

BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP
1285 AVENUE OF THE AMERICAS
NEW YORK, N.Y. 10019
(212) 554-1400
TELECOPIER (212)554-1444

GRANT & EISENHOFER, P.A.
CHASE MANHATTAN CENTER
1201 N. MARKET STREET
WILMINGTON, DE 19801
(302) 622-7000
TELECOPIER (302) 622-7100

May 29, 2008

Via Hand Delivery

The Honorable Naomi R. Buchwald
United States District Court
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, New York 10007

Re: United States v. Phillip Bennett, S3 05 Cr. 1192 (NRB)

Dear Judge Buchwald:

Our firms (“Lead Counsel”) represent RH Capital, Inc. and Pacific Investment Management Company, Inc. (together, “Lead Plaintiffs”), the institutional investors appointed by Judge Gerard Lynch to prosecute the claims of the class of defrauded Refco investors (the “Class”) in *In re Refco, Inc. Sec. Litig.*, 05 Civ. 8626 (GEL) (“*Refco Investor Class Action*”). We write to advise the Court of facts that may bear on Mr. Bennett’s sentencing on June 19, 2008. Specifically, we wish to describe for the Court the considerable assistance that Mr. Bennett has recently provided to Lead Plaintiffs in a series of wide-ranging and detailed debriefings.

By way of brief background, Mr. Bennett is a defendant in the *Refco Investor Class Action*.¹ The Complaint asserts a number of civil claims against Mr. Bennett arising from the collapse of Refco, including violations of Sections 11 and 15 of the Securities Act of 1933 and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. The Complaint also names as defendants various other former Refco officers and directors; several banks involved with the issuance of Refco stocks and bonds (the “Underwriters”); Refco’s former auditor, Grant Thornton LLP; Refco’s former corporate law firm, Mayer Brown LLP and one of its partners, and several persons and entities associated with the Thomas H. Lee funds (collectively, the “THL Defendants”). Aggregate damages arising under different statutes are estimated in the vicinity of one billion dollars. Lead Plaintiffs have to date reached settlements with one of Refco’s former investors (the Austrian-based bank BAWAG) and two former Refco officers; those settlements total approximately \$170 million. Discovery with regard to the balance of the defendants is ongoing. We anticipate that the case will be tried in 2009.

¹ The publicly filed version of the operative pleading, the Second Amended Consolidated Complaint (“Complaint”), can be found on the web at http://www.refcosecuritieslitigation.com/courtbox/Refco_2ndAmendCplt_12-3-07.pdf

The Honorable Naomi R. Buchwald
May 29, 2008
Page 2

After entering his guilty plea on February 15, 2008, Mr. Bennett, through counsel, approached Lead Counsel and offered to assist our efforts to maximize the recovery for defrauded Refco investors by providing information concerning the transactions at issue in our case and, most importantly, the conduct of other defendants in the case. Mr. Bennett offered to do so notwithstanding that he has not settled with Lead Plaintiffs. (Discussions concerning a possible resolution of the Class' claims against Mr. Bennett had been unsuccessful in 2007.) In return, Mr. Bennett asked that, after Lead Counsel debriefed him, we evaluate his assistance and, if we concluded that it was beneficial to prosecution of the Class' claims, that Lead Plaintiffs consider advising Your Honor of his assistance.

Given the unique opportunity to debrief a former CEO involved in a massive corporate fraud, Lead Plaintiffs promptly agreed to meet with Mr. Bennett, but we emphasized that doing so would not be linked to a settlement of the Class' claims against him, that we were not obligated to write to the Court, and that we would consider doing so only if we found his assistance to be significant, complete and credible.


Lead Counsel and Mr. Bennett have had several highly productive meetings. Among other things, Mr. Bennett has helped advance our understanding about matters within Refco, providing insights not readily discernable from our ongoing review of documents or cross-examination of deposition witnesses who are almost universally aligned with the defendants in the *Refco* Investor Class Action. Speaking from personal knowledge as well as his well-informed analysis of pertinent documents, Mr. Bennett has also provided important information about the interaction between Refco and various defendants in our case, most notably identifying a number of "red flags" and other circumstances that would have alerted a diligent gatekeeper that things at Refco were not what they appeared to be. Suffice it to say that Mr. Bennett's assistance has materially strengthened the Class' claims against a number of defendants in the *Refco* Investor Class Action, most notably the THL Defendants, the Underwriters, Grant Thornton and Mayer Brown. In the opinion of Lead Counsel, his assistance has substantially enhanced the ability of Lead Plaintiffs to hold those defendants more fully accountable for their role in the events resulting in the devastating losses suffered by Refco investors.

In submitting this letter to the Court, Lead Plaintiffs and Lead Counsel do not overlook or in any way condone the misconduct of Mr. Bennett while CEO of Refco, and we applaud the service performed by the United States Attorney's Office in bringing Mr. Bennett and other wrongdoers to justice. That said, we believe that, since his plea of guilty, Mr. Bennett has made a substantial effort to assist the investors hurt by the collapse of Refco. In addition to the aforementioned cooperation during his debriefing, Mr. Bennett also made clear his willingness to work with the USAO and Lead Counsel to see that a significant percentage of the considerable sums he will forfeit as part of his sentence will flow to the Class in the *Refco* Investor Class Action.

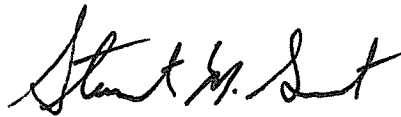
The Honorable Naomi R. Buchwald
May 29, 2008
Page 3

We hope that this information proves helpful as the Court considers an appropriate sentence for Mr. Bennett.

Respectfully,



John P. Coffey
Bernstein Litowitz Berger &
Grossmann LLP



Stuart M. Grant
Grant & Eisenhofer P.A.

Cc: David Frankel, Esq. (counsel for Phillip Bennett)
AUSA Neil Barofsky, Esq.
AUSA Chris Garcia, Esq.