouse, 500 Pearl Street, New York, NY, 10007, to determine: (1) whether the Settlements with the Settling Defendants should be approved as fair, reasonable and adequate; (2) whether the Action should be dismissed with prejudice against the Underwriter Defendants and the releases specified and described in the respective Stipulations of Settlement should be granted; and (3) whether the plaintiffs' attorneys' application for reimbursement of litigation expenses should be granted.

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS DESCRIBED ABOVE, YOUR RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT FUNDS. If you have not yet received the full printed Notice of (I) Proposed Settlements of Class Action With The Underwriter Defendants, (II) Hearing on Proposed Settlements and (III) Motion for Reimbursement of Litigation Expenses and the Proof of Claim Form, you may obtain copies by contacting the Claims Administrator at:

*Refco Securities Litigation*  
c/o The Garden City Group, Inc.  
Claims Administrator  
P.O. Box 9087  
Dublin, Ohio 43017-0987

Copies of the Notice and Proof of Claim Form are also available at [www.refcosecuritieslitigation.com](http://www.refcosecuritieslitigation.com).

If you are a member of the Settlement Class, in order to be eligible to participate in the proposed settlements, as well as a previously achieved and approved settlement, you will be required to submit a Proof of Claim by \_\_\_\_\_, 2010.

If you are a member of the Settlement Class and do not exclude yourself from the Settlement Class, you will be bound by any judgment entered in the Action whether or not you make a Claim. To exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is received no later than \_\_\_\_\_, 2010, in accordance with the instructions set forth in the Notice. Any objections to the proposed settlements and/or the application for reimbursement of expenses must be filed with the Court and delivered to counsel for the parties as set forth in the Notice such that they are received no later than \_\_\_\_\_, 2010, in accordance with the instructions set forth in the Notice. If you are a member of the Settlement Class and do not submit a proper Proof of Claim form, you will not share in the proceeds of the settlements but you will nevertheless be bound by the judgments of the Court.

Inquiries, other than requests for copies of the Notice and Proof of Claim Form or for inclusion on the mailing list for future notices, may be directed to Plaintiffs' Lead Counsel:

Salvatore J. Graziano, Esquire  
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP  
1285 Avenue of the Americas  
New York, NY 10019

Megan D. McIntyre, Esquire  
GRANT & EISENHOFER P.A.  
1201 N. Market Street  
Wilmington, DE 19801

Dated: \_\_\_\_\_, 2010

BY ORDER OF THE COURT

# 444705

# **Exhibit B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**EXHIBIT B**

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

**JUDGMENT APPROVING CLASS ACTION  
SETTLEMENT WITH THE SETTLING UNDERWRITER DEFENDANTS**

WHEREAS, Lead Plaintiffs RH Capital Associates and Pacific Investment Management Company LLC (“Lead Plaintiffs”), on behalf of themselves and the class of persons and entities defined below, and defendants Credit Suisse Securities (USA) 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., BMO Capital Markets Corp. (f/k/a Harris Nesbitt Corp.), Samuel A. Ramirez & Company, Inc., Muriel Siebert & Co., Inc., and The Williams Capital Group, L.P.(collectively, the “Settling Underwriter Defendants”) entered into a Stipulation and Agreement of Settlement between Lead Plaintiffs and the Settling Underwriter Defendants dated April 20, 2010 (the “Stipulation”), that provides for a complete dismissal with prejudice of the claims asserted in the above-referenced litigation (the “Action”) against the Settling Underwriter Defendants, CMG Institutional Trading, LLC, and Utendahl Capital Partners, L.P. on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the “Settling Underwriter Defendants Settlement” or the “Settlement”); and

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Stipulation; and

WHEREAS, by Order dated \_\_\_\_\_, 2010, (the “Preliminary Approval Order”), this Court (a) preliminarily approved the Settlement and certified a Settlement Class solely for purposes

