

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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: 05 Civ. 8626 (GEL)
In re REFCO, INC. SECURITIES LITIGATION :
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**ORDER PRELIMINARILY APPROVING
PROPOSED SETTLEMENT WITH DEFENDANT BAWAG**

WHEREAS, by Order dated February 8, 2006, Pacific Investment Management Company LLC and RH Capital Associates LLC were appointed by this Court to serve as Lead Plaintiffs on behalf of the Class in *In re Refco, Inc. Securities Litigation*, No. 05 Civ. 8626 (GEL) (S.D.N.Y.) (the "Action");

WHEREAS, the parties have made an application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order preliminarily approving the partial settlement ("Settlement") of the Action in accordance with the Stipulation and Agreement of Settlement dated February 13, 2007 between Lead Plaintiffs and defendant BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft ("BAWAG") (the "Stipulation"), which sets forth the terms and conditions for a proposed Settlement and for the release of certain claims and the dismissal of the Action against BAWAG with prejudice upon the terms and conditions set forth therein;

WHEREAS, the Court has not certified the Action as a class action, but is being asked to preliminarily certify a Settlement Class, for purposes of this Settlement only, consisting of all persons and entities that purchased or otherwise acquired Refco Group Ltd., LLC/ Refco Finance Inc. 9% Senior Subordinated Notes due 2012 (CUSIP Nos. 75866HAA5 and/or 75866HAC1)

and/or common stock of Refco (CUSIP No. 75866G109) during the period August 5, 2004 through and including October 17, 2005 (the "Class Period") and who were damaged thereby;

WHEREAS, Lead Plaintiffs' proposed definition of the Settlement Class excludes (i) Refco; (ii) the Defendants; (iii) any person or entity who was a partner, executive officer, director, controlling person, subsidiary, or affiliate of Refco or any Defendant during the Class Period; (iv) members of the Defendants' immediate families; (v) entities in which Refco or any Defendant has a controlling interest; and (vi) the legal representatives, heirs, predecessors, successors or assigns of any of the foregoing excluded persons or entities. Also excluded from the Class is any person or entity who or which properly excludes himself, herself or itself by filing a valid and timely request for exclusion in accordance with the requirements set forth in the Notice.

WHEREAS, the Court having (1) read and considered the First Amended Consolidated Class Action Complaint, filed in this Action on May 5, 2006; (2) read and considered Lead Plaintiffs' Notice of Motion for (I) Preliminary Approval of Partial Settlement With Defendant BAWAG, (II) Preliminary Certification of Class for Purposes of Settlement (III) Preliminary Approval of Form and Manner of Notice, and (IV) Scheduling of a Final Approval Hearing, together with the accompanying Memorandum of Law; (3) read and considered the Stipulation between counsel for BAWAG and counsel for Lead Plaintiffs; and (4) heard and considered arguments by counsel for Lead Plaintiffs and BAWAG in favor of preliminary approval of the Settlement and preliminary certification of the Settlement Class for purposes of the Settlement;

WHEREAS, the Court finds, upon a preliminary evaluation, that the proposed Settlement falls within the range of possible approval criteria, as it provides a beneficial result for the

Settlement Class and appears to be the product of good faith, informed and non-collusive negotiations between experienced and able counsel for the settling parties;

WHEREAS, the Court also finds, upon a preliminary evaluation, that the Settlement Class should be apprised of the Settlement, allowed to file objections thereto and to appear at the Settlement Hearing, or alternatively, be afforded a reasonable opportunity to opt out of the Action;

WHEREAS, the Court finds, upon a preliminary evaluation, that the Notice and the Publication Notice attached hereto as Exhibits 1 and 2, respectively, and the methodology described in Paragraph 6 of this Order for the publication and dissemination of such Notice and Publication Notice: (i) are the best practicable notice; (ii) are reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and of their right to object or exclude themselves from the proposed Settlement and to object to Co-Lead Counsel's application for attorneys' fees; (iii) are reasonable and constitute due, adequate and sufficient notice to all persons and entities entitled to receive notice; and (iv) meet all applicable requirements of the Federal Rules of Civil Procedures, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. 78u-4, *et seq.*), the Rules of the Court and any other applicable law; and

WHEREAS, unless otherwise stated herein, all defined terms contained herein shall have the same meanings set forth in the Stipulation.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. **Class Findings** – For purposes of the Settlement of this Action as against BAWAG (and only for such purposes, and without an adjudication of the merits), the Court preliminarily finds that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the

Court and any other applicable law have been met as to the Settlement Class described in the paragraphs above in that:

