

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re REFCO, INC. SECURITIES LITIGATION : 05 CV 8626 (GEL)  
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: **AMENDED ANSWER OF**  
: **DEFENDANT PHILLIP R.**  
: **BENNETT TO FIRST AMENDED**  
: **CONSOLIDATED CLASS ACTION**  
: **COMPLAINT**  
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Defendant Phillip R. Bennett, by and through his attorneys, Golenbock Eiseman Assor Bell & Peskoe LLP, without waiving any constitutional, statutory or common law rights or privileges, responds to the First Amended Consolidated Class Action Complaint:

1. With respect to the allegations contained in Paragraphs 1-269 of the First Amended Complaint, Mr. Bennett: refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

2. With respect to the allegations contained in Paragraphs 270-283 of the First Amended Complaint, Mr. Bennett states that, pursuant to the Court's Order, dated April 30, 2007, Count 1 was dismissed in its entirety and therefore does not require a response.

3. With respect to the allegations contained in Paragraphs 284-298 of the First Amended Complaint, Mr. Bennett states that, pursuant to the Court's Order, dated April 30, 2007, Count 2 was dismissed in its entirety and therefore does not require a response.

4. With respect to the allegations contained in Paragraphs 299-312 of the First Amended Complaint (Count 3), Mr. Bennett: refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

5. With respect to the allegations contained in Paragraphs 313-328 of the First Amended Complaint (Count 4), Mr. Bennett: refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

6. With respect to the allegations contained in Paragraphs 329-341 of the First Amended Complaint (Count 5), Mr. Bennett: refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the

privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

7. With respect to the allegations contained in Paragraphs 342-360 of the First Amended Complaint (Count 6), Mr. Bennett: refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

8. With respect to the allegations contained in Paragraphs 361-368 of the First Amended Complaint (Count 7), Mr. Bennett refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

9. With respect to the allegations contained in Paragraphs 369-379 of the First Amended Complaint (Count 8), Mr. Bennett: refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

10. With respect to the allegations contained in Paragraphs 380-636 of the First Amended Complaint, Mr. Bennett: refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

11. With respect to the allegations contained in Paragraphs 637-645 of the First Amended Complaint (Count 9), Mr. Bennett: refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

12. With respect to the allegations contained in Paragraphs 646-653 of the First Amended Complaint (Count 10), Mr. Bennett refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

13. With respect to the allegations contained in Paragraphs 654-669 of the First Amended Complaint (Count 11), Mr. Bennett: refers to the documents referenced therein for a

complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

14. With respect to the allegations contained in Paragraphs 670-689 of the First Amended Complaint (Count 12), Mr. Bennett: refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

15. With respect to the allegations contained in Paragraphs 690-706 of the First Amended Complaint (Count 13), Mr. Bennett: refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

16. With respect to the allegations contained in Paragraphs 707-712 of the First Amended Complaint (Count 14), Mr. Bennett: refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required;

denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

17. With respect to the allegations contained in Paragraphs 713-720 of the First Amended Complaint (Count 15), Mr. Bennett refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that Plaintiffs are entitled to any relief from him; and otherwise responds by asserting the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York.

#### **AFFIRMATIVE DEFENSES**

As separate and distinct affirmative defenses to the First Amended Complaint and each alleged causes of action, Mr. Bennett, without conceding that he bears the burden of proof as to any of the following issues, and without waiving any of his constitutional, statutory or common law rights or privileges, and while reserving the right to assert additional or different defenses based upon additional evidence developed in discovery or otherwise, alleges as follows:

##### **First Affirmative Defense**

18. The First Amended Complaint, and each cause of action therein, fails to state a claim upon which relief can be granted.

##### **Second Affirmative Defense**

19. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, estoppel, laches and unclean hands.

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**Third Affirmative Defense**

20. To the extent Plaintiffs' sustained any damage, loss or injury, any damage award against Mr. Bennett should be reduced, diminished and/or eliminated to reflect only Mr. Bennett's percentage of responsibility.

**Fourth Affirmative Defense**

21. Plaintiffs' claims are barred in whole or in part by the comparative or contributory fault of theirs and/or third parties, including, but not limited to, current and/or former personnel of Refco, Inc. and/or Refco Capital Markets, Ltd.

This Answer is submitted without waiver of any of Mr. Bennett's constitutional, statutory or common law rights or privileges, including the privilege against self-incrimination afforded by the Constitutions of the United States and the State of New York.

WHEREFORE, defendant Phillip R. Bennett respectfully requests that judgment be entered:

A. Dismissing the First Amended Complaint, and each cause of action therein, with prejudice, as to Mr. Bennett;

B. Awarding Mr. Bennett his costs, including reasonable attorneys' fees, and disbursements in connection with this action; and

C. Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
June 14, 2007

GOLENBOCK EISEMAN ASSOR BELL  
& PESKOE LLP

By: /s/ Jeffrey T. Golenbock  
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