

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re REFCO, INC. SECURITIES LITIGATION :
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05 Civ. 8626 (GEL)

JUDGMENT APPROVING CLASS ACTION SETTLEMENT WITH BAWAG

WHEREAS, Lead Plaintiffs and Defendant BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft (“BAWAG”) entered into a Stipulation and Agreement of Settlement dated February 13, 2007 (the “Stipulation”), which provides for a settlement of this action as against BAWAG only (the “Partial Settlement”); and

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms in this Judgment shall have the same meaning as they have in the Stipulation; and

WHEREAS, the Court entered an Order dated March 5, 2007 (the “Preliminary Approval Order”) preliminarily certifying, for settlement purposes only, an opt-out Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3); and

WHEREAS, the Preliminary Approval Order also (i) ordered that notice be provided to potential members of the Settlement Class; (ii) scheduled a Settlement Hearing; and (iii) provided those persons and entities identified as members of the putative Settlement Class with an opportunity either to exclude themselves from the proposed Partial Settlement or to object to the proposed Partial Settlement; and

WHEREAS, the Court held a Settlement Hearing on June 29, 2007 to determine, among other things, (i) whether the terms and conditions of the Partial Settlement are fair, reasonable and adequate and should therefore be approved; and (ii) whether judgment should be entered dismissing the Complaint on the merits and with prejudice as against BAWAG; and

and for the reasons stated on the record in open court on this date,

NOW, THEREFORE, based on the submissions of the parties, and on the arguments of counsel at the Settlement Hearing, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Incorporation of Settlement Documents.** This Judgment Approving Class Action Settlement With BAWAG incorporates and makes a part hereof:

- (a) the Stipulation filed with this Court; and
- (b) the Notice and the Publication Notice, both of which were filed with the Court on April 5, 2007.

2. **Jurisdiction.** The Court has personal jurisdiction over all Settlement Class members and has subject matter jurisdiction over the Action, including, without limitation, jurisdiction to approve the proposed Partial Settlement, grant final certification of the Settlement Class, and dismiss the Action as against BAWAG on the merits and with prejudice. The Court has personal jurisdiction over BAWAG for purposes of enforcing the Partial Settlement.

3. **Final Settlement Class Certification.** The Court finds that the Settlement Class preliminarily certified in the Preliminary Approval Order meets all of the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3) for the reasons set out in the Preliminary Approval Order. The Court therefore finally certifies the Settlement Class for settlement purposes 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, and who were damaged thereby. Excluded from the Settlement Class are: (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.

4. **Adequacy of Representation.** The Co-Lead Counsel and Lead Plaintiffs adequately represented the Settlement Class for purposes of entering into and implementing the Partial Settlement and have fully and adequately represented the Settlement Class for purposes of entering into and implementing the Partial Settlement and have satisfied the requirements of Federal Rule of Civil Procedure 23(a)(4).

5. **Notice.** The Court finds that the distribution of the Notice, the publication of the Publication Notice, and the notice methodology: (i) were all implemented in accordance with the Preliminary Approval Order; (ii) constituted the best practicable notice; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class members of the pendency of the Action, of the effect of the Partial Settlement including the releases, of their right to object to the proposed Partial Settlement, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Settlement Hearing; (iv) were reasonable and constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (v) met all applicable requirements of the Federal Rules of Civil Procedure, 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 "PSLRA"), the Rules of the Court, and any other applicable law.

6. **Binding Effect.** The terms of the Stipulation and of this Judgment shall be forever binding on Lead Plaintiffs and all members of the Settlement Class, as well as all of their heirs, executors and administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns.

7. **Final Settlement Approval.** The Partial Settlement is hereby fully and finally approved as fair, reasonable and adequate, and Lead Plaintiffs and BAWAG are directed to implement and consummate the Partial Settlement in accordance with the terms and provisions of the Stipulation. The Court approves the documents submitted to the Court in connection with the implementation of the Partial Settlement.

8. **Releases.** The releases as set forth in paragraphs 2 through 4 of the Stipulation (the "Release"), together with the definitions of Settled Claims, Settling Defendants' Claims, Settling Defendants, and Released Plaintiff Parties are expressly incorporated herein in all respects. The Release is effective as of the Effective Date and forever discharges, among other things, the Settling Defendants from any claims of liability arising from or related to the Settled Claims, and the Released Plaintiff Parties from any claims of liability arising from or related to the Settling Defendants' Claims. The Settled Claims are hereby compromised, settled, released, discharged and dismissed as against the Settling Defendants on the merits and with prejudice by virtue of the proceedings herein and this Judgment. The Settling Defendants' Claims are hereby compromised, settled, released, discharged and dismissed as against the Lead Plaintiffs and the members of the Settlement Class on the merits and with prejudice by virtue of the proceedings herein and this Judgment.