- a. The identities of the Settlement Class members are likely to be ascertainable from records kept by Refco and/or its agents, and from other objective criteria, and the Settlement Class members are so numerous that their joinder before the Court would be impracticable.
- b. Lead Plaintiffs have alleged numerous questions of fact and law common to the Settlement Class.
- c. Based on allegations in the Action that BAWAG engaged in misconduct uniformly affecting members of the proposed Settlement Class, the Court preliminarily finds that the claims of the Lead Plaintiffs in the Action are typical of the claims of the proposed Settlement Class.
- d. The Court finds that Lead Plaintiffs will fairly and adequately protect the interest of the proposed Class in that (i) the interests of Lead Plaintiffs and the nature of their alleged claims are consistent with those of the members of the Settlement Class, (ii) there appear to be no conflicts between or among the Lead Plaintiffs and the Settlement Class, (iii) Lead Plaintiffs have been and appear to be capable of continuing to be active participants in both the prosecution and the settlement of the Action, and (iv) Lead Plaintiffs and the Settlement Class members are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complex securities fraud class actions.
- e. The Court preliminarily finds that, for settlement purposes in the Action as against BAWAG, questions of law or fact common to members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class and that a class-action resolution in the manner proposed by the Stipulation would be superior to other available methods for a fair and efficient adjudication of the Action. In making these preliminary findings, the Court has considered, among other factors, (i) the interest of the Settlement Class members in individually controlling the prosecution or defense of separate actions, (ii) the impracticability or inefficiency of prosecuting or defending separate actions, (iii) the extent and nature of any litigation concerning these claims already commenced, and (iv) the desirability of concentrating the litigation of the claims in a particular forum.

2. **Preliminary Class Certification for Settlement Purposes With BAWAG** – Based on the findings set out in paragraph 1 above, the Court preliminarily certifies the following Settlement

Class for settlement purposes only under Fed. R. Civ. P. 23(a) and (b)(3) in the Action: all persons and entities that purchased or otherwise acquired Refco Group Ltd., LLC/ Refco Finance Inc. 9% Senior Subordinated Notes due 2012 (CUSIP Nos. 75866HAA5 and/or 75866HAC1) and/or common stock of Refco (CUSIP No. 75866G109) during the Class Period and were damaged thereby. The Settlement Class excludes (i) Refco; (ii) the Defendants; (iii) any person or entity who was a partner, executive officer, director, controlling person, subsidiary, or affiliate of Refco or any Defendant during the Class Period; (iv) members of the Defendants' immediate families; (v) entities in which Refco or any Defendant has a controlling interest; and (vi) the legal representatives, heirs, predecessors, successors or assigns of any of the foregoing excluded persons or entities. Also excluded from the Class is any person or entity who or which properly excludes himself, herself or itself by filing a valid and timely request for exclusion in accordance with the requirements set forth in the Notice.

3. **Preliminary Approval of Settlement** – The Court hereby preliminarily approves the Settlement, as embodied in the Stipulation, as being fair, reasonable and adequate as to the Settlement Class members, subject to further consideration at the Settlement Hearing described below.

4. **Settlement Hearing** – A hearing (the “Settlement Hearing”) shall be held on June 29, 2007 at 10:00 a.m. before the Honorable Gerard E. Lynch in the United States District Court for the Southern District of New York, United States Courthouse, 500 Pearl Street, New York, NY, 10007. The purpose of the Settlement Hearing will be to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate to the Class and should be approved by the Court; whether the Judgment as provided in the Stipulation should be entered herein; and whether Co-Lead Counsel’s application for attorneys’ fees should be granted.

5. **Approval of Form and Content of Notice** – The Court approves, as to form and content, the Notice and the Publication Notice, attached hereto as Exhibits 1 and 2, respectively, and finds that the mailing and distribution of the Notice and the publication of the Publication Notice in the manner and form set forth in Paragraph 6 of this Order meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Securities Exchange Act of 1934, as amended by Section 21D(a)(7) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons and entities entitled thereto.

6. **Retention of Claims Administrator and Manner of Notice** – Lead Counsel are hereby authorized to retain The Garden City Group, Inc. (“Claims Administrator”) to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

(a) Not later than March 26, 2007 (the “Notice Date”), Lead Counsel shall cause a copy of the Notice substantially in the form attached to the Stipulation as Exhibit 1 to be mailed by first-class mail to all Class Members who can be identified with reasonable effort;

(b) Not later than March 26, 2007, Lead Counsel shall cause the Publication Notice, substantially in form attached to the Stipulation as Exhibit 2, to be published on one occasion in the national edition of The Wall Street Journal; and

(c) Not later than April 5, 2007, Lead Counsel shall serve on BAWAG’s Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.

7. **Nominee Procedures** – Nominees who purchased or acquired Refco Group Ltd., LLC/Refco Finance Inc. 9% Senior Subordinated Notes Due 2012 or Refco, Inc. common stock for the benefit of another person or entity during the Class Period shall be requested to send the Notice to all such beneficial owners within ten (10) days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) days of receipt thereof in which event the Claims Administrator shall promptly mail the Notice to such beneficial owners.