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

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

WHEREAS, the Court conducted a hearing on \_\_\_\_\_, 2010 to consider, among other things, (i) whether the terms and conditions of the Settling Underwriter Defendants Settlement are fair, reasonable and adequate and should therefore be approved; and (ii) whether a judgment should be entered dismissing the Action with prejudice as against the Settling Underwriter Defendants, CMG Institutional Trading, LLC, and Utendahl Capital Partners, L.P. (the "Settlement Hearing"); and

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

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

1. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Settling Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents:** This Judgment Approving Class Action Settlement with the Settling Underwriter Defendants incorporates and makes a part hereof: (a) the Stipulation filed with the Court on \_\_\_\_\_, 2010; and (b) the Notice and the Publication Notice, both of which were filed with the Court on \_\_\_\_\_, 2010.

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

4. **Final Settlement Class Certification:** Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finally certifies solely for the purpose of effectuating this Settlement, a class of all persons and entities who purchased or otherwise acquired Refco Group Ltd., LLC/Refco Finance Inc. 9% Senior Subordinated Notes due 2012 (CUSIP Nos. 75866HAA5 and/or 75866HAC1) and/or common stock of Refco (CUSIP No. 75866G109) during the period July 1, 2004 through and including October 17, 2005, and who were damaged thereby. Excluded from the Settlement Class are: (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 of any Defendant during the Class Period; (iv) immediate family members of the individual Defendants; (v) entities in which Refco or any Defendant has a Controlling Interest; and (vi) the legal representatives, heirs, estates, administrators, predecessors, successors or assigns of any of the foregoing excluded persons

or entities; provided however that any Investment Vehicle shall not be deemed an excluded person or entity by definition. Also excluded from the Settlement 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.

5. **Adequacy of Representation:** Lead Plaintiffs and Lead Plaintiffs' Counsel have fully and adequately represented the Settlement Class for purposes of entering into and implementing the Settling Underwriter Defendants Settlement and have satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g). For purposes of the Settling Underwriter Defendants 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.

6. **Notice:** The Court finds that the distribution of the Notice and the publication of the Publication Notice: (i) were implemented in accordance with the Preliminary Approval Order; (ii) constituted the best notice reasonably practicable under the circumstances; (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 Settling Underwriter Defendants Settlement (including the releases provided for therein), of Lead Plaintiffs' Counsel's motion for reimbursement of litigation expenses incurred in connection with the prosecution of the Action, of their right to object to the Settling Underwriter Defendants Settlement and/or Lead Plaintiffs' Counsel's motion for reimbursement of litigation expenses, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the proposed Settlement; and (v) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution

(including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4, *et seq.*) (the “PSLRA”), and all other applicable law and rules.

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

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

9. **Binding Effect:** The terms of the Stipulation and of this Judgment shall be forever binding on Lead Plaintiffs and all Settlement Class Members, as well as all of their successors and assigns. The Settling Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

10. **Releases:** The releases as set forth in paragraphs 3 and 4 of the Stipulation (the “Releases”), together with the definitions contained in Paragraph 1 of the Stipulation relating thereto are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that, as of the Effective Date:

(a) Lead Plaintiffs on behalf of themselves, and each Settlement Class Member by operation of this Judgment, shall be deemed to have released and forever discharged each and every Settled Plaintiffs' Claim as against the Released Defendant Persons and shall forever be barred and enjoined from filing, commencing, instituting, prosecuting, intervening in any proceeding to assert, or maintaining any of the Settled Plaintiffs' Claims against any of the Released Defendant Persons. The releases described in this paragraph do not operate to preclude any plaintiff or claimant from making any claims (other than against the Released Defendant Persons) 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 against any Non-Settling Defendant other than CMG Institutional Trading, LLC and Utendahl Capital Partners, L.P.

