

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE REFCO, INC.
SECURITIES LITIGATION

:
:
: MASTER FILE NO.
: 05 Civ. 8626 (GEL)

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: **LEAD PLAINTIFFS' REPLY**
: **TO THE UNDERWRITERS'**
: **RESPONSE TO PLAINTIFFS'**
: **STATEMENT MADE PURSUANT TO**
: **RULE 56.1**
:
:
:

Pursuant to Rule 56.1 of this Court's Local Civil Rules, Lead Plaintiffs RH Capital Associates LLC and Pacific Investment Management Company LLC ("Lead Plaintiffs") respectfully submit this Reply to the Underwriters'¹ Response to Plaintiffs' Statement Made Pursuant to Rule 56.1 ("Underwriters' Response") and, in particular, to the Underwriters' Additional Statements Of Undisputed Facts ("Underwriters' Additional Statement of Facts") set forth therein.

GENERAL OBJECTIONS AND DEFINITIONS

The following General Objections are incorporated into each specific response below as if fully repeated in each response:

1. Lead Plaintiffs object to the Underwriters' selective use of text quoted out of context and other alterations to the extent such alterations distort the plain meaning of quoted

¹ Lead Plaintiffs' motion for partial summary judgment is brought against Defendants William Blair & Company, LLC ("William Blair"), Harris Nesbitt Corp. (n/k/a BMO Capital Markets, Inc.) ("BMO"), Samuel A. Ramirez & Company, Inc. ("Ramirez"), CMG Institutional Trading LLC ("CMG"), Muriel Siebert & Co. Inc. ("Siebert"), The Williams Capital Group, L.P. ("Williams Capital") and Utendahl Capital Partners, L.P. ("Utendahl") (collectively, the "Junior Underwriters"). Defendants Credit Suisse Securities (USA) LLC ("Credit Suisse"), Banc of America Securities LLC ("Banc of America"), Goldman Sachs & Co. ("Goldman Sachs"), Deutsche Bank Securities Inc. (Deutsche Bank"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), J.P. Morgan Securities, Inc. ("J.P.

text.

2. The phrases “do not dispute” and “not disputed” shall not be construed as a concession by Lead Plaintiffs that a statement is (a) material, (b) complete, (c) supported by the documents or exhibits cited in the Underwriters’ Additional Statement of Facts, (d) admissible at trial, (e) relevant to this motion, or (f) otherwise relevant.

3. Where the Lead Plaintiffs do not dispute the facts in a particular paragraph, they do so for purposes of Lead Plaintiffs’ Motion for Partial Summary Judgment (the “Motion”) only, and Lead Plaintiffs reserve all other objections, including, but not limited to, the right to object to or contest each of the Underwriters’ assertions of fact at any time, including the right to dispute each assertion of fact in subsequent motion practice, and to challenge admissibility at trial.

4. Evidence cited by Lead Plaintiffs in support of a particular proposition should not be construed as the only evidence supporting the proposition in question, and Lead Plaintiffs expressly reserve the right to provide additional evidence as is necessary and appropriate.

5. Lead Plaintiffs object to the Underwriters’ submission of unsubstantiated facts that are not supported by a citation to admissible evidence, as required by Federal Rules of Civil Procedure 56(e) and Local Civil Rule 56.1(d).

6. Lead Plaintiffs object to the Underwriters’ submission of facts that contradict, disclaim, mischaracterize or otherwise alter, on a *post hoc* basis, the plain meaning of sworn testimony given by representatives of the Junior Underwriters in depositions held pursuant to F.R.C.P. 30(b)(6).

Morgan”) and HSBC Securities (USA) Inc. (“HSBC”) (collectively, with the Junior Underwriters, the “Underwriters”) joined in the papers submitted in opposition to Lead Plaintiffs’ motion.

LEAD PLAINTIFFS' RESPONSES TO UNDERWRITERS'
ADDITIONAL STATEMENTS OF UNDISPUTED FACTS

Underwriters' Paragraph 1: Refco engaged Credit Suisse First Boston LLC ("Credit Suisse") on June 26, 2003 "to act as its exclusive financial advisor with respect to the Sale . . . of the Company" and, in connection with the financial adviser engagement, Refco agreed to furnish Credit Suisse "with all information concerning the Company." See Wilson Decl., Exh. 17.

Responses: The statements in Underwriters' Paragraph 1 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by other underwriters in connection with the Refco IPO. Browne Decl.² Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs dispute Underwriters' statement that "Refco agreed to furnish Credit Suisse 'with all information concerning the Company'" because it is not supported by the full text of the cited exhibit, which places key limitations on the information to be provided by Refco to Credit Suisse. See Wilson Decl. Ex. 17 at 1. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 1, except to respectfully refer the Court to the engagement agreement dated June 26, 2003 for a true and complete statement of its contents. Wilson Decl. Ex. 17.

Further, Lead Plaintiffs note that the documents cited by the Underwriters state that Credit Suisse was not "assuming any responsibility for independent investigation or verification" of information supplied to Credit Suisse by Refco. Wilson Decl. Ex. 17 at 1.

² The Declaration of John C. Browne In Support Of Lead Plaintiffs' Motion For Partial Summary Judgment, dated April 1, 2009, is cited as "Browne Decl." The Declaration of John C. Browne In Further Support Of Lead Plaintiffs' Motion For Partial Summary Judgment, dated May 29, 2009, is cited as "Browne Reply Decl." The exhibits to the Browne Decl. support Lead Plaintiffs' Statement Pursuant to Local Rule 56.1, dated April 1, 2009, and Lead Plaintiffs respectfully refer the Court to paragraphs 45-71 of that document for an explication of the Junior Underwriters' failure to conduct a reasonable investigation in connection with the Refco IPO.

Underwriters' Paragraph 2: Credit Suisse conducted due diligence, prepared a confidential information memorandum, and assisted a number of potential institutional investors in conducting due diligence on Refco. See Wilson Decl., Exh. 101 at 8-9.

Responses: The statements in Underwriters' Paragraph 2 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by other underwriters in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that Credit Suisse prepared a confidential information memorandum and assisted a number of potential institutional investors in conducting some due diligence on Refco. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 2 suggests or implies that Credit Suisse's due diligence regarding Refco was adequate, Lead Plaintiffs dispute the adequacy of the due diligence conducted by Credit Suisse because, among other things, it is not supported by the cited exhibit and is otherwise unsupported by the record, including the demonstrated falsity of Refco's confidential information memorandum. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Browne Reply Decl. Ex. A (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 116-19, 128, 131, 136, 137, 140, 146 and 150.

Underwriters' Paragraph 3: In 2003, Credit Suisse was a global investment bank with (a) substantial financial advisory experience, including 67 transactions totaling more than \$31.6 billion during the first two quarters of 2003; (b) an excellent standing in the business of providing sell-side advisory services; (c) considerable expertise in sell-side advising in the financial services sector; (d) a reputation for integrity; (e) superior expertise in valuing financial institutions; and (g) high-quality, experienced, competent, and talented personnel with good judgment. See Wilson Decl., Exh. 21 at 8.

Responses: The statements in Underwriters' Paragraph 3 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by other underwriters in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs do not dispute that, in 2003, Credit Suisse was a global investment bank. Lead Plaintiffs otherwise dispute Underwriters' Paragraph 3 because, among other things, the statements therein are not supported by the text of the cited exhibit, which does not state that Credit Suisse had "substantial financial advisory experience," "an excellent standing in the business of providing sell-side advisory services," "considerable expertise in sell-side advising in the financial services sector," "a reputation for integrity," "superior expertise in valuing financial institutions," or "high-quality, experienced, competent, and talented personnel with good judgment." Further, the cited exhibit has not been authenticated, no foundation has been laid for its receipt into evidence, and the evidence would not be admissible at trial. Because the Underwriters have failed to support Underwriters' Paragraph 3 with a citation to admissible evidence, as required by Local Civil Rule 56.1(d), the statements in Paragraph 3 should be disregarded.

Underwriters' Paragraph 4: In June 2004, Refco entered into an equity purchase and merger agreement with Thomas H. Lee Partners, L.P. and affiliated entities ("THL"). See Wilson Decl., Exh. 43 at 8.

Responses: The statements in Underwriters' Paragraph 4 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by other

underwriters in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 4.

Underwriters' Paragraph 5: As part of the financing of that transaction, Refco issued \$600 million of privately negotiated, unregistered notes in a Rule 144A private placement. See Wilson Decl., Exh. 43 at 8.

Responses: The statements in Underwriters' Paragraph 5 are immaterial to the resolution of the Motion because the Motion concerns the Refco IPO and the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by other underwriters in connection with the Refco IPO. Browne Decl. Exs. H, I, J, K, L, M, N, O, P, Q, R, S, T & U.

Lead Plaintiffs dispute that the notes referred to in Underwriters' Paragraph 5 were "privately negotiated" or were issued in a "private placement" because, among other things, the cited exhibit does not support those statements and instead states: "The Purchase Agreement and related documents contemplate the occurrence of the following transactions [...] the issuance of \$600 million in aggregate principal amount of senior subordinated notes, which are being offered hereby." For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 5.

Underwriters' Paragraph 6: In 2004, Credit Suisse was a global investment bank with (a) substantial underwriting experience, including more than 800 global debt, equity and equity-related transactions during the first two quarters of 2004; (b) an excellent standing in the business of underwriting securities; (c) considerable expertise in underwriting LBOs in the financial services sector; (d) a reputation for bringing quality issuers to market; (d) a reputation for integrity; (e) superior expertise in valuing and pricing public offerings; and (g) high-quality, experienced, competent, and talented personnel with good judgment. See Wilson Decl., Exh. 20 at 6-7.

Responses: The statements in Underwriters' Paragraph 6 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by other underwriters in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs do not dispute that, in 2004, Credit Suisse was a global investment bank. Lead Plaintiffs otherwise dispute Underwriters' Paragraph 6 because, among other thing, the statements therein are not supported by the text of the cited exhibit, which does not state that Credit Suisse had "substantial underwriting experience," "an excellent standing in the business of underwriting securities," "considerable expertise in underwriting LBOs in the financial services sector," "a reputation for bringing quality issuers to market," "a reputation for integrity," "superior expertise in valuing and pricing public offerings," or "high-quality, experienced, competent, and talented personnel with good judgment." Further, the cited exhibit has not been authenticated, no foundation has been laid for its receipt into evidence, and the evidence would not be admissible at trial. Because the Underwriters have failed to support Underwriters' Paragraph 6 with a citation to admissible evidence, as required by Local Civil Rule 56.1(d), the statements in Paragraph 6 should be disregarded.

Underwriters' Paragraph 7: In 2004, Banc of America was a global investment bank with (a) substantial underwriting experience, including more than 425 global debt, equity and equity-related transactions during the first two quarters of 2004; (b) an excellent standing in the business of underwriting securities; (c) considerable expertise in underwriting LBOs in the financial services sector; (d) a reputation for bringing quality issuers to market; (e) a reputation for integrity; (f) superior expertise in valuing and pricing public offerings; and (g) high-quality, experienced, competent, and talented personnel with good judgment. See Wilson Decl., Exh. 20 at 4.

Responses: The statements in Underwriters' Paragraph 7 are immaterial to the resolution of the

Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by other underwriters in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs do not dispute that, in 2004, Banc of America was a global investment bank. Lead Plaintiffs otherwise dispute Underwriters' Paragraph 7 because, among other things, the statements therein are not supported by the text of the cited exhibit, which does not state that Banc of America had "substantial underwriting experience," "an excellent standing in the business of underwriting securities," "considerable expertise in underwriting LBOs in the financial services sector," "a reputation for bringing quality issuers to market," "a reputation for integrity," "superior expertise in valuing and pricing public offerings," or "high-quality, experienced, competent, and talented personnel with good judgment." Further, the cited exhibit has not been authenticated, no foundation has been laid for its receipt into evidence, and the evidence would not be admissible at trial. Because the Underwriters have failed to support Underwriters' Paragraph 7 with a citation to admissible evidence, as required by Local Civil Rule 56.1(d), the statements in Paragraph 7 should be disregarded.