8. **Exclusion From the Class** – All Settlement Class members who do not timely and validly request exclusion from the Settlement Class shall be bound by all proceedings, determinations, orders and judgments in the Action relating to the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable to the Settlement Class. Settlement Class members who wish to exclude themselves from the Settlement Class shall request exclusion within the time and in the manner set forth in the Notice, including mailing or delivering a written request for exclusion such that it is postmarked no later than May 30, 2007, to: *In re Refco, Inc. Securities Litigation*, c/o The Garden City Group, Inc., Claims Administrator, P.O. Box 9087, Merrick, NY 11566, as provided in the Notice.

9. **Appearance and Objections at Fairness Hearing** – Any Settlement Class member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice, in which case such counsel must file with the Clerk of Court and deliver to Co-Lead Counsel and BAWAG's Counsel a notice of appearance such that it is received by June 1, 2007, or as the Court may otherwise direct. Any Settlement Class member who does not enter an appearance will be represented by Co-Lead Counsel. Any Settlement Class member may appear and show cause, if he, she or it has any such cause, why

the proposed Settlement of the Action should or should not be approved as fair, reasonable and adequate, or why a Judgment should or should not be entered thereon; or why Co-Lead Counsel's application for attorneys' fees should not be granted; provided, however, that no Settlement Class member or any other person or entity shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Final Judgment to be entered thereon approving the same or the award of attorneys' fees to Co-Lead Counsel, unless that person or entity has filed written objections and copies of any such papers and briefs with the Clerk of the Court for the United States District Court for the Southern District of New York, on or before May 26, 2007, and unless copies of such written objection papers and briefs are received by each of the following:

Attorney for BAWAG:

Andrew Levander, Esquire
DECHERT LLP
30 Rockefeller Plaza
New York, NY 10112-2200

Co-Lead Counsel:

Megan D. McIntyre, Esquire
GRANT & EISENHOFER, P.A.
Chase Manhattan Centre
1201 N. Market Street, Suite 2100
Wilmington, DE 19801

John P. Coffey, Esquire
BERNSTEIN LITOWITZ BERGER & GROSSMANN, LLP
1285 Avenue of the Americas
New York, NY 10019

The Claims Administrator:

In re Refco Inc. Securities Litigation
c/o The Garden City Group, Inc.
Claims Administrator

P.O. Box 9087
Merrick, NY 11566

The objections and/or briefs filed by the objecting Settlement Class member must contain a statement of his, her or its objection, as well as the specific reasons, if any, for each objection, including the legal support the Settlement Class member wishes to bring to the Court's attention and any evidence the Settlement Class member wishes to introduce in support of his, her or its objection. Any Settlement Class member who does not make his, her or its objection in the manner provided herein shall be deemed to have waived such objection and shall be forever barred and foreclosed from making any objection to the fairness, reasonableness or adequacy of the proposed Settlement, or to the approval of Co-Lead Counsel's fee application.

10. **Fees and Expenses** – All reasonable costs incurred in identifying and notifying Settlement Class members, as well as in administering the Settlement, shall be paid as set forth in the Stipulation. At or after the Settlement Hearing, the Court shall determine whether any application for attorneys' fees shall be approved. Neither BAWAG nor BAWAG's Counsel shall have any responsibility for any application for attorneys' fees submitted by Co-Lead Counsel, and such matters will be considered separately from the fairness, reasonableness and adequacy of the Settlement.

11. **Continuance of Hearing** – The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to Settlement Class members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the parties to the Stipulation, if appropriate, without further notice to the Settlement Class.

12. **Termination of Settlement** – This Order shall become null and void, and be without prejudice to the rights of Lead Plaintiffs, the Settlement Class members, and BAWAG,

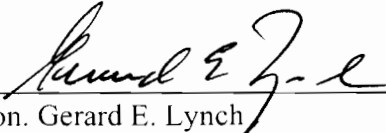
all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (i) the proposed Settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Stipulation; or (ii) the proposed Settlement is terminated or does not become effective for any other reason. In such events, the Stipulation shall become null and void and of no further force and effect.

13. **Use of Order** – This Order shall not be construed or used as an admission, concession or declaration by or against BAWAG of any fault, wrongdoing, breach, or liability. Nor shall the Order be construed or used as an admission, concession or declaration by or against Lead Plaintiffs, or the Settlement Class members, that their claims lack merit, that their damages are in any way limited, or that the relief requested in the Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have.

IT IS SO ORDERED.

Dated: March 5, 2007

BY THE COURT



Hon. Gerard E. Lynch

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK