

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x ELECTRONICALLY FILED  
: Master File No.:  
In re REFCO, INC. SECURITIES LITIGATION : 05 Civ. 8626 (GEL)  
: JURY TRIAL DEMANDED  
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**DEFENDANT PHILIP SILVERMAN'S ANSWER TO THE  
SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

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Defendant Philip Silverman, by and through his attorneys, Heller Ehrman LLP, hereby answers the Second Amended Consolidated Class Action Complaint, dated December 3, 2007 (the “Complaint”), as follows:

To the extent the Complaint attempts to characterize certain alleged facts (*e.g.*, by describing conduct as “a scheme”), Mr. Silverman responds generally that such allegations constitute mere perjoratives, characterizations, or rhetorical statements and do not constitute allegations of fact requiring a response; to the extent such allegations may be construed as allegations of fact, Mr. Silverman objects to and denies such allegations, and incorporates by reference this response in each paragraph below as if fully set forth therein.

**I. NATURE OF THE ACTION**

¶ 1: Mr. Silverman denies the allegations in Paragraph 1 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. To the extent Paragraph 1 purports to summarize Refco’s public statements, those statements speak for themselves.

¶ 2: Mr. Silverman denies the allegations in Paragraph 2 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. To the extent Paragraph 2 purports to summarize Refco’s public statements, those statements speak for themselves.

¶ 3: Mr. Silverman denies the allegations in Paragraph 3 to the extent they purport to

describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct or motivations of others.

¶ 4: Mr. Silverman denies the allegations in Paragraph 4 to the extent they purport to describe conduct by him; Mr. Silverman admits that RGHI assumed certain debts, but lacks sufficient information to form a belief as to whether the owners of RGHI had the ability to arrange for the repayment of those debts and further lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct or motivations of others.

¶ 5: Mr. Silverman denies the allegations in Paragraph 5 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. To the extent Paragraph 5 purports to describe information contained in “Refco’s books,” those documents speak for themselves.

¶ 6: Mr. Silverman denies the allegations in Paragraph 6 to the extent they purport to describe conduct by him or any cash payouts, stock options, or other benefits he received. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. To the extent Paragraph 6 purports to describe the LBO, the details of that transaction are disclosed in public filings which speak for themselves.

¶ 7: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 7, except Mr. Silverman admits that investment

banks served as underwriters for the August 2005 IPO. To the extent Paragraph 7 purports to describe the August 2005 IPO, the details of that transaction are disclosed in public filings which speak for themselves.

¶ 8: Mr. Silverman denies the allegations in Paragraph 8 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. To the extent Paragraph 8 purports to describe the Company's stock price, such information is available from public sources.

¶ 9: Mr. Silverman denies the allegations in Paragraph 9 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. To the extent Paragraph 9 purports to summarize Refco's public statements, those statements speak for themselves.

¶ 10: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 10, except admits upon information and belief that Bennett was arrested and charged with securities fraud. To the extent Paragraph 10 purports to summarize Refco's public statements, those statements speak for themselves. Further, to the extent Paragraph 10 purports to describe Refco's stock price, such information is available from public sources.

¶ 11: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 11. To the extent Paragraph 11 purports to describe the Examiner's Report, that Report speaks for itself, but that document does not

represent an adjudication of any factual or legal issues addressed therein, and this caveat applies to all other references herein to the Examiner's Report.

¶ 12: Mr. Silverman denies the allegations contained in Paragraph 12, except admits that they purport to describe plaintiffs' claims. To the extent that Paragraph 12 purports to describe this Court's April 30, 2007 opinion, that opinion speaks for itself, and to the extent footnote 2 purports to describe Plaintiffs' view of the effect and purpose of their amendments, such editorializing amounts only to legal argument, not appropriately included in a complaint and does not require a response; to the extent a response is necessary, Mr. Silverman incorporates and repeats his responses to the Complaint as set forth herein.

## **II. JURISDICTION AND VENUE**

¶ 13: Mr. Silverman admits that plaintiffs purport to bring the claims identified in Paragraph 13.

¶ 14: Paragraph 14 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in that Paragraph.

¶ 15: Paragraph 15 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in that Paragraph.

¶ 16: Paragraph 16 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in that Paragraph.

### **III. PARTIES AND RELEVANT NON-PARTIES**

#### **A. Plaintiffs**

¶ 17: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 17, except admits that on February 3, 2006, the Court appointed RH Capital as Co-Lead Plaintiff for this consolidated litigation.

¶ 18: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 18, except admits that on February 3, 2006, the Court appointed PIMCO as Co-Lead Plaintiff for this consolidated litigation.

¶ 19: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 19, except admits that PIMCO High Yield Fund, which is not a Lead Plaintiff, has purported to join in this action as a Named Plaintiff and proposed Class Representative.

¶ 20: Paragraph 20 contains no factual allegations to which a response is required.

#### **B. The Company**

¶ 21: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 21, except admits that: Refco Inc. was a publicly traded company that, through its subsidiaries, was in the business of providing execution and clearing services for exchange-traded derivatives, and providing prime brokerage services in the fixed income and foreign exchange markets; Refco Inc. was the issuer of the stock sold pursuant to the IPO; Refco Inc. was a Delaware corporation with its principal offices located at One World Financial Center, 200 Liberty Street, Tower A, New York, New York; and the

financial results of Refco Securities, LLC, Refco, LLC, and of Refco Capital Markets Ltd. were consolidated in Refco Inc.'s financial statements for financial reporting purposes.

¶ 22: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 22, except admits that Refco Group filed for bankruptcy protection under Chapter 11 and had its principal offices at One World Financial Center, 200 Liberty Street, Tower A, New York, New York, and that Refco Group was the parent company prior to the formation of Refco Inc. Mr. Silverman further admits that the financial results of Refco Group's operating subsidiaries – Refco Securities, LLC; Refco, LLC; and Refco Capital Markets Ltd. – were consolidated on Refco Group's financial statements for financial reporting purposes. To the extent that Paragraph 22 purports to summarize public financial documents, those documents speak for themselves.

¶ 23: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 23, except he admits upon information and belief that prior to the IPO the THL Partner Defendants and Refco Holdings owned, respectively, 57% and 43% of New Refco. To the extent that Paragraph 23 purports to summarize public financial documents, those documents speak for themselves.

¶ 24: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 24. To the extent that Paragraph 24 purports to summarize public financial documents, those documents speak for themselves.

¶ 25: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 25. To the extent that Paragraph 25 purports to summarize public financial documents, those documents speak for themselves.

¶ 26: Mr. Silverman denies the allegations contained in Paragraph 26 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they purport to relate to the conduct of others; he admits that Refco Capital Markets Ltd. was an offshore securities and foreign exchange broker whose financial results were consolidated on the Company's financial statements. To the extent that Paragraph 26 purports to describe the contents of the referenced criminal complaint, that document speaks for itself.

¶ 27: Mr. Silverman admits the allegations contained in Paragraph 27, except that he lacks sufficient information to form a belief as to the truth or falsity of the allegations as to Plaintiffs' reasons for not naming Refco Futures as a defendant.

¶ 28: Mr. Silverman admits the allegations contained in Paragraph 28, except that he lacks sufficient information to form a belief as to the truth or falsity of the allegations as to Plaintiffs' reasons for not naming Westminster-Refco as a defendant and the location of Westminster-Refco's principal offices.

¶ 29: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 29, except admits that Lind-Waldock is a Delaware limited liability company.

**C. The Defendants**

¶ 30: Paragraph 30 contains no factual allegations to which a response is required.



## **1. The Bennett Shell-Entity Defendants**

¶ 31: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 31, except Mr. Silverman admits that RGHI is a Delaware corporation that, upon information and belief, was wholly owned and controlled by Refco's CEO, Bennett, after August 5, 2004. Mr. Silverman further admits upon information and belief that prior to that date, RGHI was owned 50% by Bennett and 50% by Refco's former CEO, Defendant Tone Grant.

¶ 32: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 32.

## **2. The Officer Defendants**

¶ 33: Mr. Silverman lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 33, except admits that at various times Bennett was the Chief Executive Officer and President of various Refco entities. To the extent Paragraph 33 purports to describe Bennett's resignation and indictment, Mr. Silverman respectfully refers the Court to the indictment itself and news coverage of those events.

¶ 34: Mr. Silverman lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 34, except admits that at various times Sherer was Executive Vice President and CFO of Refco Group. To the extent that Paragraph 34 references various public documents, those documents speak for themselves.

¶ 35: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 35, except admits that at various times

Sexton held positions at Refco and its subsidiaries. To the extent that Paragraph 35 references various public documents, those documents speak for themselves.

¶ 36: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 36, except admits that at various times Maggio held positions at Refco and its subsidiaries. To the extent that Paragraph 36 references various public documents, those documents speak for themselves. To the extent Paragraph 36 purports to describe Maggio's leave of absence and resignation, Mr. Silverman respectfully refers the Court to news coverage of those events.

¶ 37: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 37, except admits that at various times Murphy held positions at various Refco entities. To the extent that Paragraph 37 references public documents, those documents speak for themselves.

¶ 38: Mr. Silverman denies the allegations contained in Paragraph 38, except admits that at various times he served as Secretary of certain Refco entities and, without being a member of senior management, held certain administrative positions within Refco and its subsidiaries. He further admits that he has been a certified public accountant since 1982. Mr. Silverman denies that he was a close confidant of Bennett or Bennett's personal accountant, and denies that he was Controller of Refco Group.

¶ 39: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 39, except admits that at various times Klejna served as Executive Vice President and General Counsel of Refco Group and Klejna reviewed and approved bills from outside counsel.

¶ 40: Paragraph 40 contains no factual allegations to which a response is required.

### **3. Defendant Trosten**

¶ 41: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 41, except admits that at various times Trosten held positions at various Refco entities. To the extent that Paragraph 41 references public documents, those documents speak for themselves. To the extent Paragraph 41 purports to describe Trosten's indictment, Mr. Silverman respectfully refers the Court to the indictment itself.

### **4. Defendant Grant**

¶ 42: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 42, except admits that at various times Grant held positions at various Refco entities and, upon information and belief, owned 50% of RGHI. To the extent that Paragraph 42 references public documents, those documents speak for themselves. To the extent Paragraph 42 purports to describe Grant's indictment, Mr. Silverman respectfully refers the Court to the indictment itself.

### **5. The Audit Committee Defendants**

¶ 43: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 43, except admits that O'Kelley was a director and a member of the Audit Committee.

¶ 44: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 44, except admits that Breitman was a

director and a member of the Audit Committee.

¶ 45: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 45, except admits that Gantcher was a director and a member of the Audit Committee.

¶ 46: The first sentence of Paragraph 46 contains no factual allegations to which a response is required. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in that Paragraph, except admits that the Audit Committee Defendants served on the referenced audit committees.

## **6. The Defendants Affiliated with Thomas H. Lee Partners**

¶ 47: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 47, except admits upon information and belief that Thomas H. Lee Partners and others purchased a 57% equity stake in the Company in 2004.

¶ 48: Paragraph 47 contains no factual allegations to which a response is required.

¶ 49: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 49 and respectfully refers the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and Refco's public filings for descriptions of the THL Defendants and their involvement with Refco.

¶ 50: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 50 except admits that Lee was a director,

and respectfully refers the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and Refco's public filings for the contents thereof.

¶ 51: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 51 except admits that Harkins was a director, and respectfully refers the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and Refco's public filings for the contents thereof.

¶ 52: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 52 except admits that Jaeckel was a director, and respectfully refers the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and Refco's public filings for the contents thereof.

¶ 53: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 53 except admits that Schoen was a director, and respectfully refers the Court to the Offering Memorandum, the Bond Registration Statement, the IPO Registration Statement, and Refco's public filings for the contents thereof.

¶ 54: Paragraph 54 contains no factual allegations to which a response is required.

## **7. Defendant Grant Thornton**

¶ 55: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 55, except admits that Grant Thornton served as the Company's independent auditor at certain times, and that Grant Thornton issued audit opinions in connection with the Company's financial statements.

¶ 56: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 56, except admits that Grant Thornton provided auditing services to the Company.

¶ 57: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 57, except admits that after the LBO, Grant Thornton conducted quarterly reviews of the Company's financial statements.

¶ 58: Mr. Silverman admits the allegations contained in Paragraph 58.

## **8. The Underwriter Defendants**

¶ 59: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 59, except admits that Credit Suisse served as an underwriter for certain Refco offerings.

¶ 60: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 60, except admits that BAS served as an underwriter for certain Refco offerings.

¶ 61: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 61.

¶ 62: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 62.

¶ 63: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 63.

¶ 64: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 64.

¶ 65: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 65.

¶ 66: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 66.

¶ 67: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 67.

¶ 68: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 68.

¶ 69: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 69.

