

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re REFCO, INC. SECURITIES LITIGATION :  
 : 05 CV 8626 (GEL)  
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 :  
 : **ANSWER OF DEFENDANT**  
 : **REFCO GROUP HOLDINGS, INC.**  
 : **TO FIRST AMENDED**  
 : **CONSOLIDATED CLASS ACTION**  
 : **COMPLAINT**  
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Subject to, and without waiver of its motion to dismiss, Defendant Refco Group Holdings, Inc. (“RGHI”), by and through its attorneys, Golenbock Eiseman Assor Bell & Peskoe LLP, responds solely to those causes of action in the First Amended Consolidated Class Action Complaint as to which it has not moved to dismiss:

1. With respect to the allegations contained in Paragraphs 1-269 of the First Amended Complaint, RGHI states that (i) defendant Phillip R. Bennett is the only known individual representative of RGHI capable of responding on its behalf to the allegations of the Complaint; (ii) Mr. Bennett has asserted the privilege against self-incrimination accorded to him by the United States and New York State Constitutions and therefore is unavailable to answer those allegations; and (iii) there is no other known individual representative of RGHI who is capable of responding to those allegations on RGHI’s behalf.

2. With respect to the allegations contained in Paragraphs 270-283 of the First Amended Complaint (Count 1), RGHI states that (i) defendant Phillip R. Bennett is the only known individual representative of RGHI capable of responding on its behalf to the allegations of the Complaint; (ii) Mr. Bennett has asserted the privilege against self-incrimination accorded

to him by the United States and New York State Constitutions and therefore is unavailable to answer those allegations; and (iii) there is no other known individual representative of RGHI who is capable of responding to those allegations on RGHI's behalf.

3. With respect to the allegations contained in Paragraphs 284-298 of the First Amended Complaint, RGHI states that it has moved to dismiss Count 2, in which these paragraphs are included.

4. With respect to the allegations contained in Paragraphs 299-312 of the First Amended Complaint (Count 3), RGHI states that (i) defendant Phillip R. Bennett is the only known individual representative of RGHI capable of responding on its behalf to the allegations of the Complaint; (ii) Mr. Bennett has asserted the privilege against self-incrimination accorded to him by the United States and New York State Constitutions and therefore is unavailable to answer those allegations; and (iii) there is no other known individual representative of RGHI who is capable of responding to those allegations on RGHI's behalf.

5. With respect to the allegations contained in Paragraphs 313-328 of the First Amended Complaint, RGHI states that it has moved to dismiss Count 4, in which these paragraphs are included.

6. With respect to the allegations contained in Paragraphs 329-341 of the First Amended Complaint (Count 5), RGHI states that (i) defendant Phillip R. Bennett is the only known individual representative of RGHI capable of responding on its behalf to the allegations of the Complaint; (ii) Mr. Bennett has asserted the privilege against self-incrimination accorded to him by the United States and New York State Constitutions and therefore is unavailable to answer those allegations; and (iii) there is no other known individual representative of RGHI who is capable of responding to those allegations on RGHI's behalf.

7. With respect to the allegations contained in Paragraphs 342-360 of the First Amended Complaint, RGHI states that it has moved to dismiss Count 6, in which these paragraphs are included.

8. With respect to the allegations contained in Paragraphs 361-368 of the First Amended Complaint (Count 7), RGHI states that (i) defendant Phillip R. Bennett is the only known individual representative of RGHI capable of responding on its behalf to the allegations of the Complaint; (ii) Mr. Bennett has asserted the privilege against self-incrimination accorded to him by the United States and New York State Constitutions and therefore is unavailable to answer those allegations; and (iii) there is no other known individual representative of RGHI who is capable of responding to those allegations on RGHI's behalf.

9. With respect to the allegations contained in Paragraphs 369-379 of the First Amended Complaint, RGHI states that it has moved to dismiss Count 8, in which these paragraphs are included.