Underwriters' Paragraph 8: In 2004, Deutsche Bank was a global investment bank with (a) substantial underwriting experience, including more than 725 global debt, equity and equity-related transactions during the first two quarters of 2004; (b) an excellent standing in the business of underwriting securities; (c) considerable expertise in underwriting LBOs in the financial services sector; (d) a reputation for bringing quality issuers to market; (e) a reputation for integrity; (f) superior expertise in valuing and pricing public offerings; and (g) high-quality, experienced, competent, and talented personnel with good judgment. See Wilson Decl., Exh. 20 at 6-7.

Responses: The statements in Underwriters' Paragraph 8 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they

themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by other underwriters in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs do not dispute that, in 2004, Deutsche Bank was a global investment bank. Lead Plaintiffs otherwise dispute Underwriters' Paragraph 8 because, among other things, the statements therein are not supported by the text of the cited exhibit, which does not state that Deutsche Bank had "substantial underwriting experience," "more than 725 global debt, equity and equity-related transactions during the first two quarters of 2004," "an excellent standing in the business of underwriting securities," "considerable expertise in underwriting LBOs in the financial services sector," "a reputation for bringing quality issuers to market," "a reputation for integrity," "superior expertise in valuing and pricing public offerings," or "high-quality, experienced, competent, and talented personnel with good judgment." Further, the cited exhibit has not been authenticated, no foundation has been laid for its receipt into evidence, and the evidence would not be admissible at trial. Because the Underwriters have failed to support Underwriters' Paragraph 8 with a citation to admissible evidence, as required by Local Civil Rule 56.1(d), the statements in Paragraph 8 should be disregarded.

Underwriters' Paragraph 9: Banc of America, Credit Suisse, and Deutsche Bank ("Initial Purchasers") agreed to act as lead initial purchasers, placement agents, and joint book-running managers of the Rule 144A private placement of \$600 million of privately negotiated unregistered notes (the "144A Notes"), an \$800 million term loan, and a \$75 million credit facility ("Refco LBO"). See Wilson Decl., Exhs. 43 at 95, 166; 47.

Responses: The statements in Underwriters' Paragraph 9 are immaterial to the resolution of the Motion because the Motion concerns the Refco IPO and the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by

other underwriters in connection with the Refco IPO. Browne Decl. Exs. H, N, O, P, Q, R, S, T & U.

Lead Plaintiffs dispute that the notes referred to in Underwriters' Paragraph 9 were "privately negotiated," as that statement is not supported by the exhibits cited. For purposes of the Motion only, Lead Plaintiffs otherwise do not dispute Underwriters' Paragraph 9.

Underwriters' Paragraph 10: In connection with the Refco LBO, the law firm of Cravath, Swaine & Moore, LLP ("Cravath") represented the Initial Purchasers and, among other things, documented the Initial Purchasers investigation of Refco's business, financial and legal affairs, and participated in the drafting and verification of the Confidential Offering Circular. See Declaration of George Stephanakis, Cravath, Swaine & Moore, LLP (May 4, 2009) ("Stephanakis Decl.") at ¶ 5-6; Wilson Decl., Exh. 43 at 172.

Responses: The statements in Underwriters' Paragraph 10 are immaterial to the resolution of the Motion because the Motion concerns the Refco IPO and the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by other underwriters in connection with the Refco IPO. Browne Decl. Exs. H, N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that Cravath, Swaine & Moore, LLP ("Cravath") represented the Initial Purchasers, documented those steps the Initial Purchasers took to investigate Refco's business, financial and legal affairs, and participated in the drafting of and took some steps to verify the Confidential Offering Circular. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 10 suggests or implies that the due diligence regarding Refco was adequate, Lead Plaintiffs dispute the adequacy of the due diligence conducted by Cravath and/or the Initial Purchasers because, among other things, it is not supported by the cited exhibit or otherwise in the record, including the demonstrated falsity

of Refco's confidential information memorandum. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Browne Reply Decl., Ex. A (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 116-19, 128, 131, 136, 137, 140, 146 and 150.

Underwriters Paragraph 11: At the time that Cravath was selected to serve as counsel for the Initial Purchasers, Cravath was one of the nation's premier law firms with (a) substantial underwriting experience, ranking among the top five legal advisers to underwriters in a variety of categories, including global equity, global initial public offering, equity and equity-related, and high-yield corporate debt issuance; (b) an excellent standing in the business of representing underwriting syndicates; (c) a reputation for integrity; and (e) high quality, experienced, competent, and talented personnel with good judgment. See Wilson Decl., Exh. 153; Daines Decl. at ¶¶ 80, 83; Erb Decl. at ¶ 53, 56; Rudley Decl. at ¶¶ 47, 50.

Responses: The statements in Underwriters' Paragraph 11 are immaterial to the resolution of the Motion because the Motion concerns the Refco IPO and the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. H, N, O, P, Q, R, S, T & U. Lead Plaintiffs also note that the phrases "substantial underwriting experience," "excellent standing in the business of representing underwriting syndicates," "reputation for integrity," and "high quality, experienced, competent and talented personnel with good judgment" are vague, ambiguous, open to various interpretations, conclusory and inappropriate for a Rule 56.1 Statement. Further, the documents cited by the Underwriters state that "Simpson, Thacher & Bartlett" was "the top...legal advisor to US issuers of initial public offerings," and Vinson & Elkins was "second place," with Skadden, Arps, Slate, Meagher & Flom in third. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 11.

Underwriters' Paragraph 12: Credit Suisse's IBC Financing Committee authorized Credit Suisse to provide financing for the Refco LBO. See Wilson Decl., Exhs. 33; 171 (Excerpt from the Transcript of the Rule 30(b)(6) Deposition of Credit Suisse, by its designee Joseph Molluso, dated March 26, and 27, 2009 ("Molluso Tr.)) at 214:17-215:24.

Responses: The statements in Underwriters' Paragraph 12 are immaterial to the resolution of the Motion because the Motion concerns the Refco IPO and the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. H, N, O, P, Q, R, S, T & U. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 12.

Underwriters' Paragraph 13: Banc of America's Leveraged Finance Committee authorized Banc of America to provide financing for the Refco LBO. See Wilson Decl., Exhs. 4; 42; 161 (Excerpt from the Transcript of the Rule 30(b)(6) Deposition of Banc of America Securities LLC, by its designee Bradford Jones, dated July 17, 2008 ("Jones Tr.)) at 242:10-12.

Responses: The statements in Underwriters' Paragraph 13 are immaterial to the resolution of the Motion because the Motion concerns the Refco IPO and the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. H, N, O, P, Q, R, S, T & U. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 13.

Underwriters' Paragraph 14: Deutsche Bank's Credit Committee authorized Deutsche Bank to provide financing for the Refco LBO. See Wilson Decl., Exhs. 162 (Excerpt from the Transcript of the Rule 30(b)(6) Deposition of Deutsche Bank Securities Inc., by its designee William D. Addas, dated August 20, 2008 ("Addas Tr.)) at 243:23 - 245:12.

Responses: The statements in Underwriters' Paragraph 14 are immaterial to the resolution of the Motion because the Motion concerns the Refco IPO and the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. H, N, O, P, Q, R, S, T & U. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 14.

Underwriters' Paragraph 15: Cravath documented the Initial Purchasers' review of the factual statements in the Offering Circular, and with the assistance of Cravath, the Initial Purchasers formed a reasonable belief that the statements in the Offering Circular were true and that there was no omission to state a material fact required to be stated or necessary to make the statements not misleading. See Wilson Decl. Exs. 14; 18; 43 at 172; 46; Stephanakis Decl. at ¶ 6.

Responses: The statements in Underwriters' Paragraph 15 are immaterial to the resolution of the Motion because the Motion concerns the Refco IPO and the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. H, N, O, P, Q, R, S, T & U.

Lead Plaintiffs dispute the statement in Underwriters' Paragraph 15 that "with the assistance of Cravath, the Initial Purchasers formed a reasonable belief that the statements in the Offering Circular were true and that there was no omission to state a material fact required to be stated or necessary to make the statements not misleading" because this statement is conclusory and inappropriate for a Rule 56.1 statement. Underwriters do not cite evidence that the Initial Purchasers believed "that the statements in the Offering Circular were true and that there was no omission to state a material fact required to be stated or necessary to make the

statements not misleading” and do not cite evidence that any such belief, if held by the Initial Purchasers, was reasonable. The text of the cited exhibits does not support the statements in Underwriters’ Paragraph 15.

Underwriters’ Paragraph 16: On August 5, 2004, Refco issued \$600 million in 144A Notes and entered into a credit agreement with Banc of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer, Banc of America, Credit Suisse, acting through its Cayman Islands Branch, and Deutsche Bank, as Co-Lead Arrangers and Joint Book Running Managers, Credit Suisse, as Syndication Agent, and Deutsche Bank as Documentation Agent. See Wilson Decl. Exs. 43; 47.

Responses: The statements in Underwriters’ Paragraph 16 are immaterial to the resolution of the Motion because the Motion concerns the Refco IPO and the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. H, N, O, P, Q, R, S, T & U. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters’ Paragraph 16.

Underwriters’ Paragraph 17: On August 5, 2004, THL acquired a majority interest in Refco. See Wilson Decl. Ex. 47.

Responses: Lead Plaintiffs do not dispute Underwriters’ Paragraph 17.

Underwriters’ Paragraph 18: Refco selected Credit Suisse, Goldman Sachs, and Banc of America ("Lead Managers") to be the lead underwriters of the Refco IPO Underwriting Syndicate in or around October 2004. See Wilson Decl. Ex. 57.

Responses: The statements in Underwriters’ Paragraph 18 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO

Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs do not dispute that Credit Suisse, Goldman Sachs, and Banc of America were selected as joint-bookrunners for the Refco IPO. Although immaterial to the Motion, Lead Plaintiffs dispute that Credit Suisse, Goldman Sachs, and Banc of America were selected as lead underwriters of the “Refco IPO Underwriting Syndicate,” which is not supported by the text of the cited exhibit. Indeed, the record suggests that there was significant jockeying for position among numerous underwriters regarding who would be “leads” on the IPO, and this jockeying for position continued beyond October 2004.

Underwriters’ Paragraph 19: In 2005, the Credit Suisse [sic] was a global investment bank with (a) substantial underwriting experience, including 8 initial public offerings in the first two quarters of 2005; (b) an excellent standing in the business of underwriting securities; (c) considerable expertise in underwriting IPOs in the financial services sector; (d) a reputation for bringing quality issuers to market; (e) a reputation for integrity; (f) superior expertise in valuing and pricing public offerings; and (g) employees who were high-quality, experienced, competent, and talented personnel with good judgment. See Wilson Decl. Ex. 89.

Responses: The statements in Underwriters’ Paragraph 19 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs do not dispute that, in 2005, Credit Suisse was a global investment bank. Lead Plaintiffs otherwise dispute Underwriters’ Paragraph 19 because, among other things, the statements therein are not supported by the text of the cited exhibit, which does not state that Credit Suisse had “substantial underwriting experience,” “an excellent standing in the business of underwriting securities,” “considerable expertise in underwriting LBOs in the financial

services sector,” “a reputation for bringing quality issuers to market,” “a reputation for integrity,” “superior expertise in valuing and pricing public offerings,” or “high-quality, experienced, competent, and talented personnel with good judgment.” Further, the cited exhibit has not been authenticated, no foundation has been laid for its receipt into evidence, and the evidence would not be admissible at trial. Because the Underwriters have failed to support Underwriters’ Paragraph 19 with a citation to admissible evidence, as required by Local Civil Rule 56.1(d), the statements in Paragraph 19 should be disregarded.