¶ 70: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 70.

¶ 71: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 71.

¶ 72: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 72.

¶ 73: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 73.

¶ 74: Paragraph 74 contains no factual allegations to which a response is required.

¶ 75: Paragraph 75 contains no factual allegations to which a response is required.

## **9. The Mayer Brown Defendants**

¶ 76: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 76, except admits that Mayer Brown performed legal services for Refco.

¶ 77: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 77, except admits upon information and belief that Collins is a partner at Mayer Brown. To the extent that Paragraph 77 purports to summarize public documents and press reports, those documents speak for themselves.

¶ 78: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 78. To the extent that Paragraph 78 purports to summarize the Examiner's Report, that Report speaks for itself.

¶ 79: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 79.

¶ 80: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 80.

## **IV. CLASS ALLEGATIONS**

¶ 81: Paragraph 81 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies the



allegations contained in Paragraph 81, except he admits that Plaintiffs purport to bring this action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3).

¶ 82: Paragraph 82 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations in that Paragraph, except admits that Refco issued debt securities and common stock.

¶ 83: Paragraph 83 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 84: Paragraph 84 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 85: Paragraph 85 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 86: Paragraph 86 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 87: Paragraph 87 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a

belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 88: Paragraph 88 does not contain factual allegations that require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

**V. FACTUAL ALLEGATIONS PERTINENT TO CLAIMS FOR RELIEF UNDER THE SECURITIES ACT**

**A. Historical Background Regarding the Company**

¶ 89: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 89, except admits that Refco provided brokerage and clearing services in the international derivatives, currency and futures markets.

¶ 90: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 90, except admits that Refco earned transaction fees and interest income.

¶ 91: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 91.

¶ 92: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 92.

¶ 93: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 93.

¶ 94: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 94, except he admits that at various times certain customers, including Victor Niederhoffer, suffered trading losses; to the extent Paragraph 94 purports to describe “media reports,” those documents speak for themselves.

¶ 95: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 95, except admits that at various times certain Refco customers and Refco suffered trading losses.

¶ 96: Mr. Silverman denies the allegations contained in Paragraph 96 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they allege formulation of a fraudulent scheme by others. To the extent that those allegations purport to describe Refco’s books, the books speak for themselves.

¶ 97: To the extent Paragraph 97 purports to summarize the allegations contained in the “VR Complaint,” that Complaint was filed in a separate litigation and no response to that complaint is required here; if that complaint is not dismissed before then, Mr. Silverman expects at the appropriate time to respond to any allegations of wrongdoing asserted against him in the VR Complaint.

**B. Early Efforts to Sell the Company**

¶ 98: Mr. Silverman denies the allegations in Paragraph 98 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others.

¶ 99: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 99. To the extent Paragraph 99 purports to describe the contents of the Examiner's Report, that Report speaks for itself.

**C. The THL Partner Defendants' Investment and the 2004 Recapitalization**

¶ 100: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 100, except he admits that the THL Defendants entered into a leveraged buyout transaction with Refco.

¶ 101: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 101, except he admits upon information and belief that the THL Partner Defendants and their co-investors acquired a 57% equity stake in New Refco. To the extent Paragraph 101 purports to describe the contents of the Merger Agreement, that document speaks for itself.

¶ 102: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 102, except he admits that the Company issued the 144A Bonds.

¶ 103: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 103.

¶ 104: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 104.

¶ 105: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 105.

¶ 106: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 106; to the extent those allegations purport to summarize the contents of the Bond Registration Statement and the IPO Registration Statement, those documents speak for themselves.

**D. The Bond Offering**

¶ 107: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 107, except that the final sentence contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in the final sentence of that Paragraph; the Court rejected this claim in its opinion dated April 30, 2007.

¶ 108: Paragraph 108 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 108.

¶ 109: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 109.

¶ 110: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 110.

¶ 111: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 111. To the extent Paragraph 111 purports to describe the contents of the Exchange Offer, that document speaks for itself.

¶ 112: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 112.

**1. The Offering Memorandum**

¶ 113: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 113. To the extent Paragraph 113 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

¶ 114: Paragraph 114 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 114. To the extent Paragraph 114 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

¶ 115: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 115.

¶ 116: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 116. To the extent Paragraph 116 purports to describe the contents of the Offering Memorandum, the Examiner's Report, or bills submitted by Mayer Brown, those documents speak for themselves.

¶ 117: Mr. Silverman lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 117. To the extent Paragraph 117 purports to describe the contents of the Examiner's Report, that document speaks for itself.

¶ 118: Paragraph 118 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies those allegations to the extent they

purport to allege conduct by him, and lacks information sufficient to form a belief as to the truth or falsity of those allegations to the extent they purport to allege conduct by others.

(a) **The Financial Statements in the Offering Memorandum Contained Untrue Statements of Material Facts**

¶ 119: Mr. Silverman denies the allegations contained in Paragraph 119 to the extent they purport to describe conduct, or any involvement, or knowledge by him in connection with the alleged misstatements; to the extent they purport to describe the conduct, involvement, or knowledge of others, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of those allegations. To the extent Paragraph 119 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

¶ 120: Paragraph 120 purports to describe the contents of the Consolidated Balance Sheets; those documents speak for themselves.

¶ 121: Paragraph 121 purports to describe the contents of the Consolidated Statements of Income; those documents speak for themselves.

¶ 122: Paragraph 122 purports to describe the contents of Grant Thornton's audit report; that document speaks for itself.

¶ 123: Paragraph 123 purports to describe the contents of the Offering Memorandum; that document speaks for itself.

¶ 124: Paragraph 124 purports to describe the contents of the Offering Memorandum; that document speaks for itself.

¶ 125: Paragraph 125 purports to describe the contents of the Offering Memorandum;

that document speaks for itself.

¶ 126: Paragraph 126 purports to describe the contents of the Offering Memorandum; that document speaks for itself.

¶ 127: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 127 as to who drafted the Offering Memorandum. To the extent Paragraph 127 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

¶ 128: Mr. Silverman denies the allegations in Paragraph 128 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others.

¶ 129: Mr. Silverman denies the allegations contained in Paragraph 129 to the extent they purport to describe conduct by him; to the extent Paragraph 129 purports to describe the contents of the Offering Memorandum, Refco's and the THL Partner Defendants' public statements, and the THL Complaint, the referenced documents speaks for themselves.

¶ 130: Mr. Silverman denies the allegations contained in Paragraph 130 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others or describe Lead Plaintiffs' investigation.

¶ 131: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 131. To the extent Paragraph 131 purports to quote the contents of Grant Thornton's audit report, that document speaks for itself.



**(b) The Description of Customer Receivables and  
Related-Party Transactions in the  
Offering Memorandum Contained Untrue  
Statements and Omissions of Material Fact**

¶ 132: Mr. Silverman denies the allegation that the quoted statements were made to “assure investors that the Bonds were a sound investment” to the extent that allegation purports to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of that allegation to the extent it purports to describe the conduct of others. To the extent Paragraph 132 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

¶ 133: Paragraph 133 purports to quote the contents of the Offering Memorandum; that document speaks for itself.

¶ 134: Paragraph 134 purports to quote the contents of the Offering Memorandum; that document speaks for itself.

¶ 135: Mr. Silverman denies the allegations contained in Paragraph 135 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe conduct of others. To the extent Paragraph 135 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

¶ 136: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 136. To the extent Paragraph 136 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

¶ 137: Mr. Silverman denies the allegations contained in Paragraph 137 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. To the extent Paragraph 137 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

**(c) The Offering Memorandum Misrepresented the Reasons for the Company's Purported Success**

¶ 138: Paragraph 138 purports to describe the contents of the Offering Memorandum; that document speaks for itself.

¶ 139: Paragraph 139 purports to describe the contents of the Offering Memorandum; that document speaks for itself.

¶ 140: Mr. Silverman denies the allegations contained in Paragraph 140 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others.

**(d) The Offering Memorandum Misrepresented the Company's Ability to Access the Cash It Needed to Service Its Debt**

¶ 141: Paragraph 141 purports to describe the contents of the Offering Memorandum; that document speaks for itself.

¶ 142: Paragraph 142 purports to describe the contents of the Offering Memorandum; that document speaks for itself.

¶ 143: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 143.

¶ 144: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 144.

¶ 145: Mr. Silverman denies the allegations contained in Paragraph 145 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. To the extent Paragraph 145 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

¶ 146: Mr. Silverman denies the allegations contained in Paragraph 146 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others.

**(e) The Offering Memorandum Misrepresented That the Company Had Taken Adequate Steps to Protect Itself From the Risk of Customer Defaults**

¶ 147: Paragraph 147 purports to quote the contents of the Offering Memorandum; that document speaks for itself.

¶ 148: Mr. Silverman denies the allegations contained in Paragraph 148 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. To the extent Paragraph 148 purports to describe the contents of the Offering

Memorandum, that document speaks for itself.

¶ 149: Paragraph 149 purports to describe the contents of the Offering Memorandum; that document speaks for itself.

¶ 150: Mr. Silverman denies the allegations contained in Paragraph 150 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations.

**(f) The Offering Memorandum Misrepresented That the Company Maintained Excess Regulatory Capital**

¶ 151: Paragraph 151 purports to describe the contents of the Offering Memorandum; that document speaks for itself.

¶ 152: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 152 to the extent they purport to identify the reason or purpose behind the language quoted. To the extent Paragraph 152 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

¶ 153: Mr. Silverman denies the allegations contained in Paragraph 153 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations.

**(g) The Offering Memorandum Failed to Disclose  
BAWAG's Full Ownership Interest in Refco Group**

¶ 154: Mr. Silverman denies the allegations contained in Paragraph 154 to the extent they purport to describe conduct by him, except he admits upon information and belief that the Company was 10% owned by BAWAG Overseas. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations. To the extent Paragraph 154 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

¶ 155: Mr. Silverman denies the allegations contained in Paragraph 155 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations. To the extent Paragraph 155 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

**2. Presentations to Ratings Agencies**

¶ 156: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 156.

¶ 157: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 157. To the extent Paragraph 157 purports to describe the contents of the referenced documents, those documents speak for themselves.

**3. The Bond Road Show**

¶ 158: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 158.

¶ 159: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 159.

¶ 160: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 160.

¶ 161: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 161.

¶ 162: Mr. Silverman denies the allegations contained in Paragraph 162 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations.

¶ 163: Mr. Silverman denies the allegations contained in Paragraph 163 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations.

¶ 164: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 164.

#### **4. The Bond Registration Statement**

¶ 165: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 165. Mr. Silverman respectfully refers the Court to the referenced documents, which are publicly available, for information regarding the dates on which those documents were filed.

¶ 166: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 166. To the extent Paragraph 166 purports to

describe the contents of the Bond Registration Statement, that document speaks for itself.

¶ 167: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 167. To the extent Paragraph 167 purports to describe the contents of the Bond Registration Statement, that document speaks for itself.

¶ 168: Paragraph 168 purports to describe the contents of the Bond Registration Statement; that document speaks for itself.

¶ 169: Mr. Silverman denies the allegations contained in Paragraph 169 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others.

¶ 170: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 170.

¶ 171: Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 171.

¶ 172: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 172.

¶ 173: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 173.

¶ 174: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 174.

¶ 175: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 175.

¶ 176: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 176.

¶ 177: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 177.

¶ 178: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 178.

¶ 179: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 179.

¶ 180: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 180.

¶ 181: Mr. Silverman denies the allegations contained in Paragraph 181 to the extent they purport to describe his conduct or knowledge. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations.

¶ 182: Paragraph 182 purports to describe the contents of the Bond Registration Statement and the Offering Memorandum; those documents speak for themselves.

¶ 183: Paragraph 183 purports to describe the contents of the Bond Registration Statement and the Offering Memorandum; those documents speak for themselves.

¶ 184: Mr. Silverman denies the allegations contained in Paragraph 184 to the extent



they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations. To the extent Paragraph 184 purports to describe the contents of the Offering Memorandum and the Bond Registration Statement, those documents speak for themselves.

¶ 185: Mr. Silverman denies the allegations contained in Paragraph 185 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations. To the extent Paragraph 185 purports to describe the contents of the Bond Registration Statement and the Offering Memorandum, those documents speak for themselves.

¶ 186: Mr. Silverman denies the allegations in Paragraph 186 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations. To the extent Paragraph 186 purports to describe the contents of the Bond Registration Statement, that document speaks for itself.

¶ 187: Mr. Silverman denies the allegations contained in Paragraph 187 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations. To the extent Paragraph 187 purports to describe the contents of referenced documents, those documents speak for themselves.

¶ 188: Paragraph 188 purports to describe the contents of the Bond Registration Statement; that document speaks for itself.