10. With respect to the allegations contained in Paragraphs 380-636 of the First Amended Complaint, RGHI states that (i) defendant Phillip R. Bennett is the only known individual representative of RGHI capable of responding on its behalf to the allegations of the Complaint; (ii) Mr. Bennett has asserted the privilege against self-incrimination accorded to him by the United States and New York State Constitutions and therefore is unavailable to answer those allegations; and (iii) there is no other known individual representative of RGHI who is capable of responding to those allegations on RGHI's behalf.

11. With respect to the allegations contained in Paragraphs 637-645 of the First Amended Complaint (Count 9), RGHI states that (i) defendant Phillip R. Bennett is the only known individual representative of RGHI capable of responding on its behalf to the allegations

of the Complaint; (ii) Mr. Bennett has asserted the privilege against self-incrimination accorded to him by the United States and New York State Constitutions and therefore is unavailable to answer those allegations; and (iii) there is no other known individual representative of RGHI who is capable of responding to those allegations on RGHI's behalf.

12. With respect to the allegations contained in Paragraphs 646-653 of the First Amended Complaint (Count 10), RGHI states that (i) defendant Phillip R. Bennett is the only known individual representative of RGHI capable of responding on its behalf to the allegations of the Complaint; (ii) Mr. Bennett has asserted the privilege against self-incrimination accorded to him by the United States and New York State Constitutions and therefore is unavailable to answer those allegations; and (iii) there is no other known individual representative of RGHI who is capable of responding to those allegations on RGHI's behalf.

13. With respect to the allegations contained in Paragraphs 654-669 of the First Amended Complaint, RGHI states that it has moved to dismiss Count 11, in which these paragraphs are included.

14. With respect to the allegations contained in Paragraphs 670-689 of the First Amended Complaint, RGHI states that it has moved to dismiss Count 12, in which these paragraphs are included.

15. With respect to the allegations contained in Paragraphs 690-706 of the First Amended Complaint, RGHI states that it has moved to dismiss Count 13, in which these paragraphs are included.

16. With respect to the allegations contained in Paragraphs 707-712 of the First Amended Complaint (Count 14), RGHI states that (i) defendant Phillip R. Bennett is the only known individual representative of RGHI capable of responding on its behalf to the

allegations of the Complaint; (ii) Mr. Bennett has asserted the privilege against self-incrimination accorded to him by the United States and New York State Constitutions and therefore is unavailable to answer those allegations; and (iii) there is no other known individual representative of RGHI who is capable of responding to those allegations on RGHI's behalf.

17. With respect to the allegations contained in Paragraphs 713-720 of the First Amended Complaint (Count 15), RGHI states that (i) defendant Phillip R. Bennett is the only known individual representative of RGHI capable of responding on its behalf to the allegations of the Complaint; (ii) Mr. Bennett has asserted the privilege against self-incrimination accorded to him by the United States and New York State Constitutions and therefore is unavailable to answer those allegations; and (iii) there is no other known individual representative of RGHI who is capable of responding to those allegations on RGHI's behalf.

#### **AFFIRMATIVE DEFENSES**

As separate and distinct affirmative defenses to the First Amended Complaint and each alleged causes of action, RGHI, without conceding that it bears the burden of proof as to any of the following issues, and while reserving the right to assert additional or different defenses based upon additional evidence developed in discovery or otherwise, alleges as follows:

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

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

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

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

**Third Affirmative Defense**

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

**Fourth Affirmative Defense**

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

WHEREFORE, defendant Refco Group Holdings, Inc. respectfully requests that judgment be entered:

- A. Dismissing the First Amended Complaint, and each cause of action therein, with prejudice, as to RGHI;
- B. Awarding RGHI its costs, including reasonable attorneys' fees, and disbursements in connection with this action; and
- C. Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
July 10, 2006

GOLENBOCK EISEMAN ASSOR BELL  
& PESKOE LLP

By:  /s/ Jeffrey T. Golenbock  
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*Attorneys for Defendant Refco Group Holdings, Inc.*