Underwriters’ Paragraph 20: In 2005, the Goldman Sachs [sic] was a global investment bank with (a) substantial underwriting experience, including 27 initial public offerings in the first two quarters of 2005; (b) an excellent standing in the business of underwriting securities; (c) considerable expertise in underwriting IPOs in the financial services sector; (d) a reputation for bringing quality issuers to market; (e) a reputation for integrity; (f) superior expertise in valuing and pricing public offerings; and (g) employees who were high-quality, experienced, competent, and talented personnel with good judgment. See Wilson Decl. Ex. 89.

Responses: The statements in Underwriters’ Paragraph 20 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs do not dispute that, in 2005, Goldman Sachs was a global investment bank. Lead Plaintiffs otherwise dispute Underwriters’ Paragraph 20 because, among other things, the statements therein are not supported by the text of the cited exhibit, which does not state that Goldman Sachs had “substantial underwriting experience,” “an excellent standing in the business of underwriting securities,” “considerable expertise in underwriting LBOs in the financial services sector,” “a reputation for bringing quality issuers to market,” “a reputation for integrity,” “superior expertise in valuing and pricing public offerings,” or “high-quality,

experienced, competent, and talented personnel with good judgment.” Further, the cited exhibit has not been authenticated, no foundation has been laid for its receipt into evidence, and the evidence would not be admissible at trial. Because the Underwriters have failed to support Underwriters’ Paragraph 20 with a citation to admissible evidence, as required by Local Civil Rule 56.1(d), the statements in Paragraph 20 should be disregarded.

Finally, Lead Plaintiffs note that exhibits submitted by the Underwriters state that Goldman Sachs had a “symbiotic relationship” with Refco. Wilson Decl. Ex. 58.

Underwriters’ Paragraph 21: In 2005, Banc of America was a global investment bank with (a) substantial underwriting experience, including 21 equity and equity-related transactions in the first two quarters of 2005; (b) an excellent standing in the business of underwriting securities; (c) considerable expertise in underwriting IPOs in the financial services sector; (d) a reputation for bringing quality issuers to market; (e) a reputation for integrity; (f) superior expertise in valuing and pricing public offerings; and (g) employees who were high-quality, experienced, competent, and talented personnel with good judgment. See Wilson Decl. Ex. 89.

Responses: The statements in Underwriters’ Paragraph 21 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs do not dispute that, in 2005, Banc of America was a global investment bank. Lead Plaintiffs otherwise dispute Underwriters’ Paragraph 21 because, among other things, the statements therein are not supported by the text of the cited exhibit, which does not state that Credit Suisse had “substantial underwriting experience,” “an excellent standing in the business of underwriting securities,” “considerable expertise in underwriting LBOs in the financial services sector,” “a reputation for bringing quality issuers to market,” “a reputation for integrity,” “superior expertise in valuing and pricing public offerings,” or “high-quality,

experienced, competent, and talented personnel with good judgment.” Further, the cited exhibit has not been authenticated, no foundation has been laid for its receipt into evidence, and the evidence would not be admissible at trial. Because the Underwriters have failed to support Underwriters’ Paragraph 21 with a citation to admissible evidence, as required by Local Civil Rule 56.1(d), the statements in Paragraph 21 should be disregarded.

Underwriters’ Paragraph 22: In January 2003, Credit Suisse executed the Credit Suisse Master Agreement Among Underwriters (“AAU”). See Wilson Decl. Ex. 1.

Responses: The statements in Underwriters’ Paragraph 22 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters’ Paragraph 22.

Underwriters’ Paragraph 23: The AAU authorized Credit Suisse to act as "Manager" and "to exercise, in the Manager's discretion, all of the authority vested in the Manager in the Underwriting Agreement," including to allocate responsibilities among and between underwriters at its discretion and to take whatever action it deemed advisable in connection with the offering of securities, and to "charge your account as compensation for the Manager's and Co-Managers' services in connection with the Offering." See Wilson Decl. Ex. 1 at 4, 10.

Responses: The statements in Underwriters’ Paragraph 23 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs dispute the statement in Underwriters' Paragraph 23 that the AAU authorizes Credit Suisse to "allocate responsibilities among and between underwriters at its discretion" because this statement is not supported by the text of the cited exhibit, which does not state that Credit Suisse had the authority to "allocate responsibilities among and between underwriters at its discretion." See Wilson Decl., Ex. 1 at 4-5. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 23, except to respectfully refer the Court to the AAU for a true and complete statement of its contents. See Wilson Decl. Ex. 1.

Underwriters' Paragraph 24: The AAU authorized Credit Suisse to execute the underwriting agreement to be entered into between Refco and the Refco IPO Underwriting Syndicate on the Syndicate's behalf. See Wilson Decl. Ex. 1 at 4.

Responses: The statements in Underwriters' Paragraph 24 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 24, except to respectfully refer the Court to the AAU for a true and complete statement of its contents. See Wilson Decl. Ex. 1. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 23, except to respectfully refer the Court to the AAU for a true and complete statement of its contents. See Wilson Decl. Ex. 1.

Underwriters' Paragraph 25: The Lead Managers retained Cravath to serve as counsel for the Refco IPO Underwriting Syndicate. See Wilson Decl. Ex. 171 (Molluso Tr.) at 452:24-457:8, 580:7-15; Stephanakis Decl. at ¶¶ 8-12; Browne Decl. Ex. H (IPO Prospectus) at 141.

Responses: The statements in Underwriters' Paragraph 25 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs dispute the statement in Underwriters' Paragraph 25 that Cravath was retained "to serve as counsel for the Refco IPO Underwriting Syndicate" because, among other things, Cravath was retained to work on the Refco IPO long before the Junior Underwriters were involved in the Refco IPO. The Underwriters' own documents reflect that Cravath was retained to work on the Refco IPO as early as October 19, 2004 whereas the Junior Underwriters were not invited to become involved in the Refco IPO until July 29, 2005. Wilson Decl. Exs. 57 at 25; 119-25.

Further, the statement that Cravath was retained "to serve as counsel for the Refco IPO Underwriting Syndicate" is contradicted by testimony from the Junior Underwriters in depositions conducted pursuant to Rule 30(b)(6) in which representatives of the Junior Underwriters testified that they (i) did not themselves retain legal counsel in respect of the Refco IPO; (ii) did not know who provided legal representation to the underwriters in the Refco IPO; (iii) were not familiar with Cravath; (iv) did not know of Cravath's involvement in the Refco IPO; and/or (v) had no communications with lawyers for the underwriters concerning the Refco IPO. Browne Decl. Exs. H, N, O, P, Q, R, S, T & U.

In particular, William Blair's corporate representative testified as follows:

Q: Did William Blair know whether the other underwriters retained counsel to assist in performing due diligence?

A: I don't know.

Q: Did William Blair retain counsel to assist in performing due diligence?

A: No.

Browne Decl. Ex. N (William Blair Tr.) at 63. Siebert's corporate representative testified as follows:

Q: Who were the lawyers for the underwriting syndicate in the Refco IPO?

A: I don't recall.

Q: Do -- are you familiar with the law firm Cravath, Swaine & Moore?

A: No, I'm not.

Q: Who did Siebert regard as providing legal counsel to it in connection with the Refco IPO in 2005?

A: I don't know.

Q: Did Siebert ever communicate with any attorneys in connection with the Refco IPO?

A: It did not.

Browne Decl. Ex. Q (Siebert Tr.) at 119-120. Williams Capital's corporate representative testified as follows:

Q: Who were underwriters' counsel for the Refco IPO?

A: That I don't remember.

Q: [D]id Williams Capital have any communication with the underwriters' counsel in connection with the Refco IPO?

A: We did not.

Browne Decl. Ex. R (Williams Capital Tr.) at 83. Utendahl's corporate representative testified as follows:

Q: Do you have any reason to believe that Utendahl communicated in any way with underwriters' counsel in connection with the Refco IPO?

A: No.

Browne Decl. Ex. O (Utendahl Tr.) at 214.

Finally, there is no evidence in the record that any Junior Underwriter signed an engagement or retainer letter with Cravath.

Underwriters' Paragraph 26: At the time that Cravath was selected to serve as counsel for the Refco IPO Underwriting Syndicate, Cravath was one of the nation's premier law firms with (a) substantial underwriting experience, ranking among the top five legal advisers to underwriters in a variety of categories, including global equity, global initial public offering, equity and equity-related, and high-yield corporate debt issuance; (b) an excellent standing in the business of representing underwriting syndicates; (c) a reputation for integrity; and (d) high quality, experienced, competent, and talented personnel with good judgment. See Wilson Decl. Ex. 153; Daines Decl. at ¶¶ 80, 83; Erb Decl. at ¶¶ 53, 56; Rudley Decl. at ¶¶ 47, 50.

Responses: The statements in Underwriters' Paragraph 26 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs dispute the statement in Underwriters' Paragraph 26 that Cravath was "selected to serve as counsel for the Refco IPO Underwriting Syndicate" and expressly incorporate their response to Underwriters' Paragraph 25. For purposes of the Motion, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 26.

Underwriters' Paragraph 27: The due diligence for the Refco IPO augmented and expanded the due diligence conducted for the Refco LBO. See Wilson Decl. Exs. 101; 150; 157 (Excerpts from the Transcript of the Deposition of David Schwimmer, Goldman, Sachs & Co. (March 19, 2008) ("Schwimmer Tr.") 432:3-433:19.

Responses: The statements in Underwriters' Paragraph 27 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that certain investment banks (but not including any of the Junior Underwriters) conducted some due diligence for the Refco LBO and then augmented that due diligence in connection with the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 27 suggests or implies that the due diligence conducted by those investment banks was adequate, Lead Plaintiffs dispute the adequacy of the due diligence conducted regarding the Refco LBO and IPO because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the demonstrated falsity of Refco's confidential information memorandum and IPO Registration Statement. Browne Reply Decl. Ex. A (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 116-19, 128, 131, 136, 137, 140, 146 and 150; Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 28: During the 13 months that Cravath was retained for the Refco LBO and IPO, Cravath rendered more than 4000 hours in professional services (including over 2000 hours working on the Refco IPO), performed by approximately eleven attorneys, including four partners, and seven associates, across at least three departments, including, Corporate, Litigation, and Tax. See Wilson Decl., Ex. 151; Stephanakis Decl. at ¶ 20.

Responses: The statements in Underwriters' Paragraph 28 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that Cravath performed work in connection with the Refco LBO and the Refco IPO, or that Cravath's billing statement indicates that it rendered more than 2000 hours of professional time working on the Refco IPO. Lead Plaintiffs dispute that Cravath rendered more than 4000 hours in professional services on the Refco LBO and IPO because that statement is not supported by the exhibits cited. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 28 suggests or implies that the work performed by Cravath was sufficient or adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the demonstrated falsity of Refco's confidential information memorandum and IPO Registration Statement. Browne Reply Decl. Ex. A (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 116-19, 128, 131, 136, 137, 140, 146 and 150; Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 29: On or about October 19, 2004, the Lead Managers participated in an organizational meeting regarding a variety of topics, including business due diligence. See Wilson Decl., Ex. 57.

Responses: The statements in Underwriters' Paragraph 29 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U. For purposes of this Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 29.

Underwriters' Paragraph 30: Between October and December 2004, Deutsche Bank, Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities Inc., Sandler O'Neill & Partners L.P., and HSBC Securities (USA) Inc. ("Co-Managers") were selected to serve as co-managing underwriters of the Syndicate. See Wilson Decl., Exhs. 58; 185.

Responses: The statements in Underwriters' Paragraph 30 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs dispute the statement in Underwriters' Paragraph 30 that the Co-Managers were "selected to serve as co-managing underwriters of the Syndicate" because this statement is not supported by the text of the cited exhibits, which do not refer to the term "syndicate." Wilson Decl. Exhs. 58; 185. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 30.