¶ 189: Mr. Silverman denies the allegations contained in Paragraph 189 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a

belief as to the truth or falsity of the remaining allegations. To the extent Paragraph 189 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

¶ 190: Paragraph 190 purports to describe the contents of the Bond Registration Statement; that document speaks for itself.

¶ 191: Paragraph 191 purports to describe the contents of the Bond Registration Statement; that document speaks for itself.

¶ 192: Mr. Silverman denies the allegations contained in Paragraph 192 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations. To the extent Paragraph 192 purports to describe the contents of the Bond Registration Statement, that document speaks for itself.

¶ 193: Mr. Silverman denies the allegations contained in Paragraph 193 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others or to describe Lead Plaintiffs' investigation. To the extent Paragraph 193 purports to describe the contents of the Offering Memorandum and the Bond Registration Statement, those documents speak for themselves.

¶ 194: Mr. Silverman denies the allegations contained in Paragraph 194 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others.

**E. The August 2005 Initial Public Offering**

¶ 195: Mr. Silverman denies the allegations contained in Paragraph 195 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. Mr. Silverman respectfully refers the Court to the IPO Registration Statement for the details of the IPO.

¶ 196: Mr. Silverman denies the allegations contained in Paragraph 196 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations.

¶ 197: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 197. To the extent Paragraph 197 purports to describe the contents of the IPO Prospectus, that document speaks for itself.

**1. The IPO Registration Statement**

¶ 198: Paragraph 198 purports to describe the contents of the IPO Registration Statement; that document speaks for itself.

¶ 199: Paragraph 199 purports to describe the contents of the IPO Registration Statement; that document speaks for itself.

¶ 200: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 200.

¶ 201: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 201. To the extent that Paragraph 201 purports to describe the contents of the IPO Registration Statement and the Examiner's Report, those documents speak for themselves.

¶ 202: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 202. To the extent Paragraph 202 purports to describe the contents of the IPO Registration Statement, that document speaks for itself.

¶ 203: Paragraph 203 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 203 to the extent they purport to describe conduct by him. He lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others.

**(a) The Financial Statements in the IPO Registration Statement Contained Untrue Statements of Material Facts**

¶ 204: Mr. Silverman denies the allegations contained in Paragraph 204 to the extent they purport to describe conduct by him. He lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. To the extent Paragraph 204 purports to describe the contents of the IPO Registration Statement, that document speaks for itself.

¶ 205: Paragraph 205 purports to describe the contents of Refco's Consolidated Balance Sheets and the IPO Registration Statement; those documents speak for themselves.

¶ 206: Paragraph 206 purports to describe the contents of Refco's Consolidated

Statements of Income and the IPO Registration Statement; those documents speak for themselves.

¶ 207: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 207. To the extent Paragraph 207 purports to describe the contents of the IPO Registration Statement and Grant Thornton's audit opinions, those documents speak for themselves.

¶ 208: Paragraph 208 purports to describe the contents of the IPO Registration Statement; that document speaks for itself.

¶ 209: Paragraph 209 purports to describe the contents of the IPO Registration Statement; that document speaks for itself.

¶ 210: Paragraph 210 purports to describe the contents of the IPO Registration Statement; that document speaks for itself.

¶ 211: Paragraph 211 purports to describe the contents of the IPO Registration Statement; that document speaks for itself.

¶ 212: Paragraph 212 purports to describe the contents of the IPO Registration Statement; that document speaks for itself.

¶ 213: Paragraph 213 purports to describe the contents of the IPO Registration Statement and the IPO Prospectus; those documents speak for themselves.

¶ 214: Paragraph 214 purports to describe the contents of the IPO Registration Statement; that document speaks for itself.

¶ 215: Mr. Silverman denies the allegations contained in Paragraph 215 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. To the extent Paragraph 215 purports to describe the contents of the IPO Registration Statement and public pronouncements, those documents speak for themselves.

¶ 216: Mr. Silverman denies the allegations contained in Paragraph 216 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others or to describe Lead Plaintiffs' investigation.

¶ 217: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 217. To the extent Paragraph 217 purports to describe the contents of Grant Thornton's audit report, that document speaks for itself.

**(b) The Description of Customer Receivables and Related-Party Transactions in the IPO Registration Statement Contained Untrue Statements and Omissions of Material Fact**

¶ 218: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 218 to the extent they purport to identify the reason or purpose behind the language quoted; to the extent Paragraph 218 purports to quote the contents of the IPO Registration Statement, that document speaks for itself.

¶ 219: Paragraph 219 purports to quote the contents of the IPO Registration Statement; that document speaks for itself.

¶ 220: Paragraph 220 purports to quote the contents of the Prospectus; that document speaks for itself.

¶ 221: Mr. Silverman denies the allegations contained in Paragraph 221 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others.

¶ 222: Mr. Silverman denies the allegations contained in Paragraph 222 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others.

¶ 223: Mr. Silverman denies the allegations contained in Paragraph 223 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. To the extent Paragraph 223 purports to describe the contents of the IPO Registration Statement, that document speaks for itself.

**(c) The IPO Registration Statement Misrepresented That the Company Had Taken Adequate Steps to Protect Itself From the Risk of Customer Defaults**

¶ 224: Paragraph 224 purports to quote the contents of the IPO Registration Statement; that document speaks for itself.

¶ 225: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 225 to the extent they purport to identify the

reason or purpose behind the language quoted; to the extent Paragraph 225 purports to quote the contents of the IPO Registration Statement, that document speaks for itself.

¶ 226: Mr. Silverman denies the allegations contained in Paragraph 226 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations.

**(d) The IPO Registration Statement Misrepresented That The Company Maintained Excess Regulatory Capital**

¶ 227: Paragraph 227 purports to quote the contents of the IPO Registration Statement; that document speaks for itself.

¶ 228: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 228 to the extent they purport to identify the reason or purpose behind the language quoted. To the extent Paragraph 228 purports to quote the contents of the IPO Registration Statement, that document speaks for itself.

¶ 229: Paragraph 229 purports to quote the contents of the IPO Registration Statement; that document speaks for itself.

¶ 230: Mr. Silverman denies the allegations contained in Paragraph 230 to the extent they purport to describe conduct by him. Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations.

**(e) The IPO Registration Statement Failed to Disclose BAWAG's Full Ownership Interest in Refco Group**

¶ 231: Mr. Silverman lacks sufficient information to form a belief as to the truth or



falsity of the allegations contained in Paragraph 231, except he admits upon information and belief that the Company was 10% owned by BAWAG Overseas. To the extent Paragraph 231 purports to describe the contents of the IPO Prospectus, that document speaks for itself.

**F. The Truth Begins to Emerge and the Company Collapses**

¶ 232: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 232.

¶ 233: Paragraph 233 purports to quote the contents of a Refco press release; that document speaks for itself.

¶ 234: Paragraph 234 purports to quote the contents of a Refco press release; that document speaks for itself.

¶ 235: Paragraph 235 purports to describe the contents of a Refco press release; that document speaks for itself.

¶ 236: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 236. To the extent that Paragraph 236 purports to describe Refco's stock price, that information is available from public sources.

¶ 237: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 237. To the extent Paragraph 237 purports to describe the contents of a Refco press release, that document speaks for itself.

¶ 238: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 238. To the extent Paragraph 238 purports to

describe the contents of a Refco press release, that document speaks for itself.

¶ 239: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 239. To the extent Paragraph 239 purports to describe the contents of a Refco press release, that document speaks for itself.

¶ 240: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 240. To the extent that Paragraph 240 purports to describe Refco's stock price, that information is available from public sources.

¶ 241: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 241. To the extent Paragraph 241 purports to describe the contents of a Refco statement, that document speaks for itself.

¶ 242: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 242. To the extent Paragraph 242 purports to describe the contents of publicly available documents, those documents speak for themselves.

¶ 243: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 243. To the extent Paragraph 243 purports to describe the price of Refco's stock and the Bonds, such information is available from public sources.

¶ 244: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 244. To the extent Paragraph 244 purports to describe Refco's bankruptcy filing and the price of Refco's stock, such information is available from public sources.

¶ 245: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 245.

¶ 246: Paragraph 246 contains legal conclusions to which a response is not required; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 246 to the extent they purport to describe conduct by him, and lacks information sufficient to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others.

¶ 247: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 247.

## **VI. THE COMPANY'S VIOLATIONS OF GAAP**

¶ 248: Paragraph 248 contains assertions regarding the professional standards applicable to the accounting industry, and as such states legal and/or expert conclusions to which a response is not required. Mr. Silverman respectfully refers the Court to publicly available sources describing such standards.

¶ 249: Paragraph 249 purports to describe the contents of SEC Regulation S-X; that regulation speaks for itself.

¶ 250: Paragraph 250 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 251: Paragraph 251 contains legal and/or expert conclusions that do not require a

response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 252: Paragraph 252 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 253: Mr. Silverman denies the allegations in Paragraph 253 to they extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 253 to the extent they purport to describe the conduct of others.

¶ 254: Mr. Silverman denies the allegations in Paragraph 254 to they extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 254 to the extent they purport to describe the conduct of others.

¶ 255: Mr. Silverman denies the allegations in Paragraph 255 to they extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 255 to the extent they purport to describe the conduct of others. To the extent Paragraph 255 contains legal and/or expert conclusions, no response is necessary.

¶ 256: Mr. Silverman denies the allegations in Paragraph 256 to they extent they purport

to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 256 to the extent they purport to describe the conduct of others. To the extent Paragraph 256 contains legal and/or expert conclusions, no response is necessary.

¶ 257: Mr. Silverman denies the allegations in Paragraph 257 to they extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 257 to the extent they purport to describe the conduct of others. To the extent Paragraph 257 contains legal and/or expert conclusions, no response is necessary.

¶ 258: Mr. Silverman denies the allegations in Paragraph 258 to they extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 258 to the extent they purport to describe the conduct of others. To the extent Paragraph 258 contains legal and/or expert conclusions, no response is necessary.

¶ 259: Mr. Silverman denies the allegations in Paragraph 259 to they extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 259 to the extent they purport to describe the conduct of others.

¶ 260: Mr. Silverman denies the allegations in Paragraph 260 to they extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 260 to the extent they purport to describe the conduct of others. To the extent Paragraph 260 purports to quote the referenced

accounting standards, those documents speak for themselves. To the extent Paragraph 260 contains legal and/or expert conclusions, no response is necessary.

¶ 261: Paragraph 261 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

## **VII. GRANT THORNTON'S VIOLATIONS OF AUDITING STANDARDS**

¶ 262: Paragraph 262 contains assertions regarding the history and statutory responsibility of the PCAOB, as well as the Interim Professional Auditing Standards adopted by the PCAOB. Mr. Silverman respectfully refers the Court to publicly available sources describing the PCAOB; to the extent Paragraph 262 purports to summarize the provisions of the Sarbanes-Oxley Act of 2002, the PCAOB's Interim Auditing Standards or the auditing standards issued by the AICPA, those provisions speak for themselves.

¶ 263: Paragraph 263 purports to describe the standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as "GAAS"; those standards speak for themselves. To the extent Paragraph 263 contains legal and/or expert conclusions, no response is necessary.

### **A. Violations of General Standards**

¶ 264: Paragraph 264 purports to describe the standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as "GAAS", and the contents of the Examiner's Report; those standards and the document speak for themselves. To the extent

Paragraph 264 contains legal and/or expert conclusions, no response is necessary. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 264, except he admits that Grant Thornton audited the Company's financial statements for the years ended February 28, 2003, February 29, 2004, and February 28, 2005.

¶ 265: Paragraph 265 purports to describe the standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as "GAAS", and the contents of the Examiner's Report; those standards and document speak for themselves. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations in that Paragraph.

**B. Violations of Standards of Fieldwork**

**1. Standard of Fieldwork No. 1 – Audit Planning**

¶ 266: Paragraph 266 purports to describe the standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as "GAAS"; those standards speak for themselves. To the extent Paragraph 266 contains legal and/or expert conclusions, no response is necessary.

¶ 267: Paragraph 267 purports to describe the standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as "GAAS"; those standards speak for themselves. To the extent Paragraph 267 contains legal and/or expert conclusions, no response is necessary.

¶ 268: Paragraph 268 purports to describe the standards promulgated by the PCAOB and

the AICPA, collectively referred to in the Complaint as “GAAS”; those standards speak for themselves. To the extent Paragraph 268 contains legal and/or expert conclusions, no response is necessary.

¶ 269: Paragraph 269 purports to describe the standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as “GAAS”; those standards speak for themselves. To the extent Paragraph 269 contains legal and/or expert conclusions, no response is necessary.

¶ 270: Paragraph 270 purports to describe the standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as “GAAS”; those standards speak for themselves. To the extent Paragraph 270 contains legal and/or expert conclusions, no response is necessary.