(b) The Settling Underwriter Defendants by operation of this Judgment, shall be deemed to have released and forever discharged each and every Settled Defendants' Claim as against the Released Plaintiff Persons, and shall forever be barred and enjoined from filing commencing, instituting, prosecuting, intervening in any proceeding to assert, or maintaining any of the Released Defendants' Claims against any of the Released Plaintiff Persons.

11. **PLSRA Bar Order:** The Court hereby permanently bars, enjoins, and restrains, the fullest extent permitted by 15 U.S.C. §78u-4(f)(7) and any other applicable law or regulation, all claims for contribution arising out of the Action (a) by any person or entity against any of the Settling Underwriter Defendants; and (b) by any of the Settling Underwriter Defendants against any person or entity other than a person whose liability to the Settlement Class has been extinguished by this Settlement.

12. **Bar Order:** The Court hereby (a) permanently bars, enjoins, and restrains the Non-Settling Defendants and any other person or entity from commencing, prosecuting, or asserting any

Barred Claims against any of the Released Defendant Persons, whether as claims, cross-claims, counterclaims, third-party claims, or otherwise, and whether asserted in the Action or any other proceeding, 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; and (b) permanently bars, enjoins, and restrains the Released Defendant Persons from commencing, prosecuting, or asserting any Barred Claims against any other person or entity, other than a person or entity whose liability to the Settlement Class has been extinguished pursuant to this Settlement, whether as claims, cross-claims, counterclaims, third-party claims or otherwise, and whether asserted in the Action or any other proceeding, 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 (i) the Barred Claims shall not be subject to this Bar Order if they seek to recover for alleged liability to a person or entity who timely opted out of this Settlement and did not revoke that request for exclusion within the applicable time period; and (ii) nothing in this Bar Order alters the rights between and among the Settling Underwriter Defendants, CMG Institutional Trading, LLC, and Utendahl Capital Partners, L.P. under the Master Agreement Among Underwriters dated January 17, 2003, as to which claims are not barred, released or discharged.

13. **Judgment Reduction:** Any final verdict or judgment that may be obtained by or on behalf of the Settlement Class or a Settlement Class Member against a Non-Settling Defendant or Non-Settling Defendants, shall be reduced by the greater of: (i) an amount that corresponds to the percentage of responsibility of the Settling Underwriter Defendants for common damages; or (ii) the amount paid by or on behalf of the Settling Underwriter Defendants to the Settlement Class or any Settlement Class Member for common damages.

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

15. **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 the Settling Underwriter Defendants as evidence of and/or deemed to be evidence of any presumption, concession, or admission by any Settling Underwriter Defendant 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 any Settling Underwriter Defendant;

(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 in the Action would not have exceeded the Settlement Amount;

(d) described as, construed as, offered or received against any of the Settling Parties in any other civil, criminal or administrative action or proceeding, provided, however, that (i) if it is necessary to refer to the Stipulation or this Judgment to effectuate the provisions of the Stipulation or this Judgment, they may be referred to in such proceedings, and (ii) the Released Defendant Persons may refer to the Stipulation and this Judgment to effectuate the liability protection granted them thereunder; or

(e) described as or construed against the Settling Underwriter Defendants, 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.

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

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

18. **Modification of Settlement Agreement:** Without further approval from the Court, Lead Plaintiffs and the Settling Underwriter Defendants are hereby authorized to agree to and adopt

such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate this Settlement that: (i) are not materially inconsistent with this Judgment; and (ii) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Lead Plaintiffs and the Settling Underwriter Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

19. **Entry of Final Judgment:** There is no just reason to delay the entry of this Judgment as a final judgment as against the Settling Underwriter Defendants, CMG Institutional Trading, LLC, and Utendahl Capital Partners, L.P. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment as against the Settling Underwriter Defendants, CMG Institutional Trading, LLC, and Utendahl Capital Partners, L.P. pursuant to Federal Rule of Civil Procedure 54(b).

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

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
THE HONORABLE JED S. RAKOFF  
United States District Judge

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