Underwriters' Paragraph 31: At the time that Deutsche Bank was selected to be a Co-Manager for the Refco IPO, market reports and commercial publications relied upon by persons in the investment banking industry indicated that it was a global investment bank with (a) substantial underwriting experience, including more than 1000 global debt, equity and equity-related underwriting transactions in the first three quarters of 2004; (b) an excellent standing in the business of underwriting securities; (c) considerable expertise in underwriting IPOs in the financial services sector; (d) a reputation for bringing quality issuers to market; (e) a reputation

for integrity; (f) superior expertise in valuing and pricing public offerings; and (g) high-quality, experienced, competent, and talented personnel with good judgment. See Wilson Decl., Ex. 55 at 3.

Responses: The statements in Underwriters' Paragraph 31 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs do not dispute that, in 2004, Deutsche Bank was a global investment bank. Lead Plaintiffs otherwise dispute Underwriters' Paragraph 31 because, among other things, the statements therein are not supported by the text of the cited exhibit, which does not state that Deutsche Bank had "substantial underwriting experience," "an excellent standing in the business of underwriting securities," "considerable expertise in underwriting IPOs in the financial services sector," "a reputation for bringing quality issuers to market," "a reputation for integrity," "superior expertise in valuing and pricing public offerings," or "high-quality, experienced, competent, and talented personnel with good judgment." Further, the cited exhibit has not been authenticated, no foundation has been laid for its receipt into evidence, and the evidence would not be admissible at trial. Because the Underwriters have failed to support Plaintiffs' Paragraph 31 with a citation to admissible evidence, as required by Local Civil Rule 56.1(d), the statements in Paragraph 31 should be disregarded.

Underwriters' Paragraph 32: At the time Deutsche Bank was selected to be a Co-Manager for the Refco IPO, Deutsche Bank had a preexisting relationship with Refco. See Wilson Decl., Exhs. 43; 58.

Responses: The statements in Underwriters' Paragraph 32 are immaterial to the resolution of

the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 32.

Underwriters' Paragraph 33: At the time Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") was selected to be a Co-Manager for the Refco IPO, market reports and commercial publications relied upon by persons in the investment banking industry indicated that it was a global investment bank with (a) substantial underwriting experience, including more than 1200 global debt, equity and equity-related underwriting transactions in the first three quarters of 2004; (b) an excellent standing in the business of underwriting securities; (c) considerable expertise in underwriting IPOs in the financial services sector; (d) a reputation for bringing quality issuers to market; (e) a reputation for integrity; (f) superior expertise in valuing and pricing public offerings; and (g) high-quality, experienced, competent, and talented personnel with good judgment. See Wilson Decl., Ex. 55 at 3.

Responses: The statements in Underwriters' Paragraph 33 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs do not dispute that, in 2004, Merrill Lynch was a global investment bank. Lead Plaintiffs otherwise dispute Underwriters' Paragraph 33 because, among other things, the statements therein are not supported by the text of the cited exhibit, which does not state that Merrill Lynch had "substantial underwriting experience," "an excellent standing in the business of underwriting securities," "considerable expertise in underwriting IPOs in the financial services sector," "a reputation for bringing quality issuers to market," "a reputation for integrity," "superior expertise in valuing and pricing public offerings," or "high-quality, experienced,

competent, and talented personnel with good judgment.” Further, the cited exhibit has not been authenticated, no foundation has been laid for its receipt into evidence, and the evidence would not be admissible at trial. Because the Underwriters have failed to support Plaintiffs’ Paragraph 33 with a citation to admissible evidence, as required by Local Civil Rule 56.1(d), the statements in Paragraph 33 should be disregarded.

Underwriters’ Paragraph 34: At the time Merrill Lynch was selected to be a Co-Manager for the Refco IPO, Merrill Lynch had a preexisting relationship with Refco. See Wilson Decl., Exhs. 58; 156 (Excerpts from the Transcript of the Deposition of Lee M. Shavel, Merrill Lynch, Pierce, Fenner & Smith Incorporated (March 4, 2008) ("Shavel Tr.") at 15:7-16:24.

Responses: The statements in Underwriters’ Paragraph 34 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters’ Paragraph 34 except to note that the Underwriters’ cited exhibit states that Merrill Lynch’s inclusion was “somewhat unexpected” and “they were going to take a pass” on the IPO, but were “induce[d]” to join the syndicate by the promise of significant fees from Refco. Wilson Decl. Ex. 58.

Underwriters’ Paragraph 35: At the time J.P. Morgan Securities Inc. ("J.P. Morgan") was selected to be a Co-Manager for the Refco IPO, market reports and commercial publications relied upon by persons in the investment banking industry indicated that it was a global investment bank with (a) substantial underwriting experience, including more than 1175 global debt, equity and equity-related underwriting transactions in the first three quarters of 2004; (b) an excellent standing in the business of underwriting securities; (c) considerable expertise in underwriting IPOs in the financial services sector; (d) a reputation for bringing quality issuers to market; (e) a reputation for integrity; (f) superior expertise in valuing and pricing public offerings; and (g) high-quality, experienced, competent, and talented personnel with good judgment. See Wilson Decl., Ex. 55 at 3.

Responses: The statements in Underwriters' Paragraph 35 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs do not dispute that, in 2004, J.P. Morgan was a global investment bank. Lead Plaintiffs otherwise dispute Underwriters' Paragraph 35 because, among other things, the statements therein are not supported by the text of the cited exhibit, which does not state that J.P. Morgan had "substantial underwriting experience," "an excellent standing in the business of underwriting securities," "considerable expertise in underwriting IPOs in the financial services sector," "a reputation for bringing quality issuers to market," "a reputation for integrity," "superior expertise in valuing and pricing public offerings," or "high-quality, experienced, competent, and talented personnel with good judgment." Further, the cited exhibit has not been authenticated, no foundation has been laid for its receipt into evidence, and the evidence would not be admissible at trial. Because the Underwriters have failed to support Plaintiffs' Paragraph 35 with a citation to admissible evidence, as required by Local Civil Rule 56.1(d), the statements in Paragraph 35 should be disregarded.

Underwriters' Paragraph 36: At the time J.P. Morgan was selected to be a Co-Manager for the Refco IPO, J.P. Morgan had a preexisting relationship with Refco. See Wilson Decl., Exhs. 15; 58.

Responses: The statements in Underwriters' Paragraph 36 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else

in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 36.

Underwriters' Paragraph 37: At the time Sandler O'Neill & Partners L.P. ("Sandler O'Neill") was selected to be a Co-Manager for the Refco IPO, market reports and commercial publications relied upon by persons in the investment banking industry indicated that it was a global investment bank with (a) substantial underwriting experience, including at least 51 United States announced mergers & acquisitions in 2004; (b) an excellent standing in the business of underwriting securities; (c) considerable expertise in underwriting IPOs in the financial services sector; (d) a reputation for bringing quality issuers to market; (e) a reputation for integrity; (f) superior expertise in valuing and pricing public offerings; and (g) high-quality, experienced, competent, and talented personnel with good judgment. See Wilson Decl., Ex. 75 at 6.

Responses: The statements in Underwriters' Paragraph 37 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs do not dispute that, in 2004, Sandler O'Neill was a global investment bank. Lead Plaintiffs otherwise dispute Underwriters' Paragraph 37 because, among other things, the statements therein are not supported by the text of the cited exhibit, which does not state that Sandler O'Neill had "substantial underwriting experience," "an excellent standing in the business of underwriting securities," "considerable expertise in underwriting IPOs in the financial services sector," "a reputation for bringing quality issuers to market," "a reputation for integrity," "superior expertise in valuing and pricing public offerings," or "high-quality, experienced, competent, and talented personnel with good judgment." Further, the cited exhibit has not been authenticated, no foundation has been laid for its receipt into evidence, and the evidence would not be admissible at trial. Because the Underwriters have failed to support

Plaintiffs' Paragraph 37 with a citation to admissible evidence, as required by Local Civil Rule 56.1(d), the statements in Paragraph 37 should be disregarded.

Underwriters' Paragraph 38: At the time Sandler O'Neill was selected to be a Co-Manager for the Refco IPO, Sandler O'Neill had a preexisting relationship with Refco. See Wilson Decl., Ex. 170 (Excerpts from the Transcript of the Deposition of Richard W. Durkes, Sandler O'Neill & Partners, L.P. (Feb. 19, 2009)) at 79:22-80:08, 85:19-86:23.

Responses: The statements in Underwriters' Paragraph 38 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 38.

Underwriters' Paragraph 39: At the time HSBC Securities (USA) Inc. ("HSBC") was selected to be a Co-Manager for the Refco IPO, market reports and commercial publications relied upon by persons in the investment banking industry indicated that it was a global investment bank with (a) substantial underwriting experience, including being ranked one of the top 10 underwriters for global initial public offerings for the first two quarters of 2005; (b) an excellent standing in the business of underwriting securities; (c) considerable expertise in underwriting IPOs in the financial services sector; (d) a reputation for bringing quality issuers to market; (e) a reputation for integrity; (f) superior expertise in valuing and pricing public offerings; and (g) high-quality, experienced, competent, and talented personnel with good judgment. See Wilson Decl., Ex. 89 at 4.

Responses: The statements in Underwriters' Paragraph 39 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs do not dispute that, in 2004, HSBC was a global investment bank. Lead Plaintiffs otherwise dispute Underwriters' Paragraph 39 because, among other things, the statements therein are not supported by the text of the cited exhibit, which does not state that HSBC had "substantial underwriting experience," "an excellent standing in the business of underwriting securities," "considerable expertise in underwriting IPOs in the financial services sector," "a reputation for bringing quality issuers to market," "a reputation for integrity," "superior expertise in valuing and pricing public offerings," or "high-quality, experienced, competent, and talented personnel with good judgment." Further, the cited exhibit has not been authenticated, no foundation has been laid for its receipt into evidence, and the evidence would not be admissible at trial. Because the Underwriters have failed to support Plaintiffs' Paragraph 37 with a citation to admissible evidence, as required by Local Civil Rule 56.1(d), the statements in Paragraph 39 should be disregarded.

Underwriters' Paragraph 40: At the time HSBC was selected to be a Co-Manager for the Refco IPO, HSBC had a preexisting relationship with Refco. See Wilson Decl., Ex. 15.

Responses: The statements in Underwriters' Paragraph 40 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 40.

Underwriters' Paragraph 41: Between June 2003 and August 2005, the Lead Managers and Co-Managers served detailed questions on Refco that probed various aspects of Refco's business, including business regulation, relationships and related party transactions, indebtedness, and shares eligible for future sale. See Wilson Decl., Exhs. 4 at 3; 5; 149; 191-93; 196; 157

(Schwimmer Tr.) at 296:24-299:25; 160 (Excerpts from the Transcript of the Deposition of Gilberto Garay, Goldman Sachs (May 7, 2008) ("Garay Tr.")) at 55:12-58:19, 66:25-70:16.

Responses: The statements in Underwriters' Paragraph 41 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that the Lead Managers and Co-Managers conducted some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 41 suggests or implies that the due diligence conducted by the Lead Managers and Co-Managers was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 42: Between June 2003 and August 2005, the Lead Managers and Co-Managers spoke and/or met with senior and mid-level executives at Refco on more than 40 occasions, including Refco Chief Executive Officer Phillip Bennett, Refco Chief Financial Officer Robert Trosten, Refco General Counsel Dennis Klejna, Executive Vice President of Refco Group and President and Chief Executive Officer of Refco Securities Santo C. Maggio, Executive Vice President of Refco Group Joseph Murphy, and President of Refco Group Limited Thomas Hackl, at which Refco management presented information regarding Refco's business, financial performance, risk-management procedures, and other topics, and responded to questions. See Wilson Decl., at 205-06; Exhs. 59; ; 91; 100; 101 at 8-10; 135, 176-78; 180-183; 157 (Schwimmer Tr.) at 296:24 - 299:25; 158 (Excerpts from the Transcript of the Deposition of Jamie Lewis, Deutsche Bank (April 3, 2008) ("Lewis Tr.")) at 62:8-63:12; 161

(Jones Tr.) at 70:5-71:17; 162 (Addas Tr.) at 145:14-152:6; 168 (Excerpts from the Transcript of the Deposition of Simon Western, BAS (Jan. 14, 2009) ("Western Tr.")) at 28:3-17.

Responses: The statements in Underwriters' Paragraph 42 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that the Lead Managers and Co-Managers conducted some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 42 suggests or implies that the due diligence conducted by the Lead Managers and Co-Managers was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 43: Between June 2003 and August 2005, the Lead Managers and Co-Managers, with the assistance of Cravath, obtained completed directors and officer questionnaires, including among other representations that there were no undisclosed related party transactions, from, among others, Phillip Bennett, Robert Trosten, Santo C. Maggio, Dennis A. Klejna, William M. Sexton, Joseph James Murphy, Gerald M. Sherer, Ronald L. O'Kelley, Scott L. Jaeckel, Leo R. Breitman, Nathan Gantcher, David V. Harkins, Thomas H. Lee, and Scott A. Schoen. See Wilson Decl., Exhs. 24-25; 32; 36-40; 65-67; 70-74; 76-8; 86-87; 96; 98; 102-10; 115; 152. The questionnaires sought various information, including:

- "To the best of your knowledge, since the beginning of the last fiscal year, have any of the following people [you, your spouse, your family, etc.] had a direct or indirect

material interest in any transaction or any currently proposed transaction, or series of similar transactions, to which the Company or its Affiliates was or is to be a party in which the amount involved exceeds \$60,000";

- "[Are you an Executive Officer of or do you own more than 10% of a beneficial interest in] any business or professional entity to which the Company or its Affiliates was indebted at the end of the last full fiscal year?";
- "Have you, or did you have during the last fiscal year, any interest, direct or indirect, by security holdings or otherwise, in any other business or professional entity with a relationship to the Company or its Affiliates that is substantially similar in nature and scope to those relationships listed in subparagraphs [7(a) through 7(d)] above [payments to/by the company, law firm relationships, investment banking relationships, accounting firm relationships]?"; and
- "At any time since the beginning of the last fiscal year have you . . . been indebted to the Company or its Affiliates in any amount or been indebted in any amount to another entity which has been the subject of a guarantee, support agreement, letter of credit or other similar arrangement or understanding provided by the Company or its Affiliates."

Responses: The statements in Underwriters' Paragraph 43 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that the Lead Managers and Co-Managers conducted some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 43 suggests or implies that the due diligence conducted by the Lead Managers and Co-Managers was adequate, Lead Plaintiffs dispute the adequacy of that due diligence conducted because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior

Disclosure” dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters’ Paragraph 44: Between June 2003 and August 2005, the Lead Managers and Co-Managers spoke and/or met with senior and mid-level executives from THL on more than 15 occasions. See Wilson Decl., 111 207-12; Exhs. 2-3; 8; 41; 54; 56-57; 61; 63; 79; 85; 90; 101; 172-173; 179.

Responses: The statements in Underwriters’ Paragraph 44 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that the Lead Managers and Co-Managers conducted some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters’ Paragraph 44 suggests or implies that the due diligence conducted by the Lead Managers and Co-Managers was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco’s IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005), Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters’ Paragraph 45: Between June 2003 and August 2005, the Lead Managers and Co-Managers verified information provided by Refco personnel through external and internal sources, including by requesting, receiving, and reviewing documents. See Wilson Decl.,

Exhs. 4 at 3; 101 at 9; 149 at GS - CIV - 041725, 041745, 041751; 157 (Schwimmer Tr.) at 203:25-206:2, 240:24-247:5; 158 (Lewis Tr.) at 57:17 - 59:7, 63:13-64:21; 159 (Peyton Tr.) at 40:13 - 41:8, 69:14 - 70:14, 268:14 - 269:9; 160 (Garay Tr.) at 55:12-58:19, 66:25-70:16.

Responses: The statements in Underwriters' Paragraph 45 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that the Lead Managers and Co-Managers conducted some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 45 suggests or implies that the due diligence conducted by the Lead Managers and Co-Managers was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 46: Between June 2003 and August 2005, the Lead Managers and Co-Managers spoke and/or met with Grant Thornton LLP on more than 8 occasions about topics including, but not limited to, the results of Grant Thornton's audits of Refco, the scope and actual procedures used in the audit of Refco, significant deficiencies observed by Grant Thornton and management's plans to correct them, the auditor's discussions with management, Grant Thornton's historical relationship with Refco and view of management, acquisitions consummated by Refco, joint ventures in which Refco participated, and the substance of a comfort letter to be provided by Grant Thornton on the date of the IPO. See Wilson Decl., 11213; Exhs. 28; 31; 83; 93; 99; 133; 136; 143; 155 (Excerpts from the Transcript of the Deposition of Kaivan M. Shakib, Merrill Lynch, Pierce, Fenner & Smith Incorporated (Feb. 12, 2008) ("Shakib Tr.)) at 148:24-149:10; 157 (Schwimmer Tr.) at 213:15-215:4,

401:12-403:1, 409:22-411:9; 418:19- 422:21; 162 (Addas Tr.) at 107:14-109:16; 168 (Western Tr.) at 62:3-14, 143:13-144:13; 171 (Molluso Tr.) at 522:8-20.

Responses: The statements in Underwriters' Paragraph 46 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that the Lead Managers and Co-Managers conducted some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 46 suggests or implies that the due diligence conducted by the Lead Managers and Co-Managers was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 47: Between June 2003 and August 2005, the Lead Managers and Co-Managers participated in more than 25 drafting sessions for the various offering documents, during which they discussed a variety of due diligence topics. See Wilson Decl., at Tif 214-15; Exhs. 9, 11-13; 16; 19; 22; 26-27; 29; 34; 60; 62; 68; 81; 92; 101; 111; 112; 161 (Jones Tr.) at 146:5-23.

Responses: The statements in Underwriters' Paragraph 47 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO

Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that the Lead Managers and Co-Managers conducted some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 47 suggests or implies that the due diligence conducted by the Lead Managers and Co-Managers was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 48: Between June 2003 and August 2005, the Lead Managers and Co-Managers reviewed and analyzed a report prepared by KPMG concerning the quality of Refco's earnings, its financial performance, financial position, information technology capabilities, and an overall assessment of the risks and opportunities associated with an investment in Refco. See Wilson Decl., Exhs. 7; 162 (Addas Tr.) at 145:23-152:6; 168 (Western Tr.) at 195:18-196:22.

Responses: The statements in Underwriters' Paragraph 48 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that the Lead Managers and Co-Managers conducted some due diligence for the Refco IPO. Although immaterial to the

Motion, to the extent that Underwriters' Paragraph 48 suggests or implies that the due diligence conducted by the Lead Managers and Co-Managers was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 49: Between June 2003 and August 2005, the Lead Managers and Co-Managers reviewed and analyzed a report prepared by McKinsey & Co. concerning loyalty, retention, and satisfaction of Refco's customers. See Wilson Decl., Exhs. 7; 159 (Peyton Tr.) at 268:14-269:9; 161 (Jones Tr.) at 383:16-20; 162 (Addas Tr.) at 288:23-289:22.

Responses: The statements in Underwriters' Paragraph 49 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that the Lead Managers and Co-Managers conducted some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 49 suggests or implies that the due diligence conducted by the Lead Managers and Co-Managers was adequate, Lead Plaintiffs dispute the adequacy of the due diligence conducted regarding the Refco IPO because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled "Refco Announces

Undisclosed Affiliate Transaction” dated October 10, 2005), Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters’ Paragraph 50: Between June 2003 and August 2005, the Lead Managers and Co-Managers conferred with internal and external colleagues regarding Refco's reputation and business prospects. See Wilson Decl., Exhs. 186; 157 (Schwimmer Tr.) at 224:25-225:21; 162 (Addas Tr.) 159:4-161:17; 168 (Western Tr.) at 122:21-124:18.

Responses: The statements in Underwriters’ Paragraph 50 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that the Lead Managers and Co-Managers conducted some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters’ Paragraph 50 suggests or implies that the due diligence conducted by the Lead Managers and Co-Managers was adequate, Lead Plaintiffs dispute the adequacy of the due diligence conducted regarding the Refco IPO because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco’s IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005), Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 51: In connection with the Refco LBO, Credit Suisse, Banc of America and Deutsche Bank conducted a thorough credit analysis of Refco, including preparing and analyzing a consolidating balance sheet. See Wilson Decl., Exhs. 4; 33; 171 (Molluso Tr.) at 216:16-217:22, 238:23-239:7.

Responses: The statements in Underwriters' Paragraph 51 are immaterial to the resolution of the Motion because the Motion concerns the Refco IPO and the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that Credit Suisse, Banc of America and Deutsche Bank conducted a credit analysis of Refco. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 51 suggests or implies that these banks conducted adequate due diligence of Refco, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's confidential information memorandum and IPO Registration Statement. Browne Reply Decl. Ex. A (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 116-19, 128, 131, 136, 137, 140, 146 and 150; Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 52: Between June 2003 and August 2005, the Lead Managers and Co-Managers prepared memoranda for, and discussed the firms' participation in, Refco offerings, with the firms' various commitment committees, and followed up on additional diligence requested by these committees. See Wilson Decl., Exhs. 4; 5; 33; 42; 64; 80; 101; 149; 156

(Shavel Tr.) at 269:10-271:4; 279:8-280:16; 157 (Schwimmer Tr.) at 346:22-347:17, 351:4-22, 359:21-360:19; 161 (Jones Tr.) at 182:13-183:25; 168 (Western Tr.) at 252:24 - 253:17; 171 (Molluso Tr.) at 214:25-215:6, 292:21-293:24.

Responses: The statements in Underwriters' Paragraph 52 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that the Lead Managers conducted some due diligence for the Refco LBO and that the Lead Managers and Co-Managers conducted some diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 52 suggests or implies that the due diligence conducted by the Lead Managers and Co-Managers was adequate, Lead Plaintiffs dispute the adequacy of that due diligence conducted because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's confidential information memorandum and IPO Registration Statement. Browne Reply Decl., Ex. A (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 116-19, 128, 131, 136, 137, 140, 146 and 150; Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 53: Between June 2003 and August 2005, the Lead Managers and Co-Managers requested and received opinion letters, negative assurance letters, comfort letters, and

certifications from Refco, Mayer Brown, Weil, Grant Thornton, and Cravath in connection with the Refco LBO and IPO. See Wilson Decl., Exhs. 23, 44; 48-52; 69; 140; 145-48; 184.

Responses: The statements in Underwriters' Paragraph 53 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that the Lead Managers conducted some due diligence for the Refco LBO and that the Lead Managers and Co-Managers conducted some diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 53 suggests or implies that the due diligence conducted by the Lead Managers and Co-Managers was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's confidential information memorandum and IPO Registration Statement. Browne Reply Decl. Ex. A (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 116-19, 128, 131, 136, 137, 140, 146 and 150; Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 54: Cravath documented at least three discussions with Grant Thornton regarding Refco's interim financial statements, issues related to the minutes of Refco's board of directors' meetings, and the comfort letter to be issued by Grant Thornton after the Junior

Underwriters accepted the invitation to participate in the Refco IPO. See Wilson Decl. at ¶ 216; Exs. 82; 133; 136; 143.

Responses: The statements in Underwriters' Paragraph 54 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that Cravath conducted some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 54 suggests or implies that the due diligence conducted by Cravath was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Further, Lead Plaintiffs note that the Underwriters' cited exhibit 82 to the Wilson Decl. does not support the statements in paragraph 54, and appears to be an internal invoice for a "public record check." None of the cited exhibits support the notion that any of the Junior Underwriters were aware that Cravath was doing any work on the Refco IPO.

Underwriters' Paragraph 55: Cravath documented meetings and/or teleconferences with Refco's General Counsel, Refco's primary outside counsel, Mayer Brown, Weil Gotshal, and others, regarding the status and implications of Refco's litigation and regulatory history, including then pending litigation and regulatory actions, disclosure schedules, and to verify that an anticipated,

partial redemption of outstanding Refco bonds was permissible under existing Refco agreements, including four meetings or teleconferences after August 5, 2005. See Wilson Decl., Exhs. 10; 84; 88; 91; 94; 134; 137-39; 144; 175; 183; Stephanakis Decl. at 13.

Responses: The statements in Underwriters' Paragraph 55 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that Cravath conducted some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 55 suggests or implies that the due diligence conducted by Cravath was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 56: Cravath documented a teleconference with representatives from Goldman Sachs and PricewaterhouseCoopers, L.L.P. ("PwC"), a Refco adviser on accounting and financial reporting matters, and separately documented a meeting, concerning, among other things, Refco's internal reporting and finance functions, the nature and scope of PwC's work at Refco, expectations about the Company's prospects, and general observations about Refco learned during the course of PwC's engagement. See Wilson Decl., Exhs. 113; 135.

Responses: The statements in Underwriters' Paragraph 56 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they

themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that Cravath conducted some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 56 suggests or implies that the due diligence conducted by Cravath was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 57: Cravath documented multiple drafting sessions. See Wilson Decl., Exhs. 9; 1113; 16; 19; 22; 26-27; 29; 31; 34; 45; 60; 62; 68; 81; 92; 95; 111; 112; 114; 195.

Responses: The statements in Underwriters' Paragraph 57 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that Cravath conducted some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 57 suggests or implies that the due diligence conducted by Cravath was

adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 58: Cravath documented "bring down" due diligence calls both on the date of the Refco IPO's pricing and on the date of its closing. See Wilson Decl., Exhs. 138; 144; Stephanakis Decl. at ¶ 13(g).

Responses: The statements in Underwriters' Paragraph 58 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that Cravath conducted some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 58 suggests or implies that the due diligence conducted by Cravath was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the material falsity of Refco's IPO Registration Statement. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005), Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005) and Ex. M (Answer Of

The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters' Paragraph 59: Cravath, supporting the Lead Managers on behalf of the syndicate, helped to document through such documents as the fact circle-ups, that the Syndicate reasonably believed that the statements made by Refco were truthful in the Refco Confidential Offering Circular, the Refco LBO, the Preliminary Prospectus, and the IPO Registration Statement. See Wilson Decl., Exhs. 14; 18; 46; 97; Stephanakis Decl. at 14.

Responses: The statements in Underwriters' Paragraph 59 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Lead Plaintiffs dispute the statements in Underwriters' Paragraph 59 that Cravath acted “on behalf of the syndicate [sic]” and “helped to document...that the Syndicate reasonably believed...” because the cited exhibits do not support these statements. Further, Lead Plaintiffs expressly incorporate and refer to Lead Plaintiffs' Response to Underwriters' Paragraph 25.

For purposes of the Motion only, Lead Plaintiffs do not dispute that Cravath conducted some due diligence for the Refco LBO and some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 59 suggests or implies that the due diligence conducted by Cravath was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's confidential information memorandum and IPO Registration Statement. Browne Reply Decl. Ex. A (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 116-19, 128, 131, 136, 137, 140, 146 and 150; Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed

Affiliate Transaction” dated October 10, 2005), Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters’ Paragraph 60: Cravath documented discussions with Refco regarding the Underwriting Agreement with Refco, including that the Underwriting Agreement contain representations and warranties that, among other things, the financial statements in the registration statement were in accordance with generally accepted accounting principles and were accurate. See Wilson Decl., Exhs. 87-93; 141; Stephanakis Decl. at ¶ 13(c).

Responses: The statements in Underwriters’ Paragraph 60 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that Cravath conducted some due diligence for the Refco LBO and some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters’ Paragraph 59 suggests or implies that the due diligence conducted by Cravath was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco’s confidential information memorandum and IPO Registration Statement. Browne Reply Decl. Ex. A (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 116-19, 128, 131, 136, 137, 140, 146 and 150; Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005), Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The

Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

For purposes of the Motion only, Lead Plaintiffs do not dispute that the Underwriting Agreement contains representations and warranties, but Lead Plaintiffs respectfully refer the Court to the Underwriting Agreement for a true and complete statement of its contents. Wilson Decl. Ex. 141.

Underwriters' Paragraph 61: Cravath documented and assisted in the request, receipt, and review of hundreds of categories of Refco documents, including documents related to Refco's incorporation, accounting and auditing, litigation, customers, real property, management contracts, financing, risk management, ownership, and other topics. See Wilson Decl., Exhs. 53; 150; Stephanakis Decl. at ¶ 14.

Responses: The statements in Underwriters' Paragraph 61 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that Cravath conducted some due diligence for the Refco LBO and some due diligence for the Refco IPO. Although immaterial to the Motion, to the extent that Underwriters' Paragraph 61 suggests or implies that the due diligence conducted by Cravath was adequate, Lead Plaintiffs dispute the adequacy of that due diligence because, among other things, it is not supported by the cited exhibits or otherwise in the record, including the falsity of Refco's confidential information memorandum and IPO Registration Statement. Browne Reply Decl. Ex. A (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 116-19, 128, 131, 136, 137, 140, 146 and 150; Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed

Affiliate Transaction” dated October 10, 2005), Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005) and Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶ 203, 204, 215-17, 221-23, 226, 230-32, 379 & 416.

Underwriters’ Paragraph 62: The Refco IPO roadshow began on July 26, 2005. See Wilson Decl., Ex. 117.

Responses: For purposes of this Motion only, Lead Plaintiffs do not dispute Underwriters’ Paragraph 62.

Underwriters’ Paragraph 63: On July 25, 2005, Amendment No. 4 to Form S-1 Registration Statement for Refco, Inc. was filed with the Securities and Exchange Commission. See Wilson Decl., Ex. 116.

Responses: For purposes of this Motion only, Lead Plaintiffs do not dispute Underwriters’ Paragraph 63.

Underwriters’ Paragraph 64: The "Red" was printed on or before July 28, 2005. See Wilson Decl., Ex. 118.

Responses: For purposes of this Motion only, Lead Plaintiffs do not dispute Underwriters’ Paragraph 64.

Underwriters’ Paragraph 65: Muriel Siebert & Co., Inc., is a woman-owned capital markets business enterprise, offering investment banking and underwriting services, with extensive experience in underwriting initial public offerings as a participating underwriter (or "junior underwriting"). See Turner Decl. at 2, 3, 13.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters’ Paragraph 65.

Underwriters' Paragraph 66: Samuel A. Ramirez & Company, Inc., is a full-service minority-owned investment bank, offering investment banking and underwriting services, with extensive experience in underwriting initial public offerings as a participating underwriter (or "junior underwriting"). See Goldman Decl. at 1112, 4, 11.

Responses: For purposes of this Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 66.

Underwriters' Paragraph 67: Utendahl Capital Partners, L.P., is a full-service broker-dealer, offering investment banking and underwriting services, with extensive experience in underwriting initial public offerings as a participating underwriter (or "junior underwriting"). See Reyes Decl. at in 2, 7.

Responses: For purposes of this Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 67.

Underwriters' Paragraph 68: The Williams Capital Group, L.P., is a minority-owned investment bank, offering investment banking and underwriting services, with extensive experience in underwriting initial public offerings as a participating underwriter (or "junior underwriting"). See Levin Decl. at ¶¶ 2, 3, 9, 13.

Responses: For purposes of this Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 68.

Underwriters' Paragraph 69: BMO Capital Markets Corp., is a full-service investment bank, offering investment banking and underwriting services, with extensive experience in underwriting initial public offerings as a participating underwriter (or "junior underwriting"). See Begley Decl. at ¶ 3, 10.

Responses: For purposes of this Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 69.

Underwriters' Paragraph 70: William Blair & Company, L.L.C., is a full-service investment bank, offering investment banking and underwriting services, with extensive experience in underwriting initial public offerings as a participating underwriter (or "junior underwriting"). See Washburn Decl. at ¶¶ 2, 10.

Responses: For purposes of this Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 70.

Underwriters' Paragraph 71: CMG Institutional Trading, LLC, was an underwriter that participated in the Refco IPO. See Wilson Decl. at Ex. 127.

Responses: Lead Plaintiffs dispute the statement in Underwriters' Paragraph 71 that CMG "participated" in the Refco IPO. Browne Decl. ¶ 21. Lead Plaintiffs do not dispute that CMG was an underwriter that consented to having its name listed as an underwriter in the IPO Registration Statement, sold 152,375 shares (including its estimated portion of the shares issued pursuant to the green shoe option) for total proceeds of approximately \$3,352,250 and received a fee in connection therewith. Browne Decl. Ex. H (IPO Prospectus) at 136 and Ex. I (Press Release Titled "Refco, Inc. Announces Completion Of Its Initial Public Offering" dated August 16, 2005).

Underwriters' Paragraph 72: On July 29, 2005, the Junior Underwriters received an invitation wire inviting them into the Refco IPO Underwriting Syndicate. See Wilson Decl., Exhs. 119 - 125.

Responses: Lead Plaintiffs dispute Underwriters' Paragraph 72 because the statements in Underwriters' Paragraph 72 are not supported by the text of the cited exhibits, which do not state that the Junior Underwriters were being invited "into the Refco IPO Underwriting Syndicate." Wilson Decl. Exhs. 119-25. Lead Plaintiffs do not dispute that the Junior Underwriters each received an invitation wire on or about July 29, 2005, inviting each of them individually to participate as one of the several underwriters in the Refco IPO. *Id.*

Underwriters' Paragraph 73: The Invitation Wires included the identity of the Lead Managers and Co-Managers for the Refco IPO. See Wilson Decl., Exhs. 119 - 125.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 73.

Underwriters' Paragraph 74: The Junior Underwriters believed that the Lead Managers and Co-Managers were Tier One investment banks. See Begley Decl. at ¶¶ 26-28; Reyes Decl. at ¶¶ 14-16; Levin Decl. at ¶¶ 19-21; Washburn Decl. at ¶¶ 22-23, 26; Goldman Decl. at ¶¶ 21-23; Turner Decl. at ¶¶ 23-24, 26-27.

Responses: The statements in Underwriters' Paragraph 74 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 74.

Underwriters' Paragraph 75: The Junior Underwriters were invited to underwrite approximately 6% of the Refco IPO. See Wilson Decl., Exhs. 119 - 125.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 75, except to clarify that the invitations were received individually by the Junior Underwriters. Wilson Decl. Exhs. 119-25.

Underwriters' Paragraph 76: The Junior Underwriters previously had participated in underwritings with the Lead Managers. See Begley Decl. at ¶ 29; Turner Decl. at ¶ 25; Goldman Decl. at ¶ 24; Reyes Decl. at ¶ 15; Washburn Decl. at ¶ 24; Levin Decl. at ¶ 22; Erb Decl. at ¶¶ 62-63.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 76.

Underwriters' Paragraph 77: By the terms of the Invitation Wire, a Junior Underwriter's acceptance of the invitation subjected the Junior Underwriter to the "Master Agreement among Underwriters, dated January 17, 2003, relating to offerings described by an invitation telex." See Wilson Decl., Exhs. 119 - 125.

Responses: Lead Plaintiffs do not dispute Underwriters' Paragraph 77, except to refer the Court to the terms of the individual invitation wires for a true and complete statement of their respective contents. Wilson Decl., Exhs. 119 - 125.

Underwriters' Paragraph 78: The Junior Underwriters were familiar with the AAU, including a provision that the Lead Managers were to enter into an underwriting agreement with Refco with respect to the stock. See Wilson Decl. Ex. 1 at 4; Begley Decl. at ¶ 37; Turner Decl. at ¶ 33; Goldman Decl. at ¶ 32; Washburn Decl. at II 31; Levin Decl. at ¶ 30.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 78.

Underwriters' Paragraph 79: Shortly after receiving the Invitation Wires, the Junior Underwriters received and reviewed portions of the preliminary prospectus. See Wilson Decl., Ex. 30; Begley Decl. at ¶ 26; Turner Decl. at ¶ 23; Goldman Decl. at ¶ 21; Reyes Decl. at ¶ 14; Washburn Decl. at ¶ 21; Levin Decl. at ¶ 19.

Responses: Lead Plaintiffs dispute Underwriters' Paragraph 79. Most of the Junior Underwriters have admitted in their depositions that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U. Representatives of certain Junior Underwriters specifically testified in Rule 30(b)(6) depositions that those Junior Underwriters did not review draft prospectuses or any final prospectuses prior to the effective date of the Refco IPO. For example, the corporate representative of William Blair testified as follows:

Q: Did William Blair review draft prospectuses prior to the Refco IPO?

A: No.

Q: Did William Blair review a final prospectus prior to the Refco IPO?

[...]

A: Not prior to the IPO.

Q: Did William Blair review a final prospectus at any point in time?

A: After the IPO was priced and it was available, yes.

Browne Decl. Ex. N (William Blair Tr.) at 66-7. Similarly, the corporate representative of Utendahl testified as follows:

Q: And had you reviewed the Refco IPO prospectus prior to August 10?

A: No.

Q: Did anyone from Utendahl review this document prior to it being filed in connection with the Refco IPO?

A: Not that I know. Not that I'm aware of.

Q: Did anyone from Utendahl make comments or revisions to any draft of the IPO prospectus filed in the Refco IPO?

A: Not that I'm aware of.

Q: [...] Did anyone from Utendahl review any financial statements or financial information regarding Refco in connection with the Refco IPO?

A: No.

Q: Well, what I'd like to know is what specific activities did Utendahl either conduct itself or participate in as an underwriter involved in the Refco IPO? What did Utendahl do?

A: Just accept an invitation to the transaction – to the transaction, that was really it.

Q: Nothing else whatsoever in connection with the Refco IPO?

A: No.

Q: So it's true that no one from Utendahl participated in or conducted due diligence in connection with the Refco IPO?

A: Due diligence, no.

Browne Reply Decl. Ex. B (Utendahl Tr.) at 29 and 172; Browne Decl. Ex. O (Utendahl Tr.) at 173, 177, 182-83 and 198-200. The corporate representative of Siebert also testified as follows:

Q: Did anyone from Siebert review a draft prospectus?

A: We did not.

Q: Did Siebert review the Refco IPO prospectus prior to it being publicly filed?

A: It did not.

Q: Did Siebert review this document [Refco prospectus] prior to August 10, 2005?

A: No, we received – when we received this document, we reviewed it.

Q: Is it correct that Siebert – that no one from Siebert reviewed any drafts of this document prior to it being made public?

A: That's correct.

Browne Decl. Ex. Q (Siebert Tr.) at 82; Browne Reply Decl. Ex. C (Siebert Tr.) at 102. The corporate representative of Ramirez similarly testified as follows:

Q: Can you describe the internal process or processes that Ramirez conducted that resulted in Ramirez's acceptance of the role of underwriter in the Refco IPO?

A: Yes. Firstly, as we notify our CFO and our compliance officer and Ramirez. Then secondly, we do a review of the – not a thorough review, but a cursory review of the public filing, preliminary prospectus. And then we make a decision whether or not to accept the invitation.

Q: And what investigation of Refco did Ramirez conduct prior to accepting the role of the underwriter in the Refco IPO?

A: We again, we read the public filings, which is a preliminary prospectus. I don't recall specifically, but I would speculate we may have looked at

recent headlines, but we – our basic investigation is to read the public filings – public – preliminary prospectus.

Q: You mentioned two possibilities in your last answer. One was to read the preliminary prospectus and the second one was to read news headlines. Were there any other steps taken by Ramirez in investigating – to investigate Refco prior to accepting the role of underwriter in the Refco IPO?

A: Not that I recall.

Q: Did anyone from Ramirez review this document [the prospectus] in connection with the Refco IPO?

A: When we were invited into the transaction I did a cursory review of this document.

Q: Did anyone from Ramirez make any comments or revisions to [the preliminary prospectus] in connection with the Refco IPO?

A: No.

Q: So is it correct to say that Ramirez did not review drafts of this prospectus in connection with its role as an underwriter on the Refco IPO?

A: Correct.

Q: Did anyone from Ramirez make any comments on any drafts?

A: No.

Browne Reply Decl. Ex. D (Ramirez Tr.) at 163-164, 166-167, 177 and 194 (objection omitted).

The corporate representative of Williams Capital also testified as follows:

Q: Does Williams Capital have any knowledge as to whether the more senior underwriters in the Refco IPO conducted due diligence procedures – let me be more specific – on Refco’s financial statements beyond just relying on the audit opinions?

A: We have no knowledge of whether they did or not.

Browne Reply Decl. Ex. E (Williams Capital Tr.) at 96-97 (objection omitted).

Underwriters’ Paragraph 80: Representatives of Siebert and Ramirez conferred with each other as part of their analysis of the Refco IPO, including discussions as to how the potential

transaction was being viewed in the market and the level of interest in the shares. See Wilson Decl., Ex. 163 (Siebert Tr.) at 113:12 - 115:10.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 80, except to dispute the inference that the Junior Underwriters themselves conducted due diligence concerning the Refco IPO. Representatives of Siebert and Ramirez admitted that Siebert and Ramirez themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Underwriters' Paragraph 81: William Blair reviewed research on Refco, including an August 4, 2005 research report on the impending Refco IPO prepared by Renaissance IPO Research. See Wilson Decl. Ex. 174.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 81, except to dispute the inference that William Blair itself conducted due diligence concerning the Refco IPO. In a Rule 30(b)(6) deposition conducted by Lead Plaintiffs on November 12, 2008 regarding the topic of any analysis, due diligence, investigation, research or audit conducted in respect of the Refco IPO, William Blair's corporate representative testified as follows:

Q: Can you please tell me everything that William Blair did, if anything, to perform due diligence on Refco in connection with the Refco IPO?

A: We did not perform any independent due diligence. We relied on the lead managers.

Q: And when you say you did not perform any independent due diligence, what due diligence did you perform, if any?

A: None

Q: And all of that stuff that you just described to me, that process in deciding whether you wanted to join the underwriting syndicate, you would not – William Blair does not characterize that as due diligence, correct?

A: No.

Q: I am correct in saying that it's not due diligence?

A: That is not due diligence.

Browne Decl. Ex. N (William Blair Tr.) at 58-9; Browne Reply Decl. Ex. F (William Blair Tr.) at 77.

Underwriters' Paragraph 82: It is industry custom and practice that participating or junior underwriters are invited into an underwriting syndicate in the final days before the shares are priced and distributed, by which time the lead and managing underwriters substantially have completed their due diligence investigation, the preliminary prospectus has been or is about to be distributed, and the marketing of the IPO has begun or is about to begin. See Begley Decl. at ¶ 15; Turner Decl. at ¶ 17; Goldman Decl. at ¶ 16; Reyes Decl. at ¶ 10; Washburn Decl. at ¶ 15; Levin Decl. at ¶ 14; Daines Decl., at ¶¶ 20, 23, 25; Erb Decl., at ¶ 36; Rudley Decl., at ¶ 22.

Responses: The statements in Underwriters' Paragraph 82 are immaterial to the resolution of this Motion because the Motion concerns the Junior Underwriters' investigation relating to the Refco IPO, and they have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U. For purposes of this motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 82.

Underwriters' Paragraph 83: BMO had a pre-existing relationship with Refco and had performed an investigation of the Company in connection with the extension of credit to Refco. See Begley Decl. at ¶ 18.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute that BMO had a pre-existing relationship with Refco or that BMO performed periodic credit reviews of Refco in

connection with certain credit facilities and lines of credit. Lead Plaintiffs dispute any inference or suggestion in Underwriters' Paragraph 83 that any such activities constituted due diligence in connection with the Refco IPO. In a Rule 30(b)(6) deposition conducted by Lead Plaintiffs on February 12, 2009 regarding the topic of any analysis, due diligence, investigation, research or audit conducted in respect of the Refco IPO, BMO's corporate representative testified as follows:

Q: Did BMO perform any due diligence in connection with the Refco IPO?

A: We were invited in as a syndicate member. And as a syndicate member, we are entitled to rely on the due diligence of the lead manager. We had an internal discussion to confirm that Refco was a client in good standing. And we reviewed the S-1. The company was already on the road show. The S-1 -- the red had already been printed and we reviewed the red. That's what we did. That's customary industry practice for firms that are participating in a syndicated capacity.

Q: Did BMO take any steps, though, after reading the S-1, to verify whether the statements in there were accurate and complete?

A: Again, you know, we relied on the diligence of the lead manager, and we were not aware of any statements in reading the red that we thought were incorrect or misleading.

Q: But did BMO do anything to investigate as to whether the statements in the red, in the offering document, were accurate and complete?

[...]

A: It's not industry practice to do that.

Q: And in fact, BMO in this case did not?

A: It's industry practice to rely on the diligence of the lead manager.

Q: [...] In this case, did BMO, whether it's practice or not, did BMO do anything to investigate whether the statements in the offering documents, Refco's IPO were accurate and complete?

[...]

A: [...] we did what I said we did, which is relied on the diligence of the leads. We made internal inquiry as to whether Refco was a customer in good standing. And we read the S-1, read the red; we read the red and didn't see anything in there that caused us to think that there was something wrong or misleading.

Q: What steps, if any, did BMO take to confirm that the statements in the IPO registration relating to Refco's related-party transactions were accurate?

A: Not aware of any specific steps that would have been taken. We reviewed it, the entire red, and didn't see anything in it that we thought was not accurate.

Q: Are you aware of any steps that BMO took to investigate whether those statements were accurate or not accurate?

A: Not specifically. Again, we relied on the diligence of the leads.

Q: Did BMO participate in any due diligence calls at any point that involved any other members of the underwriting syndicate?

A: No. It's industry practice not to include anyone other than the leads in the calls.

Q: Did BMO, at any point, receive any due diligence documents from any other member of the underwriting syndicate?

A: Not that I recall.

Q: Did BMO, at any point, ask any other member of the underwriting syndicate to provide it with due diligence documents?

A: Not that I recall.

Q: Did BMO, at any point in connection with any due diligence done on the Refco IPO, provide any documents to other members of the underwriting syndicate relating to Refco?

A: Not that I am aware of.

Q: Did BMO participate in any due diligence calls with any members of Refco's management in connection with any due diligence on the Refco IPO?

- A: Not that I am aware of.
- Q: Did BMO participate in any meetings with any members of Refco's management in connection with any due diligence on the Refco IPO?
- A: Not that I am aware of. We wouldn't have been invited.
- Q: Did BMO ask to be invited to any meetings with members of Refco's management in connection with any due diligence on the Refco IPO?
- A: John, again, not that I am aware of. It's just not done. It's not industry practice.
- Q: Did BMO ask Refco to provide it with any documents in connection with any due diligence investigation relating to the Refco IPO?
- A: Not that I am aware of.
- Q: Did BMO participate in any due diligence calls with anyone from Tom Lee Partners in connection with due diligence on the Refco IPO?
- A: Not that I am aware of.
- Q: Did BMO have any communications with Refco's auditors in connection with any due diligence on the Refco IPO?
- A: Not that I am aware of.
- Q: Did BMO ask Refco's auditors to provide it with any documents in connection with any due diligence done on the Refco IPO?
- [...]
- A: Not that I am aware.
- Q: Did BMO have any communications with any of Refco's attorneys in connection with any due diligence performed on the Refco IPO?
- A: Not that I am aware of.