¶ 271: Paragraph 271 purports to describe the standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as “GAAS”; those standards speak for themselves. To the extent Paragraph 271 contains legal and/or expert conclusions, no response is necessary.

¶ 272: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 272.

¶ 273: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 273.

¶ 274: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 274. To the extent Paragraph 274 purports to



describe the standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as “GAAS,” those standards speak for themselves.

¶ 275: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 275.

## **2. Standard of Fieldwork No. 2 – Evaluation of Internal Controls**

¶ 276: Paragraph 276 purports to describe standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as “GAAS”; those standards speak for themselves.

¶ 277: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 277.

¶ 278: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 278. To the extent Paragraph 278 purports to describe the contents of the referenced letter, that document speaks for itself.

¶ 279: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 279.

## **3. Standard of Fieldwork No. 3 – Obtaining Evidential Matter**

¶ 280: To the extent Paragraph 280 purports to describe the standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as “GAAS,” those standards speak for themselves. To the extent Paragraph 280 contains legal and/or expert conclusions, no response is necessary. Mr. Silverman lacks sufficient information to form a

belief as to the truth or falsity of the remaining allegations contained in Paragraph 280.

¶ 281: Paragraph 281 purports to describe standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as “GAAS”; those standards speak for themselves.

¶ 282: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 282.

¶ 283: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 283. To the extent Paragraph 283 purports to describe the contents of the Examiner’s Report, that Report speaks for itself.

¶ 284: Paragraph 284 purports to describe the contents of the Examiner’s Report; that Report speaks for itself.

¶ 285: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 285. To the extent Paragraph 285 purports to describe the contents of the Examiner’s Report, that Report speaks for itself.

¶ 286: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 286.

¶ 287: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 287. To the extent Paragraph 287 purports to describe standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as “GAAS,” those standards speak for themselves.

¶288: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 288.

¶ 289: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 289. To the extent Paragraph 289 purports to describe the contents of the Examiner’s Report, that Report speaks for itself.

**C. Violations of Reporting Standards**

¶ 290: To the extent Paragraph 290 purports to describe standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as “GAAS,” those standards speak for themselves. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations in that Paragraph.

¶ 291: To the extent Paragraph 291 purports to describe standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as “GAAS,” those standards speak for themselves. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations in that Paragraph.

¶ 292: Paragraph 292 purports to describe standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as “GAAS”; those standards speak for themselves.

¶ 293: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 293.

¶ 294: Mr. Silverman denies the allegations contained in Paragraph 294 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a

belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others. To the extent Paragraph 294 purports to describe the standards promulgated by the PCAOB and the AICPA, collectively referred to in the Complaint as “GAAS,” those standards speak for themselves. To the extent Paragraph 294 contains legal and/or expert conclusions, no response is necessary.

¶ 295: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 295.

**D. Violations of CFTC Rules and Regulations**

¶ 296: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 296. To the extent Paragraph 296 purports to describe standards promulgated by the CFTC, those standards speak for themselves. To the extent Paragraph 296 contains legal and/or expert conclusions, no response is necessary.

**VIII. DEFENDANTS’ NEGLIGENCE**

**A. The Offering Memorandum and the Bond Registration Statement**

¶ 297: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 297.

¶ 298: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 298. To the extent Paragraph 298 purports to describe the contents of the Offering Memorandum and Bond Registration Statement, those documents speak for themselves.

¶ 299: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 299.

¶ 300: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 300.

¶ 301: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 301.

¶ 302: Paragraph 302 states legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 302.

¶ 303: Paragraph 303 states legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 303 to the extent they purport to describe conduct by him, and lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe conduct of others; except Mr. Silverman admits that Bennett signed Mr. Silverman's name on the Registration Statement based on a power of attorney.

¶ 304: Paragraph 304 states legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 304.

**B. The IPO Registration Statement**

¶ 305: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 305.

¶ 306: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 306.

¶ 307: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 307.

¶ 308: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 308.

¶ 309: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 309. To the extent Paragraph 309 purports to describe the contents of the IPO Registration Statement, that document speaks for itself.

¶ 310: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 310.

¶ 311: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 311.

## **IX. ALLEGATIONS PERTAINING TO CONTROL PERSON LIABILITY**

¶ 312: Paragraph 312 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint realleged in Paragraph 312.

### **A. The Officer Defendants**

¶ 313: Mr. Silverman denies that he had control over Refco, and further answers Paragraph 313 as follows:

313(a): Paragraph 313(a) contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman respectfully refers the Court to Refco's public filings for a description of the other Officer Defendants, their employment histories, and their respective positions at Refco. Mr. Silverman specifically denies the allegations contained at Paragraph 313(a)(vii), except admits that he was named as Secretary of the Company and of certain Refco entities and for a period was asked to act as head of Refco's internal audit function on the assumption that adequate staff for the function would be engaged;

313(b): Paragraph 313(b) purports to describe the contents of the Offering Memorandum, Bond Registration Statement, and IPO Registration Statement; those documents speak for themselves; Mr. Silverman denies that he was identified in those documents as being a member of the Company's management;

313(c): Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 313(c);

313(d) and (e): Paragraphs 313(d) and (e) contain legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in those Paragraphs, except admits upon information and belief that Bennett was a controlling equity holder of RGHI;

313(f): Mr. Silverman denies the allegations contained in Paragraph 313(f); he denies that he had a close relationship with or was a close confidant of Bennett, that Bennett turned to him for advice and guidance as to accounting matters, or that he had any influence over Bennett's decision-making on behalf of the Company with respect to accounting-related or any other issues; Mr. Silverman admits he is a CPA.

**B. RGHI and the Bennett Trust**

¶ 314: Paragraph 314 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph, except to the extent that Paragraph 314 purports to describe the Offering Memorandum and the IPO Registration Statement. Those documents speak for themselves.

**C. Robert C. Trosten**

¶ 315: Paragraph 315 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph, except admits that Trosten was an Executive Vice President and CFO of Refco. To the extent that Paragraph 315 purports to describe the contents of the Offering Memorandum and the Bond Registration Statement, those documents speak for themselves.

**D. The THL Partner Defendants**

¶ 316: Paragraph 316 contains legal conclusions that do not require a response; to the



extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph. To the extent that Paragraph 316 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

**E. The THL Individual Defendants**

¶ 317: Paragraph 317 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph, except he admits that Lee was a member of Refco's Board of Directors.

¶ 318: Paragraph 318 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph, except he admits that Harkins was a member of Refco's Board of Directors.

¶ 319: Paragraph 319 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph, except he admits that Jaeckel was a member of Refco's Board of Directors.

¶ 320: Paragraph 320 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph, except he admits that Schoen was a member of Refco's Board of Directors.

**F. The Audit Committee Defendants**

¶ 321: Paragraph 321 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph, except he admits that the Audit Committee Defendants were members of that committee and of Refco's Board of Directors. To the extent Paragraph 321 purports to describe the contents of the Charter of the Audit Committee and IPO Registration Statement, those documents speaks for themselves.

**X. CLAIMS FOR RELIEF UNDER THE SECURITIES ACT**

**COUNT ONE**

**For Violations of Section 12(a)(2) of the Securities Act,  
On Behalf of Those Who Purchased or Otherwise  
Acquired 144A Bonds in the Bond Offering,  
Against Bennett, Trosten, Jaeckel, the THL Partner Defendants,  
and the Bond Underwriter Defendants**

¶ 322: Count One has been dismissed, and a response to this allegation therefore is unnecessary. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 322 contains no factual allegations to which a response is required, except that Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint realleged in Paragraph 322.

¶ 323: Count One has been dismissed, and a response to this allegation therefore is unnecessary even apart from the fact that Mr. Silverman is not named as a defendant in this Count. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 323 contains legal conclusions and procedural

descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 323, except he admits that Plaintiffs purport to bring this action pursuant to Section 12(a)(2) of the Securities Act.

¶ 324: Count One has been dismissed, and a response to this allegation therefore is unnecessary even apart from the fact that Mr. Silverman is not named as a defendant in this Count. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 324 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 324; to the extent Paragraph 324 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

¶ 325: Count One has been dismissed, and a response to this allegation therefore is unnecessary even apart from the fact that Mr. Silverman is not named as a defendant in this Count. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 325 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 325.

¶ 326: Count One has been dismissed, and a response to this allegation therefore is unnecessary even apart from the fact that Mr. Silverman is not named as a defendant in this Count. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 326.

¶ 327: Count One has been dismissed, and a response to this allegation therefore is

unnecessary even apart from the fact that Mr. Silverman is not named as a defendant in this Count. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 327.

¶ 328: Count One has been dismissed, and a response to this allegation therefore is unnecessary even apart from the fact that Mr. Silverman is not named as a defendant in this Count. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 328.

¶ 329: Count One has been dismissed, and a response to this allegation therefore is unnecessary even apart from the fact that Mr. Silverman is not named as a defendant in this Count. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 329 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 329.

¶ 330: Count One has been dismissed, and a response to this allegation therefore is unnecessary even apart from the fact that Mr. Silverman is not named as a defendant in this Count. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 330 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in

Paragraph 330.

¶ 331: Count One has been dismissed, and a response to this allegation therefore is unnecessary even apart from the fact that Mr. Silverman is not named as a defendant in this Count. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 331.

¶ 332: Count One has been dismissed, and a response to this allegation therefore is unnecessary even apart from the fact that Mr. Silverman is not named as a defendant in this Count. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 332.

¶ 333: Count One has been dismissed, and a response to this allegation therefore is unnecessary even apart from the fact that Mr. Silverman is not named as a defendant in this Count. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 333.

¶ 334: Count One has been dismissed, and a response to this allegation therefore is unnecessary even apart from the fact that Mr. Silverman is not named as a defendant in this Count. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 334.

¶ 335: Count One has been dismissed, and a response to this allegation therefore is unnecessary even apart from the fact that Mr. Silverman is not named as a defendant in this Count. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 335.

## COUNT TWO

**Control Person Liability Pursuant to Section 15 of the Securities Act,  
On Behalf of Purchasers of 144A Bonds in the Bond Offering,  
Against the THL Partner Defendants, Lee, Bennett,  
RGHI, Grant, Murphy, Trosten, Sexton, Silverman, and Maggio  
(Based on Violations of Section 12(a)(2) of the Securities Act  
by Refco Group, Refco Finance Holdings, and Refco Finance)**

¶ 336: Count Two has been dismissed, and a response to this allegation therefore is unnecessary. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 336 contains no factual allegations to which a response is required, except that Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint realleged in Paragraph 336.

¶ 337: Count Two has been dismissed, and a response to this allegation therefore is unnecessary; insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 337 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 337, except that he admits that Plaintiffs purport to bring this action pursuant to Section 15 of the Securities Act.

¶ 338: Count Two has been dismissed, and a response to this allegation therefore is

unnecessary. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 338 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 338 insofar as they purport to describe conduct by him, and he lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they purport to describe the conduct of others.

¶ 339: Count Two has been dismissed, and a response to this allegation therefore is unnecessary. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 339 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 339.

¶ 340: Count Two has been dismissed, and a response to this allegation therefore is unnecessary. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 340 contains legal conclusions that do not require a response. To the extent a response is deemed necessary, Mr. Silverman denies the allegations in Paragraph 340 to the extent they purport to allege that he was a controlling person of any Refco entity, and lacks information sufficient to form a belief as to the truth or falsity of those allegations to the extent they purport to relate to others.

¶ 341: Count Two has been dismissed, and a response to this allegation therefore is unnecessary. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 341 contains legal conclusions that do

not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 342: Count Two has been dismissed, and a response to this allegation therefore is unnecessary. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 342 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 343: Count Two has been dismissed, and a response to this allegation therefore is unnecessary. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 343 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 344: Count Two has been dismissed, and a response to this allegation therefore is unnecessary. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 344 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 345: Count Two has been dismissed, and a response to this allegation therefore is



unnecessary. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 345 states legal conclusions to which no response is required. To the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 345 to the extent they purport to describe conduct by him, and lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe conduct by others.

¶ 346: Count Two has been dismissed, and a response to this allegation therefore is unnecessary. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 346, except that to the extent Paragraph 346 references the date of the Bond Offering, such information is publicly available in the Bond Registration Statement.

¶ 347: Count Two has been dismissed, and a response to this allegation therefore is unnecessary. Insofar as this allegation is incorporated and realleged in connection with other Counts, Mr. Silverman responds as follows: Paragraph 347 contains legal conclusions that do not require a response. To the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 347 to the extent they purport to relate to him, and lacks information sufficient to form a belief as to the truth or falsity of those allegations to the extent they purport to relate to others.