9. **No Other Releases.** Notwithstanding any release or other language that may be contained in the Stipulation and Order of Settlement that may be entered by the Bankruptcy

Court or in any other document (including, but not limited to, any order issued by the Bankruptcy Court for the Southern District of New York in connection with the separate settlement reached between BAWAG and the Creditors' Committee) which purports to release or otherwise extinguish or limit any claims that Lead Plaintiffs and/or members of the Settlement Class have asserted or could assert against BAWAG (collectively, the "Bankruptcy Releases"), the parties have agreed and this Court hereby orders that: (i) the Bankruptcy Releases shall be fully effective on their terms, provided however, the Bankruptcy Releases shall not release the claims of Lead Plaintiffs and/or members of the Class in this Action, which claims shall be released only through this Judgment, and (ii) nothing shall preclude members of the Settlement Class from receiving distributions from the Settlement or any future settlement in this Action and receiving distributions from settlements reached between BAWAG and others in the Bankruptcy Court, to the extent that those Settlement Class members have allowed claims as creditors or interest holders of Refco.

10. **Permanent Injunction.** The Court permanently bars and enjoins (i) all Settlement Class Members (and their heirs, executors and administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns) from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration or other proceeding or order in any jurisdiction that is based upon, arises out of or relates to any Settled Claims; and (ii) BAWAG and the Settling Defendants from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration or other proceeding or order in any jurisdiction that is based upon, arises out of or relates to any Settling Defendants' Claims.

11. **Contribution Bar Order.** The Court hereby bars all claims (a) by any person or entity against the Settling Defendants for contribution arising out of the Action, and (b) by the Settling Defendants against any person or entity for contribution arising out of the Action, other than a person whose liability has been extinguished by the Partial Settlement, each to the fullest extent permitted by 15 U.S.C. § 78u-4(f)(7) and any other applicable law or regulation. Nothing herein is intended to broaden the language of the Private Securities Litigation Reform Act of 1995.

11.5. **Complete Contribution Bar Order.** The Court hereby bars all claims (a) by any person or entity against the Settling Defendants for contribution or indemnity arising out of or related to the claims or allegations asserted by the Lead Plaintiffs in the Action (or any other claim against the Settling Defendants where the injury to the Non-Settling Defendant is the Non-Settling Defendant's actual or threatened liability to the Lead Plaintiffs and other Class Members), and (b) by the Settling Defendants against any person or entity for contribution or indemnity arising out of or related to the claims or allegations asserted by the Lead Plaintiffs in the Action, whether such claims, as to (a) and (b) above, arise under state, federal or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in the Action, in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency or other forum in the United States or elsewhere. In any lawsuit brought by a putative member of the Class in the Action who has properly opted out of the Settlement (an "Opt Out Action"), BAWAG will not contend that the bar orders provided in the Stipulation and Judgment shall bar a claim over in the Opt Out Action by a Non-Settling Defendant. The foregoing sentence pertains solely to the bar orders in the Stipulation and Judgment and has no

effect whatsoever on any release or bar order in any other proceeding or settlement agreement or on any other defense or claim of the Settling Defendants.

11.6 **Judgment Reduction.** Any final verdict or judgment that may be obtained by or on behalf of the Class or a Class Member against a Non-Settling Defendant or Non-Settling Defendants shall be reduced by the greater of: (i) an amount that corresponds to the percentage of responsibility of the Settling Defendants for common damages; or (ii) the amount paid by or on behalf of the Settling Defendants to the Class for common damages.

12. **No Admissions.** Neither this Judgment, the Stipulation, nor any of their terms and provisions, nor any of the negotiations or proceedings connected therewith, nor any of the documents or statement referred to therein shall be:

(a) admissible in any action or proceeding for any reason, other than an action to enforce the terms of the Settlement or this Judgment;

(b) described as, construed as, offered or received against the Settling Defendants as evidence of and/or deemed to be evidence of any presumption, concession, or admission by the Settling Defendants of: the truth of any fact alleged by Lead Plaintiffs; the validity of any claim that has been or could have been asserted in the Action or in any litigation; the deficiency of any defense that has been or could have been asserted in the Action or in any litigation; or any liability, negligence, fault, or wrongdoing of the Settling Defendants;

(c) described as, construed as, offered or received against Lead Plaintiffs or any Settlement Class members as evidence of any infirmity in the claims of said Lead Plaintiffs and the Settlement Class or that damages recoverable under the Amended Complaint would not have exceeded the Settlement Amount;

(d) described as, construed as, offered or received against any of the parties to this Stipulation, in any other civil, criminal or administrative action or proceeding, provided, however, that (i) if it is necessary to refer to this Stipulation to effectuate the provisions of this Stipulation, it may be referred to in such proceedings, and (ii) if this Stipulation is approved by the Court, the Settling Defendants may refer to it to effectuate the liability protection granted them hereunder; or

(e) described as or construed against the Settling Defendants or the Lead Plaintiffs or any Settlement Class members as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been awarded to said Lead Plaintiffs or Settlement Class members after trial.