### **COUNT THREE**

#### **For Violations of Section 11 of the Securities Act, On Behalf of Purchasers of Registered Bonds, Against the Section 11 Bond Defendants<sup>1</sup>**

¶ 348: Paragraph 348 contains no factual allegations to which a response is required, except that Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint realleged in Paragraph 348.

¶ 349: Paragraph 349 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 349, except that he admits that Plaintiffs purport to bring this action pursuant to Section 11 of the Securities Act.

¶ 350: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 350.

¶ 351: Paragraph 351 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in Paragraph 351.

¶ 352: Paragraph 352 contains legal conclusions that do not require a response; to the

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<sup>1</sup> The Court dismissed Count Three in its April 30, 2007 Opinion and Order as to any plaintiffs who traded their unregistered Rule 144A bonds for registered bonds in the *Exxon Capital* exchange (the “Exchanging Bond Plaintiffs”). By letter dated January 25, 2008 from Megan McIntyre, counsel to Lead Plaintiffs, addressed to Greg A. Danilow, Esq., counsel for Thomas H. Lee Partners, L.P. and other defendants, counsel for the Lead Plaintiffs stated that they retained this claim in the Complaint only “in order to preserve the plaintiffs’ appellate rights, and not in an attempt to resurrect these claims through repleading.” To that extent, therefore, responses to the allegations of Count Three are unnecessary. Mr. Silverman includes his responses to these allegations only insofar as they pertain to plaintiffs other than the Exchanging Bond Plaintiffs or these allegations are incorporated and realleged in connection with other Counts of the Complaint.

extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 352.

¶ 353: Paragraph 353 purports to describe the contents of the Bond Registration Statement; that document speaks for itself.

¶ 354: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 354.

¶ 355: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 355; to the extent Paragraph 355 purports to describe the contents of the Grant Thornton audit report, that document speaks for itself. To the extent Paragraph 355 contains legal and/or expert conclusions, no response is necessary.

¶ 356: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 356.

¶ 357: Paragraph 357 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in Paragraph 357 insofar as they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations insofar as they purport to relate to others.

¶ 358: Paragraph 358 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in Paragraph 358 insofar as they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations insofar as they purport to relate to others.

¶ 359: Paragraph 359 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 359.

¶ 360: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 360, except that Mr. Silverman respectfully refers the Court to the Bond Registration Statement for the date of the Exchange Offer.

¶ 361: Paragraph 361 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 361 insofar as they purport to relate to him, and lacks information sufficient to form a belief as to the truth or falsity of those allegations insofar as they purport to relate to others.

#### **COUNT FOUR**

**Control Person Liability Pursuant to Section 15 of the Securities Act,  
On Behalf of the Section 11 Bond Plaintiffs,  
Against the THL Defendants, Bennett, RGHI,  
the Bennett Trust, Murphy, Sherer, Sexton, Silverman,  
Maggio, Klejna, O’Kelley, Gantcher, and Breitman  
(Based on Violation of Section 11 of the Securities Act by Refco Group)<sup>2</sup>**

¶ 362: Paragraph 362 contains no factual allegations to which a response is required,

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<sup>2</sup> The Court dismissed Count Four in its April 30, 2007 Opinion and Order as to any plaintiffs who traded their unregistered Rule 144A bonds for registered bonds in the *Exxon Capital* exchange (the “Exchanging Bond Plaintiffs”). By letter dated January 25, 2008 from Megan McIntyre, Esq., counsel for Lead Plaintiffs, addressed to Greg A. Danilow, Esq., counsel for Thomas H. Lee Partners, L.P. and other defendants, counsel for the Lead Plaintiffs stated that they retained this claim in the Complaint only “in order to preserve the plaintiffs’ appellate rights, and not in an attempt to resurrect these claims through repleading.” To that extent, therefore, responses to the allegations of Count Four are unnecessary. Mr. Silverman includes his responses to these allegations only insofar as they pertain to plaintiffs other than the Exchanging Bond Plaintiffs or these allegations are incorporated and realleged in connection with other Counts of the Complaint.

except that Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint realleged in Paragraph 362.

¶ 363: Paragraph 363 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 363, except he admits that Plaintiffs purport to bring this action pursuant to Section 15 of the Securities Act.

¶ 364: The first and second sentences of Paragraph 364 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in the first and second sentences. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in the last sentence of Paragraph 364.

¶ 365: Paragraph 365 contains legal and/or expert conclusions that do not require a response; to extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 365.

¶ 366: Paragraph 366 contains legal conclusions that do not require a response; to extent a response is deemed necessary, Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 367: Paragraph 367 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 368: Paragraph 368 contains legal conclusions that do not require a response; to the

extent a response is deemed necessary, Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 369: Paragraph 369 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 370: Paragraph 370 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 370 to the extent they purport to allege that Mr. Silverman controlled Refco Group, and he lacks information sufficient to form a belief as to the truth or falsity of the allegations in that Paragraph to the extent they purport to relate to others.

¶ 371: Paragraph 371 contains legal conclusions that do not require a response; to extent a response is deemed necessary, Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 372: Paragraph 372 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 372 insofar as they purport to allege that Mr. Silverman had control over Refco Group; Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations in that Paragraph to the extent they purport to relate to others.

¶ 373: Paragraph 373 contains legal conclusions that do not require a response. To the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 373 insofar as they purport to relate to conduct by him. Mr. Silverman lacks

information sufficient to form a belief as to the truth or falsity of the allegations contained in that Paragraph to the extent they purport to relate to the conduct of others.

¶ 374: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 374; except Mr. Silverman respectfully refers the Court to the Bond Registration Statement for the date of the Exchange Offer.

¶ 375. Paragraph 375 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 375.

#### **COUNT FIVE**

#### **For Violations of Section 11 of the Securities Act, On Behalf of Purchasers of Refco Common Stock, Against the Section 11 Stock Defendants**

¶ 376: Paragraph 376 contains no factual allegations to which a response is required, except that Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint realleged in Paragraph 376, and states that he is not named as a defendant in this Count.

¶ 377: Paragraph 377 contains legal conclusions and procedural descriptions, and the allegations of this Count are not directed against Mr. Silverman, and therefore no response is required by him. To the extent a response is deemed necessary, Mr. Silverman admits that Plaintiffs purport to bring this Count pursuant to Section 11 of the Securities Act.

¶ 378: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Mr. Silverman

admits the allegation contained in the first sentence of Paragraph 378. The second sentence contains legal and/or expert conclusions that do not require a response; to the extent that a response is deemed necessary, Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of those allegations.

¶ 379: The allegations of this Court are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 379 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph.

¶ 380: The allegations of this Court are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 380 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 381: The allegations of this Court are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 381 purports to describe the contents of the IPO Registration Statement; that document speaks for itself.

¶ 382: The allegations of this Court are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response to Paragraph 382 is deemed necessary, Mr. Silverman respectfully refers the Court to the IPO Registration Statement for information regarding the referenced individuals' positions at the time of its filing.



¶ 383: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 383, except admits that Grant Thornton was the auditor of Refco at various times; to the extent Paragraph 383 purports to describe the contents of the Grant Thornton audit report, that document speaks for itself.

¶ 384: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 384.

¶ 385: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 385 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 386: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 386 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 387: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 387

contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 388: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 388 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

## **COUNT SIX**

### **Control Person Liability Pursuant to Section 15 of the Securities Act, On Behalf of Purchasers of Refco Common Stock Against The Section 15 Stock Defendants (Based on Violations of Section 11 of the Securities Act by Refco)**

¶ 389: Paragraph 389 contains no factual allegations to which a response is required, except Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint that are realleged in Paragraph 389, and states that he is not named as defendant in this Count.

¶ 390: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 390 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman admits that Plaintiffs purport to bring this Count pursuant to Section 15 of the Securities Act.

¶ 391: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 391 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 391.

¶ 392: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 392 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 392.

¶ 393: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 393 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 393.

¶ 394: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 394 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 394.

¶ 395: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 395

contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 395.

¶ 396: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 396 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 396.

¶ 397: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 397 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 397.

¶ 398: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 398 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 399: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 399 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of

the allegations contained in that Paragraph.

¶ 400: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 400 contains legal and/or expert conclusions that do not require a response; to extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 400.

¶ 401: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 401 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 402: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 402 contains legal conclusions that do not require a response; to extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 402.

¶ 403: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 403 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 404: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 404; except that Mr. Silverman respectfully refers the Court to the IPO Registration Statement for the date of the IPO.

¶ 405: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 405 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

### **COUNT SEVEN**

**For Violations of Section 12(a)(2) of the Securities Act,  
On Behalf of Those Who Purchased or Otherwise Acquired  
Refco Common Stock in the IPO,  
Against the Stock Underwriter Defendants**

¶ 406: Paragraph 406 contains no factual allegations to which a response is required, except that Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint that are realleged in Paragraph 406, and states that he is not named as defendant in this Count.

¶ 407: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 407 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman admits that Plaintiffs purport to bring this

Count pursuant to Section 12(a)(2) of the Securities Act.

¶ 408: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 408 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 409: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 409 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 410: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 410 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 411: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 411 contains legal conclusions that do not require a response; to extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 411.

¶ 412: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 412 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 413: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 413 contains no factual allegations to which a response is required.

### **COUNT EIGHT**

**Control Person Liability Pursuant to Section 15 of the Securities Act,  
On Behalf of Purchasers of Refco Common Stock  
Against the Section 15 Stock Defendants  
(Based on Violations of Section 12(a)(2) of the Securities Act  
by Refco)**

¶ 414: Paragraph 414 contains no factual allegations to which a response is required, except that Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint realleged in Paragraph 414, and states that he is not named as a defendant in this Count.

¶ 415: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 415 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman admits that Plaintiffs purport to bring this Count pursuant to Section 15 of the Securities Act.



¶ 416: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 416 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 416.

¶ 417: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 417 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 417.

¶ 418: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 418 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 418.

¶ 419: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 419 contains legal and/or expert conclusions that do not require a response; to extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 419.

¶ 420: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 420

contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 420.

¶ 421: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 421 contains legal conclusions that do not require a response; to extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 421.

¶ 422: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 422 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 423: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 423; except that Mr. Silverman respectfully refers the Court to the IPO Registration Statement for the date of the IPO.

¶ 424: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 424 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of

the allegations contained in that Paragraph.

## **XI. DEFENDANTS' FRAUDULENT SCHEME**

¶ 425: Mr. Silverman denies the allegations in Paragraph 425 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others.

¶ 426: Mr. Silverman denies the allegations in Paragraph 426 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations to the extent they purport to describe the conduct of others.

¶ 427: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 427. To the extent Paragraph 427 purports to summarize publicly available documents, those documents speak for themselves.

### **A. Refco and Its Customers Suffer Hundreds of Millions of Dollars in Trading Losses**

¶ 428: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 428.

¶ 429: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 429.

¶ 430: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 430.

¶ 431: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 431, except admits that at various times, certain Refco customers sustained losses.

¶ 432: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 432.

¶ 433: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 433.

¶ 434: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 434.

¶ 435: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 435.

**B. Bennett Becomes CEO and, With the Aid of Collins, Mayer Brown and Maggio, Transfers Uncollectible Receivables Off Refco's Books**

¶ 436: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 436, except admits that Bennett became CEO and Chairman of the Company.

¶ 437: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 437.

¶ 438: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 438.

¶ 439: Mr. Silverman denies the allegations contained in Paragraph 439 to the extent

they purport to describe conduct by him, and lacks information sufficient to form a belief as to the truth or falsity of those allegations to the extent they allege that others embarked on a fraudulent scheme. To the extent that those allegations purport to describe Refco's books, the books speak for themselves.

¶ 440: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 440, except admits that Niederhoffer was a Refco customer who sustained trading losses which RGHI later agreed to repay to Refco. To the extent Paragraph 440 purports to describe the contents of the Examiner's Report, that document speaks for itself.

¶ 441: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 441.

¶ 442: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 442.

¶ 443: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 443. To the extent Paragraph 443 purports to describe the contents of the Examiner's Report, that document speaks for itself.

¶ 444: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 444.

¶ 445: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 445.

¶ 446: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 446.

¶ 447: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 447.

¶ 448: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 448.

¶ 449: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 449.

**C. Refco Conceals the Uncollectible Receivable Through a Series of Fraudulent “Round Trip” Loan Transactions**

¶ 450: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 450, except Mr. Silverman denies the allegations in Paragraph 450 to the extent they purport to describe conduct by him.

¶ 451: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 451, except Mr. Silverman denies the allegations in Paragraph 451 to the extent they purport to describe conduct by him.

¶ 452: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 452.

¶ 453: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 453.

**1. The Fraudulent Transactions With Customer X**

¶ 454: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 454.

¶ 455: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 455.

¶ 456: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 456.

¶ 457: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 457.

¶ 458: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 458.

¶ 459: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 459.

**i. The February 2002 Transaction**

¶ 460: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 460.

¶ 461: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 461.

¶ 462: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 462.

¶ 463: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 463.

¶ 464: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 464.

¶ 465: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 465.

¶ 466: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 466.

¶ 467: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 467.

¶ 468: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 468.

¶ 469: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 469.

¶ 470: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 470.

**ii. The February 2003 Transaction**

¶ 471: Mr. Silverman lacks sufficient information to form a belief as to the truth or



falsity of the allegations contained in Paragraph 471.

¶ 472: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 472.

¶ 473: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 473.

¶ 474: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 474.

¶ 475: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 475.

**iii. The February 2004 Transaction**

¶ 476: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 476.

¶ 477: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 477.

¶ 478: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 478.

¶ 479: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 479.

¶ 480: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 480.

¶ 481: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 481.

**iv. The May 2004 Transaction**

¶ 482: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 482, except Mr. Silverman denies those allegations to the extent they purport to describe conduct by him.

¶ 483: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 483.

¶ 484: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 484.

¶ 485: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 485.

¶ 486: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 486.

¶ 487: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 487.

**v. The August 2004 Transaction**

¶ 488: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 488, except Mr. Silverman denies those allegations to they extent they purport to describe conduct by him.

¶ 489: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 489.

¶ 490: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 490.

¶ 491: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 491.

¶ 492: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 492.

¶ 493: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 493.

**vi. The November 2004 Transaction**

¶ 494: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 494, except Mr. Silverman denies those allegations to they extent they purport to describe conduct by him.

¶ 495: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 495.

¶ 496: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 496.

¶ 497: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 497.

¶ 498: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 498.

¶ 499: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 499.

**vii. The December 2004 Transaction**

¶ 500: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 500.

¶ 501: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 501.

¶ 502: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 502.

¶ 503: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 503.

¶ 504: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 504.

¶ 505: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 505.

**viii. The February 2005 Transaction**

¶ 506: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 506.

¶ 507: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 507.

¶ 508: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 508.

¶ 509: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 509.

¶ 510: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 510.

¶ 511: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 511.

**ix. The May 2005 Transaction**

¶ 512: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 512, except Mr. Silverman denies those allegations to the extent they purport to describe conduct by him.

¶ 513: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 513.

x. **The August 2005 Transaction**

¶ 514: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 514.

¶ 515: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 515.

¶ 516: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 516.

¶ 517: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 517.

¶ 518: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 518.

¶ 519: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 519.

2. **The Fraudulent Transactions With BAWAG**

¶ 520: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 520.

¶ 521: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 521.

¶ 522: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 522, except Mr. Silverman denies those allegations to they extent they purport to describe conduct by him.

**xi. The February 2000 Transaction**

¶ 523: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 523, except Mr. Silverman denies those allegations to they extent they purport to describe conduct by him.

¶ 524: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 524.

¶ 525: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 525.

¶ 526: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 526.

¶ 527: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 527.

**xii. The February 2001 Transaction**

¶ 528: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 528.

¶ 529: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 529, except Mr. Silverman denies those allegations to they extent they purport to describe conduct by him.

¶ 530: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 530.

¶ 531: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 531.

### **xiii. The February 2002 Transaction**

¶ 532: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 532.

¶ 533: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 533.

¶ 534: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 534, except Mr. Silverman denies those allegations to the extent they purport to describe conduct by him.

¶ 535: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 535.

¶ 536: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 536.

### **iv. The February 2003 Transaction**

¶ 537: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 537.



¶ 538: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 538, except Mr. Silverman denies those allegations to the extent they purport to describe conduct by him.

¶ 539: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 539.

¶ 540: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 540.

**v. The February 2004 Transaction**

¶ 541: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 541.

¶ 542: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 542, except Mr. Silverman denies those allegations to the extent they purport to describe conduct by him.

¶ 543: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 543.

¶ 544: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 544.

¶ 545: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 545.

**vi. The February 2005 Transaction**

¶ 546: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 546.

¶ 547: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 547.

¶ 548: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 548, except Mr. Silverman denies those allegations to the extent they purport to describe conduct by him.

**3. The Fraudulent Transactions With CIM Ventures**

¶ 549: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 549.

**i. The February 2000 Transaction**

¶ 550: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 550.

¶ 551: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 551.

¶ 552: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 552.

¶ 553: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 553.

¶ 554: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 554.

**ii. The February 2001 Transaction**

¶ 555: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 555.

¶ 556: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 556.

¶ 557: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 557.

¶ 558: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 558.

**iii. The Aborted February 2002 Transaction**

¶ 559: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 559.

¶ 560: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 560.

¶ 561: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 561.

¶ 562: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 562.

**4. The Fraudulent Transactions With EMF and Delta Flyer**

¶ 563: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 563.

**i. The February 2000 Transaction**

¶ 564: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 564.

**ii. The February 2001 Transaction**

¶ 565: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 565.

¶ 566: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 566.

¶ 567: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 567.

¶ 568: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 568. To the extent Paragraph 568 purports to describe the contents of the Examiner's Report, that document speaks for itself.

**iii. The February 2002 Transaction**

¶ 569: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 569.

**iv. The February 2003 Transaction**

¶ 570: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 570.

**5. The Fraudulent Transaction With Beckenham**

¶ 571: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 571.

**6. The Fraudulent Transaction With CS Land**

¶ 572: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 572.

**D. Summary and Form of Transactions**

¶ 573: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 573.

¶ 574: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 574.

¶ 575: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 575.

¶ 576: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 576.

¶ 577: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 577.

**E. Material Impact on Financial Statements**

¶ 578: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 578.

¶ 579: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 579.

¶ 580: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 580.

¶ 581: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 581.

¶ 582: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 582.

¶ 583: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 583.

¶ 584: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 584.

¶ 585: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 585.

¶ 586: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 586.

¶ 587: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 587.

## **XII. FALSE AND MISLEADING STATEMENTS**

¶ 588: Mr. Silverman denies the allegations contained in Paragraph 588 to the extent they purport to describe conduct by him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they purport to describe conduct of others.

¶ 589: The first sentence of Paragraph 589 contains legal conclusions to which a response is not required; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that sentence. Mr. Silverman denies the remaining allegations contained in Paragraph 589 to the extent they purport to describe conduct by him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they purport to describe conduct of others.

### **A. The May 2005 Press Release and May 2005 8-K**

¶ 590: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 590. To the extent Paragraph 590 purports to describe the contents of referenced documents, those documents speak for themselves.

¶ 591: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 591. To the extent Paragraph 591 purports to describe the contents of the May 2005 Press Release, that document speaks for itself.

¶ 592: Paragraph 592 purports to describe the contents of the May 2005 Press Release; that document speaks for itself.

¶ 593: Paragraph 593 purports to describe the contents of the May 2005 Press Release; that document speaks for itself.

¶ 594: Mr. Silverman denies the allegations contained in Paragraph 594 to the extent they purport to describe conduct by him; he lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they purport to describe the conduct of others.

**B. The Year End 2005 Press Release and 2005 10-K**

¶ 595: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 595; Mr. Silverman respectfully refers the Court to the referenced public filings for their filing dates.

¶ 596: Mr. Silverman denies the allegations contained in Paragraph 596 to the extent they purport to describe conduct by him; he lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 596. To the extent Paragraph 596 purports to describe the contents of referenced documents, those documents speak for themselves.

¶ 597: Paragraph 597 purports to describe the contents of referenced documents; those documents speak for themselves.



¶ 598: Paragraph 598 purports to describe the contents of referenced documents; those documents speak for themselves.

¶ 599: Paragraph 599 purports to describe the contents of referenced documents; those documents speak for themselves.

¶ 600: Paragraph 600 purports to describe the contents of referenced documents; those documents speak for themselves.

¶ 601: Paragraph 601 purports to describe the contents of referenced documents; those documents speak for themselves. Mr. Silverman denies the allegations contained in Paragraph 601 to the extent they purport to describe conduct by him; he lacks sufficient information to form a belief as to the truth or falsity of the allegations in that Paragraph to the extent they purport to describe the conduct of others.

¶ 602: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 602. To the extent Paragraph 602 purports to describe the contents of referenced documents, those documents speak for themselves.

¶ 603: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 603. To the extent Paragraph 603 purports to describe the contents of referenced documents, those documents speak for themselves.

¶ 604: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 604. To the extent Paragraph 604 purports to describe the contents of referenced documents, those documents speak for themselves.

¶ 605: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 605.

**C. The First Quarter 2006 Press Release, July 2005  
8-K, and First Quarter 2006 10-Q**

¶ 606: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 606. To the extent Paragraph 606 purports to describe the contents of referenced documents, those documents speak for themselves.

¶ 607: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 607. To the extent Paragraph 607 purports to describe the contents of the First Quarter 2006 Press Release, that document speaks for itself.

¶ 608: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 608. To the extent Paragraph 608 purports to describe the contents of the First Quarter 2006 Press Release, that document speaks for itself.

¶ 609: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 609. To the extent Paragraph 609 purports to describe the contents of the First Quarter 2006 10-Q, that document speaks for itself.

¶ 610: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 610. To the extent Paragraph 610 purports to describe the contents of the First Quarter 2006 10-Q, that document speaks for itself.

¶ 611: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 611. To the extent Paragraph 611 purports to

describe the contents of the First Quarter 2006 10-Q, that document speaks for itself.

¶ 612: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 612. To the extent Paragraph 612 purports to describe the contents of the First Quarter 2006 10-Q, that document speaks for itself.

¶ 613: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 613. To the extent Paragraph 613 purports to describe the contents of the First Quarter 2006 10-Q, that document speaks for itself.

¶ 614: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 614. To the extent Paragraph 614 purports to describe the contents of the First Quarter 2006 10-Q, that document speaks for itself.

¶ 615: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 615.

### **XIII. ADDITIONAL ALLEGATIONS OF SCIENTER**

¶ 616: Paragraph 616 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in that Paragraph to the extent they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they purport to relate to others.

#### **A. Circumstantial Evidence of Scienter**

¶ 617: Paragraph 617 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in that Paragraph to

the extent they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they purport to relate to others.

¶ 618: Paragraph 618 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 619: Paragraph 619 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 620: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 620.

¶ 621: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 621.

¶ 622: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 622, except he admits that Grant Thornton was Refco's auditor.

¶ 623: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 623.

¶ 624: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 624.

¶ 625: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 625.

¶ 626: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 626.

¶ 627: Paragraph 627 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in that Paragraph insofar as they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations insofar as they purport to relate to others.

¶ 628: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 628.

¶ 629: Paragraph 629 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in that Paragraph to the extent they purport to relate to him; he lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they purport to relate to others.

¶ 630: Paragraph 630 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in that Paragraph to the extent they purport to relate to him; he lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they purport to relate to others.

¶ 631: Mr. Silverman denies the allegations contained in Paragraph 631 to they extent they purport to relate to him; he lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they purport to relate to others.

¶ 632: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 632, except Mr. Silverman denies the allegations in Paragraph 632 to the extent they purport to describe conduct by him.

¶ 633: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 633, except Mr. Silverman denies the allegations in Paragraph 633 to the extent they purport to relate to him.

¶ 634: Paragraph 634 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in that Paragraph to the extent they purport to relate to him; he lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they purport to relate to others.

¶ 635: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 635, except Mr. Silverman denies the allegations in Paragraph 635 to the extent they purport to relate to him.

¶ 636: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 636, except Mr. Silverman denies the allegations in Paragraph 636 to the extent they purport to describe conduct by him, and except he admits that RGHI was a shareholder of Refco Group and, later, of Refco, Inc.

¶ 637: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 637.

¶ 638: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 638, except Mr. Silverman denies the allegations

in Paragraph 638 to the extent they purport to relate to him.

¶ 639: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 639, except admits that certain credits and debits were, at times, reflected on the books of Refco Holdings. To the extent Paragraph 639 purports to describe the contents of referenced documents, those documents speak for themselves.

¶ 640: Paragraph 640 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 641: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 641.

¶ 642: Paragraph 642 contains a legal conclusion to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies that he was a close confidant of Mr. Bennett and the other allegations contained in that Paragraph, except he admits he served as Secretary of certain Refco Entities and was placed on leave on October 16, 2005. To the extent Paragraph 642 purports to describe the contents of an article on [www.thestreet.com](http://www.thestreet.com), that article speaks for itself.

¶ 643: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 643.

¶ 644: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 644, except Mr. Silverman denies that he had anything to do with, or had knowledge of, Trosten's severance payment.

¶ 645: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 645, except denies the allegations to the extent they purport to relate to him.

¶ 646: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 646.

¶ 647: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 647, except denies the allegations to the extent they purport to describe conduct by him.

¶ 648: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 648, except denies the allegations to the extent they purport to relate to him.

¶ 649: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 649, except denies the allegations to the extent they purport to relate to him.

¶ 650: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 650.

¶ 651: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 651, except denies the allegations to the extent they purport to relate to him, except that he was asked in 2005 to head a new internal audit function the Company was to staff.



¶ 652: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 652.

¶ 653: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 653.

¶ 654: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 654.

**B. Motive and Opportunity**

¶ 655: Paragraph 655 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in that Paragraph to the extent they purport to describe conduct by him or benefits he received. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they purport to describe the conduct of, or benefits received by, others.

¶ 656: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 656.

¶ 657: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 657; Mr. Silverman denies receiving any of the specified kinds of payments allegedly made to others.

¶ 658: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 658.

¶ 659: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 659, except Mr. Silverman denies the allegations in Paragraph 659 to the extent they purport to describe conduct by Mr. Silverman or any stock benefits received by him; he received no stock.

¶ 660: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 660. To the extent Paragraph 660 purports to describe the contents of the Prospectus, that document speaks for itself.

¶ 661: Paragraph 661 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph to the extent they purport to describe conduct by, or benefits received by, him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they purport to describe the conduct of, or benefits received by, others.

¶ 662: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 662, except Mr. Silverman denies the allegations contained in Paragraph 662 to the extent they purport to describe conduct by, or benefits received by, him; he was not a participant in the “green shoe” option.

¶ 663: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 663, except Mr. Silverman denies the allegations in Paragraph 663 to the extent they purport to describe Mr. Silverman’s conduct or benefits received by him.

¶ 664: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 664.

¶ 665: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 665.

¶ 666: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 666, except Mr. Silverman denies the allegations in Paragraph 666 to the extent they purport to describe conduct by him or benefits received by him; he was not a recipient of any RSU grants.

¶ 667: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 667.

¶ 668: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 668, except Mr. Silverman denies the allegations in that Paragraph to the extent they purport to describe conduct by him; he was not a participant in the Senior Management Bonus Pool Plan.

¶ 669: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 669, except Mr. Silverman denies the allegations in that Paragraph to the extent they purport to describe conduct by him.

¶ 670: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 670.

¶ 671: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 671.

¶ 672: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 672.

¶ 673: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 673.

**C. Additional Allegations of Scienter As to the Audit Committee**

¶ 674: Paragraph 674 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations in that Paragraph; the SEC rules speak for themselves.

¶ 675: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 675.

¶ 676: Paragraph 676 purports to describe the contents of the IPO Registration Statement; that document speaks for itself.

¶ 677: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 677. To the extent Paragraph 677 purports to describe the contents of the Charter of the Audit Committee, that document speaks for itself.

¶ 678: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 678. To the extent Paragraph 678 purports to describe the contents of the IPO Registration Statement, that document speaks for itself.

¶ 679: Paragraph 679 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a

belief as to the truth or falsity of the allegations in that Paragraph.

¶ 680: Mr. Silverman denies the allegations contained in Paragraph 680 to the extent they purport to describe conduct by him. Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 680.

¶ 681: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 681.

¶ 682: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 682. To the extent Paragraph 682 purports to describe the contents of the IPO Registration Statement, that document speaks for itself.

¶ 683: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 683.

¶ 684: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 684.

**D. Additional Allegations of Scierer Against the THL Defendants**

¶ 685: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 685.

¶ 686: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 686.

¶ 687: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 687.

¶ 688: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 688.

¶ 689: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 689.

¶ 690: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 690.

¶ 691: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 691.

¶ 692: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 692.

¶ 693: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 693.

¶ 694: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 694.

¶ 695: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 695.

¶ 696: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 696.

¶ 697: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 697.

¶ 698: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 698, except admits upon information and belief that the THL Defendants acquired an interest in Refco.

¶ 699: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 699.

¶ 700: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 700.

¶ 701: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 701.

¶ 702: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 702.

¶ 703: Paragraph 703 purports to describe the contents of a “Management Letter” from Grant Thornton; that document speaks for itself.

¶ 704: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 704.

¶ 705: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 705.

¶ 706: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 706.

¶ 707: Mr. Silverman lacks sufficient information to form a belief as to the truth or

falsity of the allegations contained in Paragraph 707.

¶ 708: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 708.

¶ 709: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 709.

**E. Additional Allegations of Scierer Against Mayer Brown and Collins**

**1. Motive and opportunity**

¶ 710: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 710.

¶ 711: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 711, except admits that Refco's operations were subject to regulation by several governmental agencies and it required legal services.

¶ 712: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 712, except admits that Mayer Brown performed legal services for Refco.

¶ 713: Paragraph 713 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 714: Paragraph 714 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a



belief as to the truth or falsity of the allegations contained in that Paragraph.

## **2. Knowledge and/or reckless disregard of the fraud**

¶ 715: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 715.

¶ 716: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 716.

¶ 717: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 717.

¶ 718: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 718.

¶ 719: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 719.

¶ 720: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 720.

¶ 721: Paragraph 721 purports to describe the contents of the Examiner's Report; that document speaks for itself.

## **XIV. LOSS CAUSATION**

¶ 722: Paragraph 722 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient

information to form a belief as to the truth or falsity of those allegations.

¶ 723: Paragraph 723 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 723.

¶ 724: Paragraph 724 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 724. Mr. Silverman respectfully refers the Court to publicly-available sources for the details regarding the price of Refco's stock and bonds on the referenced dates.

¶ 725: Paragraph 725 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph, except he denies those allegations to the extent they purport to describe conduct by him.

¶ 726: Paragraph 726 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations in that Paragraph to the extent they relate to him.

## **XV. INAPPLICABILITY OF THE STATUTORY SAFE HARBOR**

¶ 727: Paragraph 727 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that

Paragraph.

¶ 728: Paragraph 728 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph.

## **XVI. PRESUMPTION OF RELIANCE**

### **A. Reliance Should Be Presumed With Respect to Defendants' Omissions**

¶ 729: Paragraph 729 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph to the extent they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they relate to others.

### **B. Reliance Upon the Offering Memorandum and Road Show Should Be Presumed For All Purchasers of 144A Bonds in the Initial Offering**

¶ 730: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 730. To the extent Paragraph 730 purports to describe the contents of the Offering Memorandum, that document speaks for itself.

¶ 731: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 731.

### **C. Reliance Should Be Presumed Because Fraud Created the Market for the Company's Securities**

¶ 732: Paragraph 732 contains legal conclusions that do not require a response; to the

extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph to the extent they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they relate to others.

¶ 733: Paragraph 733 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 733, except to the extent Paragraph 733 purports to describe the contents of the Offering Memorandum and the Bond Registration Statement, those documents speak for themselves.

¶ 734: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 734.

¶ 735: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 735.

¶ 736: Paragraph 736 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

**D. Reliance Should Be Presumed Under the Fraud-on-the-Market Doctrine**

¶ 737: Paragraph 737 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 738: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 738.

¶ 739: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 739.

¶ 740: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 740, except Mr. Silverman denies the allegations in Paragraph 740 to the extent they purport to describe conduct by him.

¶ 741: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 741.

¶ 742: Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 742, except he admits that Refco stock was traded over the New York Stock Exchange, and respectfully refers the Court to the publicly available information as to the price and trading volume of the stock.

¶ 743: Paragraph 743 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 744: Paragraph 744 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph.

## **XVII. CLAIMS FOR RELIEF UNDER THE EXCHANGE ACT**

### **COUNT NINE**

**For Violations of Section 10(b) of the Exchange Act and  
Rule 10b-5(b) Promulgated Thereunder,  
On Behalf of Plaintiffs and All Members of the Class,  
Against the Officer Defendants, the Audit Committee Defendants, Trosten,  
the THL Defendants, Mayer Brown, Collins, and Grant Thornton**

¶ 745: Paragraph 745 contains no factual allegations to which a response is required, except Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint realleged in Paragraph 745.

¶ 746: Paragraph 746 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 746 to the extent they purport to relate to him, except that he admits that Plaintiffs purport to bring this Count pursuant to Section 10(b) of the Exchange Act and Rule 10b-5(b).

¶ 747: Paragraph 747 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph to the extent they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they relate to others.

¶ 748: Paragraph 748 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph to the extent they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they relate to others.

¶ 749: Mr. Silverman denies the allegations contained in Paragraph 749 to the extent they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they relate to others.

¶ 750: Paragraph 750 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 751: Paragraph 751 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph to the extent they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they relate to others.

¶ 752: Paragraph 752 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph to the extent they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they relate to others.

¶ 753: Paragraph 753 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph to the extent they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they relate to others.

¶ 754: Paragraph 754 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations

contained in that Paragraph to the extent they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they relate to others.

¶ 755: Paragraph 755 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph to the extent they purport to relate to him, and lacks sufficient information to form a belief as to the truth or falsity of those allegations to the extent they relate to others.

### **COUNT TEN**

#### **For Violations of Section 10(b) of the Exchange Act, and Rule 10b-5(a) and (c) Promulgated Thereunder, On Behalf of Lead Plaintiffs and All Members of the Class, Against RGHI**

¶ 756: Paragraph 756 contains no factual allegations to which a response is required, except Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint realleged in Paragraph 756, and states that he is not named as a defendant in this Count.

¶ 757: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 757 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman admits that Plaintiffs purport to bring this Count pursuant to Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c).

¶ 758: The allegations of this Count are not directed against Mr. Silverman and therefore



a response is not required by him. To the extent a response is deemed necessary, Paragraph 758 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 759: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 759 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 760: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 760 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 761: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 761 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 762: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 762 contains legal conclusions that do not require a response; to the extent a response is deemed

necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 763: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 763 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

### **COUNT ELEVEN**

#### **Pursuant to Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) Promulgated Thereunder, on Behalf of Plaintiffs and all Class Members Against Mayer Brown and Collins**

¶ 764: Paragraph 764 contains no factual allegations to which a response is required, except Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint realleged in Paragraph 764, and states that he is not named as a defendant in this Count.

¶ 765: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 765 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman admits that Plaintiffs purport to bring this Count pursuant to Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c).

¶ 766: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 766

contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 766.

¶ 767: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 767 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 767.

¶ 768: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 768 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 768.

¶ 769: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 769 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 769.

¶ 770: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 770 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of

the allegations contained in Paragraph 770.

¶ 771: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 771 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 771.

¶ 772: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 772.

¶ 773: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 773 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 773.

## **COUNT TWELVE**

**Control Person Liability Pursuant to Section 20(a) of the Exchange Act,  
On Behalf of Purchasers of 144A Bonds in the Bond Offering,  
Against Bennett, Grant, RGHI, the THL Partner Defendants, Lee, Murphy,  
Trosten, Sexton, Silverman, and Maggio  
(Based on Violations of Section 10(b) and Rule 10b-5 by Refco Group,  
Refco Finance Holdings, and Refco Finance)**

¶ 774: Paragraph 774 contains no factual allegations to which a response is required, except Mr. Silverman repeats and realleges his responses above to the allegations of the

Complaint realleged in Paragraph 774.

¶ 775: Paragraph 775 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 775 to the extent they purport to relate to him, except that he admits that Plaintiffs purport to bring this Count pursuant to Section 20(a) of the Exchange Act.

¶ 776: Paragraph 776 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 777: Paragraph 777 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 778: Paragraph 778 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 779: Paragraph 779 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 780: Paragraph 780 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a

belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 781: Paragraph 781 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 782: Paragraph 782 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph insofar as they purport to relate to him (he was not a control person as to Refco Group, Refco Finance Holdings or Refco Finance), and he lacks sufficient information to form a belief as to the truth or falsity of those allegations insofar as they purport to relate to others.

¶ 783: Paragraph 783 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph to the extent they purport to relate to him, and he lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in that Paragraph.

¶ 784: Paragraph 784 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph to the extent they purport to relate to him, and he lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in that Paragraph.

¶ 785: Paragraph 785 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph to the extent they purport to relate to him, and he lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in that Paragraph.

¶ 786: Paragraph 786 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph to the extent they purport to relate to him, and he lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in that Paragraph.

### **COUNT THIRTEEN**

**Control Person Liability Pursuant to Section 20(a) of the Exchange Act,  
On Behalf of Purchasers of Bonds After the Bond Offering and  
Before the Date of the IPO, Against the  
THL Defendants and Defendants Bennett, RGHI, the Bennett Trust, Murphy, Trosten,  
Sherer, Sexton, Silverman, Maggio, Klejna, O’Kelley, Gantcher, and Breitman  
(Based on Violations of Section 10(b) and Rule 10b-5 By Refco Group)**

¶ 787: Paragraph 787 contains no factual allegations to which a response is required, except Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint that are realleged in Paragraph 787.

¶ 788: Paragraph 788 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 788 to the extent they purport to relate to him, except he admits that Plaintiffs purport to bring this Count pursuant to Section 20(a) of the Exchange Act.