13. **Enforcement of Settlement.** Nothing in this Judgment shall preclude any action to enforce the terms of the Stipulation.

14. **Claims Administrator's Fees and Expenses.** The Court retains jurisdiction to consider an application by or on behalf of the Claims Administrator for an award of fees and reimbursement of expenses relating to its implementation of the terms of the Stipulation and/or any orders of this Court.

15. **Rule 11 Findings.** The Court finds that all parties to the Stipulation and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

16. **Modification of Settlement Agreement.** Without further approval from the Court, Lead Plaintiffs and BAWAG are hereby authorized to agree to and adopt such amendments, modifications and expansions of the Stipulation or any exhibits attached to the

Stipulation as: (i) are not materially inconsistent with this Judgment; and (ii) do not materially limit the rights of Settlement Class members under the Stipulation.

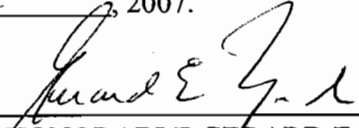
17. **Extensions of Time.** Without further order of the Court, Lead Plaintiffs and BAWAG may agree to reasonable extensions of time to carry out any provisions of the Stipulation.

18. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Judgment. Without in any way affecting the finality of this Judgment, the Court expressly retains continuing and exclusive jurisdiction over BAWAG and the Settlement Class members for purposes of the administration, interpretation, and enforcement of the Stipulation and of this Judgment. The Court further expressly retains continuing and exclusive jurisdiction over the Settlement Class members for all matters relating to the Action.

19. **Dismissal of Action.** The Action, which the Court finds was filed on a good faith basis against BAWAG in accordance with the PSLRA and Rule 11 of the Federal Rules of Civil Procedure based upon all publicly available information, is hereby dismissed as against BAWAG only, on the merits and with prejudice as of the Effective Date, without fees or costs except as otherwise provided in this Judgment.

20. **Entry of Final Judgment.** Because the Partial Settlement resolves all claims as to BAWAG in the Action, the Court finds that there is no just reason to delay the entry of this Judgment as a final judgment as against BAWAG. Accordingly, the Court expressly directs the immediate entry of final judgment by the Clerk of Court, as against BAWAG only, pursuant to Federal Rule of Civil Procedure 54(b).

SO ORDERED this 29th day of June, 2007.



THE HONORABLE GERARD E. LYNCH
United States District Judge

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

Date:

In Re:

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Case #: ()

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$450.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. **No personal checks are accepted.**

J. Michael McMahon, Clerk of Court

by: _____

, Deputy Clerk

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

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NOTICE OF APPEAL

civ. ()

Notice is hereby given that _____
(party)
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the _____ day of _____, _____ .
(day) (month) (year)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____ () _____ - _____
(Telephone Number)

Note: You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 1

APPEAL FORMS

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

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MOTION FOR EXTENSION OF TIME
TO FILE A NOTICE OF APPEAL

civ. ()

Pursuant to Fed. R. App. P. 4(a)(5), _____ respectfully
(party)
requests leave to file the within notice of appeal out of time. _____
(party)
desires to appeal the judgment in this action entered on _____ but failed to file a
(day)
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

(Signature)

(Address)

(City, State and Zip Code)

Date: _____ () _____ - _____
(Telephone Number)

Note: You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).

FORM 2

APPEAL FORMS

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

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NOTICE OF APPEAL
AND
MOTION FOR EXTENSION OF TIME

civ. ()

1. Notice is hereby given that _____ hereby appeals to
(party)
the United States Court of Appeals for the Second Circuit from the judgment entered on _____.
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time
_____ respectfully requests the court to grant an extension of time in
(party)
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, _____ states that
(party)
this Court's judgment was received on _____ and that this form was mailed to the
(date)
court on _____ .
(date)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____ () _____ - _____
(Telephone Number)

Note: You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 3

APPEAL FORMS

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

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AFFIRMATION OF SERVICE

civ. ()

I, _____, declare under penalty of perjury that I have
served a copy of the attached _____

_____ upon _____

_____ whose address is: _____

Date: _____
New York, New York

(Signature)

(Address)

(City, State and Zip Code)

FORM 4

APPEAL FORMS