¶ 789: Paragraph 789 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 790: Paragraph 790 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that

Paragraph.

¶ 791: Paragraph 791 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 792: Paragraph 792 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 793: Paragraph 793 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 794: Paragraph 794 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 795: Paragraph 795 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph insofar as they purport to relate to him (he was not a control person as to Refco Group), and he lacks sufficient information to form a belief as to the truth or falsity of those allegations insofar as they purport to relate to others.

¶ 796: Paragraph 796 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.



¶ 797: Paragraph 797 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 798: Paragraph 798 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 799: Paragraph 799 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 799 to the extent they purport to relate to him, and he lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in that Paragraph.

¶ 800: Paragraph 800 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 800 to the extent they purport to relate to him, and he lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in that Paragraph.

¶ 801: Paragraph 801 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 801 to the extent they purport to relate to him, and he lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in that Paragraph.

¶ 802: Paragraph 802 contains no factual allegations to which a response is required, except that Mr. Silverman repeats and realleges his responses above to the allegations referred to in that Paragraph.

¶ 803: Paragraph 803 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 803 to the extent they purport to relate to him, and he lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in that Paragraph.

#### **COUNT FOURTEEN**

**Control Person Liability Pursuant to Section 20(a) of the Exchange Act,  
On Behalf of Purchasers of Bonds and/or Refco Common Stock  
On and After the Date of the IPO, Against the  
THL Defendants and Defendants Bennett, RGHI, the  
Bennett Trust, Murphy, Sherer, Sexton, Silverman, Maggio, Klejna,  
O’Kelley, Gantcher, and Breitman  
(Based on Violations of Section 10(b) and Rule 10b-5 By Refco)**

¶ 804: Paragraph 804 contains no factual allegations to which a response is required, except that Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint realleged in Paragraph 804.

¶ 805: Paragraph 805 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 805 to the extent they purport to relate to him, except he admits that Plaintiffs purport to bring this Count pursuant to Section 20(a) of the Exchange Act.

¶ 806: Paragraph 806 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 806 to the extent they purport to relate to him, and he lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in that Paragraph.

¶ 807: Paragraph 807 contains legal and/or expert conclusions that do not require a

response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information as to the truth or falsity of the allegations contained in that Paragraph.

¶ 808: Paragraph 808 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 809: Paragraph 809 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 810: Paragraph 810 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 811: Paragraph 811 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that Paragraph insofar as they purport to relate to him (he was not a control person of Refco), and he lacks sufficient information to form a belief as to the truth or falsity of those allegations insofar as they purport to relate to others.

¶ 812: Paragraph 812 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 813: Paragraph 813 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in that

Paragraph to the extent they purport to relate to him, and he lacks sufficient information as to the truth or falsity of the remaining allegations contained in that Paragraph.

¶ 814: Paragraph 814 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 814 to the extent they purport to relate to him, and he lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in that Paragraph.

¶ 815: Paragraph 815 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 815 to the extent they purport to relate to him, and he lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in that Paragraph.

¶ 816: Paragraph 816 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman repeats and realleges his responses above to the allegations referred to in that Paragraph.

¶ 817: Paragraph 817 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman denies the allegations contained in Paragraph 817 to they extent they purport to relate to him, and he lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in that Paragraph.

## COUNT FIFTEEN

**Control Person Liability Pursuant to Section 20(a) of the  
Exchange Act Against Mayer Brown on Behalf of Plaintiffs and all Class Members  
(Based on Violations of Section 10(b) and Rule 10b-5 by Collins,  
Koury, Monk, and Other Mayer Brown Partners and Employees)**

¶ 818: Paragraph 818 contains no factual allegations to which a response is required, except Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint realleged in Paragraph 818, and states that he is not named as defendant in this Count.

¶ 819: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 819 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman admits that Plaintiffs purport to bring this Count pursuant to Section 20(a) of the Exchange Act.

¶ 820: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 820 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 821: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 821 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 822: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 822 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 823: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 823 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 824: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 824 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 825: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 825 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 826: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 826

contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 827: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 827 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

### **COUNT SIXTEEN**

**Pursuant to Section 20A of the Exchange Act,  
On Behalf of Purchasers of Refco Stock,  
Against Bennett, 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.,  
and Thomas H. Lee Investors Limited Partnership**

¶ 828: Paragraph 828 contains no factual allegations to which a response is required, except that Mr. Silverman repeats and realleges his responses above to the allegations of the Complaint that are realleged in Paragraph 828, and states that he is not named as a defendant in this Count.

¶ 829: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 829 contains legal conclusions and procedural descriptions to which no response is required; to the extent a response is deemed necessary, Mr. Silverman admits that Plaintiffs purport to bring this Count pursuant to Section 20A of the Exchange Act.

¶ 830: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 830 contains legal conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

¶ 831: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 831.

¶ 832: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 832.

¶ 833: The allegations of this Count are not directed against Mr. Silverman and therefore a response is not required by him. To the extent a response is deemed necessary, Paragraph 833 contains legal and/or expert conclusions that do not require a response; to the extent a response is deemed necessary, Mr. Silverman lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in that Paragraph.

### **DEFENSES**

Mr. Silverman alleges the following defenses with respect to the causes of action alleged in the Complaint, without assuming the burden of proof where the burden of proof rests on the



plaintiffs.

**First Defense**

The Complaint and each Count thereof fail to state a claim upon which relief may be granted against Mr. Silverman.

**Second Defense**

Lead Plaintiffs lack standing, in whole or in part, to assert the purported claims contained in the Complaint.

**Third Defense**

Lead Plaintiffs are not adequate or appropriate class representatives.

**Fourth Defense**

Some or all of the claims Lead Plaintiffs seek to assert are not properly prosecuted on behalf of the class or subclasses alleged.

**Fifth Defense**

Any allegedly untrue statement of material fact, omissions of material fact, misleading statements, or other actions allegedly made by Mr. Silverman (all of which Mr. Silverman denies) were not material to the investment decisions of a reasonable investor, were inadvertent and/or were made wholly without scienter.

**Sixth Defense**

Any damage, loss, or injury sustained by Plaintiffs was directly and proximately caused in whole or in part by the conduct or fault of persons and/or entities other than Mr. Silverman.

**Seventh Defense**

Any loss allegedly incurred by Lead Plaintiffs and/or any member of the alleged class in connection with any purchase or sale of Refco securities was not directly or proximately caused by any purported misstatement or omission by Mr. Silverman.

### **Eighth Defense**

The Complaint, and claims for relief stated therein fail because the conduct of persons and/or entities other than Mr. Silverman was a superseding or intervening cause of any damage, loss, or injury sustained by Lead Plaintiffs and/or any members of the class.

### **Ninth Defense**

Lead Plaintiffs' claims are barred in whole or part because the depreciation in the market price of Refco securities purchased by Lead Plaintiffs and members of the alleged plaintiff class resulted from, and was caused by, factors other than the alleged misstatements, omissions and other misconduct alleged in the Complaint.

### **Tenth Defense**

To the extent that Plaintiffs incurred any injury or damage as alleged in the Complaint (which Mr. Silverman denies), any such injury or damage was caused and brought about by individuals and/or entities other than Mr. Silverman and, as such, any recovery herein should be precluded or diminished in proportion to the amount of fault attributable to such other individuals and/or entities.

### **Eleventh Defense**

Plaintiffs' Section 11 claim against Mr. Silverman is barred because, as regards any part of the Bond Registration Statement not purporting to be made on the authority of any expert, and not purporting to be a copy of or extract from a report or valuation of an expert, Mr. Silverman had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and, as regards any part of the Bond Registration Statement purporting to be made on the authority of any expert, or purporting to be a copy of or

extract from a report or valuation of an expert, Mr. Silverman had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert.

#### **Twelfth Defense**

Plaintiffs' Section 11 claim against Mr. Silverman is barred because a signature pursuant to a power of attorney by a wrongdoer knowingly committing an illegal act is beyond the scope of the power granted, and is invalid ab initio.

#### **Thirteenth Defense**

Plaintiffs' Section 11 claim against Mr. Silverman is barred because a legally superfluous signature, not otherwise required under law, and obtained by a wrongdoer for knowingly unlawful purposes, does not give rise to liability.

#### **Fourteenth Defense**

Mr. Silverman is not liable for Lead Plaintiffs' claims because he relied in good faith upon the professional judgments of Refco's outside auditors and other professionals at the time of the alleged acts as to matters which he reasonably believed to be within such persons' professional or expert competence.

#### **Fifteenth Defense**

Lead Plaintiffs' claims are barred in whole or part because Lead Plaintiffs and members of the alleged class were expressly advised in public statements regarding the material facts and risks concerning their investments. Lead Plaintiffs and members of the alleged class therefore assumed the risk of any loss and are precluded from any recovery herein.

### **Sixteenth Defense**

Some of the alleged misrepresentations described in the Complaint are “forward-looking statements” that cannot be the basis for liability by virtue of Rule 175, 17 C.F.R. § 230.175 (promulgated pursuant to the Securities Act of 1933) and/or provisions of Section 27A of the Securities Act of 1933 and/or Section 21E of the Securities Exchange Act of 1934.

### **Seventeenth Defense**

To the extent the Complaint is based on any predictions, expressions of opinion or forward-looking statements, Lead Plaintiffs are barred from recovery in whole or in part by the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 or the bespeaks caution doctrine.

### **Eighteenth Defense**

Lead Plaintiffs and members of the alleged class failed to mitigate their alleged damages.

### **Nineteenth Defense**

Upon information and belief, Lead Plaintiffs and members of the alleged class failed to exercise due care in their purchases of Refco securities and were comparatively and contributorily negligent in said purchases.

### **Twentieth Defense**

To the extent any alleged statement or omission complained of in the Complaint could give rise to liability to Lead Plaintiffs or to any member of the class (which Mr. Silverman denies), such statement or omission cannot give rise to liability as against Mr. Silverman because the statement or omission was made by or derived from acts or omissions by others and/or because Mr. Silverman reasonably relied on the statements, acts, or omission of others in connection with any statement, act or omission by him.

### **Twenty-First Defense**

No alleged misstatement or omission complained of in the Complaint worked a fraud on the securities markets.

### **Twenty-Second Defense**

Mr. Silverman is entitled to receive contribution and/or indemnity from others for any liability he incurs.

### **Twenty-Third Defense**

Plaintiff is barred from recovering on any claims asserted against Mr. Silverman in the Complaint because Lead Plaintiffs did not rely to their detriment on any of the representations or actions of Mr. Silverman alleged in the Complaint.

### **Twenty-Fourth Defense**

Plaintiffs' claims against Mr. Silverman under Section 15 of the Securities Act and Section 20(a) of the Exchange Act are barred because Mr. Silverman lacked the power to direct or cause the direction of the management or policies of the alleged primary violator(s).

### **Twenty-Fifth Defense**

Mr. Silverman cannot be held liable as a control person under Section 20(a) of the Exchange Act because Mr. Silverman at all times acted in good faith and did not directly or indirectly induce any act or acts constituting a violation of the Exchange Act.

### **Twenty-Sixth Defense**

Plaintiffs' claims against Mr. Silverman under Section 15 and Section 20(a) are barred because Mr. Silverman lacked actual control over the transactions in question.

### **Twenty-Seventh Defense**

Lead Plaintiff's claims are barred under such other defense as the evidence demonstrates, including but not limited to the doctrines of estoppel, unclean hands, laches, and the applicable

statute of limitations.

**Twenty-Eighth Defense**

Lead Plaintiff's claims are barred to the extent such claims were dismissed pursuant to the Court's April 30, 2007 Opinion and Order.

**Twenty-Ninth Defense**

Mr. Silverman is entitled to offset damages, if any, by benefits received by plaintiffs through the Refco bankruptcy proceedings.

**Thirtieth Defense**

Mr. Silverman adopts by reference any applicable defense pled by any other defendant in this action as if set forth herein.

**Thirty-First Defense**

Mr. Silverman hereby gives notice that he intends to rely upon such other and further defenses as may become available or apparent during pretrial proceedings in this action and hereby reserves his right to amend this Answer and assert all such defenses.

WHEREFORE, having fully answered the Complaint, Mr. Silverman prays that judgment be entered:

- (a) Dismissing the Complaint and each Count thereof asserted against Mr. Silverman with prejudice or, alternatively, denying the relief requested therein;
- (b) Awarding Mr. Silverman his costs and disbursements in this action, including attorneys' fees and other disbursements;
- (c) Alternatively, denying class certification to Lead Plaintiffs; and
- (d) Awarding Mr. Silverman such other and further relief as this Court deems just and proper.

Dated: New York, New York  
March 3, 2008

HELLER EHRMAN LLP

By:           /s/ Richard Cashman            
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