Q: Did BMO have any communication with any Thomas H. Lee's attorneys in connection with any due diligence performed on the Refco IPO?

A: Not that I am aware of.

Q: Did BMO conduct any visits to Refco's offices in connection with any due diligence on the Refco IPO?

A: Not that I am aware of.

Q: Did BMO speak with any of Refco's customers in connection with any due diligence performed on the Refco IPO?

A: Not that I am aware of.

Q: Did BMO speak with any members of Refco's former management in connection with any due diligence done on the Refco IPO?

A: Not that I am aware of.

Q: Did BMO internally prepare any due diligence documents relating to any due diligence investigation that might have been done on the Refco IPO?

A: You know, again, we were entitled to rely on the diligence of the leads.

Q: Did BMO receive any projections from Tom Lee or Refco in connection with any due diligence investigation in the IPO?

[...]

A: Not that I am aware of.

Q: Did BMO have any communications with Cravath relating to due diligence performed on the Refco IPO?

A: Not that I am aware of.

Q: So am I correct that BMO did no due diligence on its own?

A: BMO relied on the diligence of the leads. We made these internal inquiries, as I discussed. And we reviewed the red herring. That's what we did.

Browne Decl. Ex. S (BMO Tr.) at 113-15, 122-27 and 130.

Underwriters' Paragraph 84: As part of BMO's prior relationship, BMO conducted due diligence on Refco in connection with the Refco LBO. See Wilson Decl. Exhs. 188; 169 (BMO Tr.) at 59:10 - 60:9; Begley Decl. at ¶ 19.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute that BMO conducted some due diligence in its capacity as a lender to Refco in the Refco LBO. Lead Plaintiffs dispute any inference or suggestion that this constituted due diligence in connection with the Refco IPO because, among other reasons, BMO's activities in connection with the Refco LBO did not involve any attempt to verify the accuracy of the Refco IPO Registration Statement or any other similar document. Further, Lead Plaintiffs expressly incorporate and rely on Lead Plaintiffs' Responses to Underwriters' Paragraph 83.

Underwriters' Paragraph 85: BMO had internal discussions confirming that Refco was a client in good standing and reviewed portions of the preliminary prospectus. See Begley Decl. at 21.

Responses: Lead Plaintiffs dispute Underwriters' Paragraph 85, and expressly incorporate and rely on Lead Plaintiffs' Responses to Underwriters' Paragraph 83.

Underwriters' Paragraph 86: After reading the preliminary prospectus, BMO independently concluded that it was not aware of any statements that it thought were inaccurate or misleading. See Begley Decl. at ¶ 26.

Responses: Lead Plaintiffs dispute Underwriters' Paragraph 86, and expressly incorporate and rely on Lead Plaintiffs' Responses to Underwriters' Paragraph 83.

Underwriters' Paragraph 87: Between July 29 and August 5, 2005, the Junior Underwriters accepted "the invitation [wire] dated July 29, 2005 to participate as one [of] the several underwriters in the equity offering of Refco Inc." See Wilson Decl., Exhs. 126 - 132.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters'

Paragraph 87, except to clarify that the Junior Underwriters each individually accepted the invitation wires. Wilson Decl., Exhs. 126 - 132.

Underwriters' Paragraph 88: The Junior Underwriters expected that the Lead Managers conducted, and would continue to conduct, a reasonable investigation into the representations made by the issuer and its management and the disclosures in the registration statement for the purpose of establishing a reasonable belief that the statements in the issuer's registration statement are true and that there is no omission to state a material fact required to be stated or necessary to make the statements not misleading. See Begley Decl. at ¶¶ 40-41; Turner Decl. at ¶¶ 36-37; Goldman Decl. at ¶¶ 35-36; Reyes Decl. at ¶ 22; Washburn Decl. at ¶¶ 34-35; Levin Decl. at ¶¶ 33-34.

Responses: Lead Plaintiffs dispute Underwriters' Paragraph 88. The Junior Underwriters have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

Underwriters' Paragraph 89: The Junior Underwriters understood that the Lead Managers had retained legal counsel and, to the extent necessary, other experts on behalf of the entire IPO underwriting syndicate. See Begley Decl. at ¶ 32; Turner Decl. at ¶ 28; Goldman Decl. at ¶ 27; Reyes Decl. at 18; Washburn Decl. at ¶ 27; Levin Decl. at 1125.

Responses: Lead Plaintiffs dispute Underwriters' Paragraph 89 and expressly incorporate and rely on Lead Plaintiffs' Response to Underwriters' Paragraph 25.

Underwriters' Paragraph 90: The Junior Underwriters expected the Lead Managers to negotiate an underwriting agreement with the issuer. See Begley Decl. at ¶ 12; Turner Decl. at ¶ 14; Goldman Decl. at ¶ 13; Reyes Decl. at ¶ 9; Washburn Decl. at ¶ 12; Levin Decl. at ¶ 11.

Responses: Lead Plaintiffs dispute Underwriters' Paragraph 90 and expressly incorporate and rely on Lead Plaintiffs' Response to Underwriters' Paragraph 25.

Underwriters' Paragraph 91: The Junior Underwriters expected the Lead Managers to lead the effort to market the IPO. See Begley Decl. at ¶12; Turner Decl. at ¶ 14; Goldman Decl. at ¶ 13; Reyes Decl. at ¶ 9; Washburn Decl. at ¶ 12; Levin Decl. at ¶ 11.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 91.

Underwriters' Paragraph 92: The Junior Underwriters expected the Lead Managers to invite other junior underwriters to participate in an Refco IPO Underwriting Syndicate to assist with the sale of the securities. See Begley Decl. at ¶ 12; Turner Decl. at ¶ 14; Goldman Decl. at ¶ 13; Reyes Decl. at ¶ 9; Washburn Decl. at ¶ 12; Levin Decl. at ¶ 11.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 92.

Underwriters' Paragraph 93: The Junior Underwriters expected Cravath to obtain comfort letters, legal opinions, and negative assurance letters in connection with their role as Underwriters' Counsel. See Begley Decl. at ¶ 35; Turner Decl. at ¶ 31; Goldman Decl. at ¶ 30; Reyes Decl. at 21; Washburn Decl. at ¶ 29; Levin Decl. at 28.

Responses: Lead Plaintiffs dispute Underwriters' Paragraph 93 and expressly incorporate and rely on Lead Plaintiffs' Response to Underwriters' Paragraph 25.

Underwriters' Paragraph 94: The Junior Underwriters contributed to the payment of Cravath's legal fees. See Begley Decl. at ¶ 33; Turner Decl. at ¶ 29; Goldman Decl. at ¶ 28; Reyes Decl. at ¶ 19; Washburn Decl. at ¶ 28; Levin Decl. at ¶ 26.

Responses: Lead Plaintiffs dispute Underwriters' Paragraph 94 and expressly incorporate and rely on Lead Plaintiffs' Response to Underwriters' Paragraph 25.

Underwriters' Paragraph 95: On August 10, 2005, the Refco IPO Underwriting Syndicate and Refco entered into an Underwriting Agreement. See Wilson Decl., Ex. 141 at 20.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 95, except to the use of the term "Refco IPO Underwriting Syndicate," which is not

supported by the text of the cited exhibit and to respectfully refer the Court to the Underwriting Agreement for a true and complete statement of its contents. Wilson Decl. Ex. 141.

Underwriters' Paragraph 96: The "Underwriters" identified in the Underwriting Agreement consisted of the Lead Managers, Co-Managers, and Junior Underwriters. The Underwriting Agreement designated the Lead Managers "Representatives" of the several underwriters (including the Junior Underwriters), authorized the Representatives to act for the several underwriters in connection with the IPO, and provided that any action taken by the Representatives would be binding upon all of the underwriters. See Wilson Decl., Ex. 141 at 20.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 96, except to the use of the term "Refco IPO Underwriting Syndicate," which is not supported by the text of the cited exhibit and to respectfully refer the Court to the Underwriting Agreement for a true and complete statement of its contents. Wilson Decl. Ex. 141.

Underwriters' Paragraph 97: The Underwriting Agreement contained various provisions designed to assure and further the efficacy of the Refco IPO Underwriting Syndicate's due diligence, including provisions requiring the following before closing: (a) receipt of a comfort letter from Refco's outside auditors; (b) statements from Refco's various legal counsel opining to the accuracy of the IPO Registration Statement; (c) a letter from Cravath indicating that they had received sufficient documentation from Refco to opine as to the validity of the securities; and (d) a Certificate from Refco's President and Chief Financial Officer stating that the representations and warranties under the Underwriting Agreement were true and correct. See Wilson Decl., Ex. 141.

Responses: Lead Plaintiffs dispute Underwriters' Paragraph 97, and the use of the terms "Refco IPO Underwriting Syndicate" and "designed to assure the further efficacy" of "due diligence," which are not supported by the text of the cited exhibit. Lead Plaintiffs respectfully refer the Court to the Underwriting Agreement for a true and complete statement of its contents and note that the Underwriting Agreement does not indicate that any Junior Underwriter conducted its own investigation or verified that anyone else did in their stead. Wilson Decl. Ex. 141.

Underwriters' Paragraph 98: On August 10, 2005, Refco's independent auditor, Grant Thornton, LLP, provided the Lead Managers, Co-Managers, and Junior Underwriters with a "comfort letter" containing statements about the auditor's review of the interim financial statement, including a statement that the financial statements included in the IPO Registration Statement and Preliminary Prospectus fairly presented the position of Refco. See Wilson Decl., Ex. 140.

Responses: Lead Plaintiffs dispute Underwriters' Paragraph 98 as the statements therein are not supported by the text of the "comfort letter" dated August 10, 2005. Lead Plaintiffs respectfully refer the Court to the "comfort letter" dated August 10, 2005 for a true and complete statement of its contents. Wilson Decl. Ex. 140.

Underwriters' Paragraph 99: On August 10, 2005, the shares for the Refco IPO were priced. See Wilson Decl., Ex. 194; Browne Decl. Ex. H at 1.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 99.

Underwriters' Paragraph 100: The Refco IPO Underwriting Syndicate placed 26,500,000 shares at \$22.00 per share. See Wilson Decl., Ex. 194; Browne Decl. Ex. H at 1.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 100, except to Underwriters' use of the term "Refco IPO Underwriting Syndicate," which is not supported by the cited exhibits.

Underwriters' Paragraph 101: The Refco IPO Underwriting Syndicate sold approximately 3.975 million additional shares under a "green-shoe" option in the IPO Registration Statement. See Wilson Decl., Ex. 197.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 101, except to Underwriters' use of the term "Refco IPO Underwriting Syndicate," which is not supported by the cited exhibits.

Underwriters' Paragraph 102: Cravath furnished a 10b-5 opinion letter ("Cravath Opinion Letter") and negative assurance letter ("Cravath Negative Assurance Letter") to the Lead Managers, Co-Managers, and Junior Underwriters. See Wilson Decl., Exhs. 145; 187; Stephanakis Decl. at ¶ 13(f).

Responses: Lead Plaintiffs dispute Underwriters' Paragraph 102 and expressly incorporate and rely on Lead Plaintiffs' Responses to Underwriter's Paragraph 25 herein.

Underwriters' Paragraph 103: On August 16, 2005, Refco's outside counsel, Weil, Gotshal & Manges LLP ("Weil Gotshal") furnished a 10b-5 opinion letter ("Weil Gotshal Opinion Letter") and negative assurance letter ("Weil Gotshal Negative Assurance Letter") to the Lead Managers, Co-Managers, and Junior Underwriters. See Wilson Decl., Exhs. 146; 69.

Responses: Lead Plaintiffs dispute that the letter was furnished to the Junior Underwriters as there is no evidence that the Junior Underwriters received the letter. For purposes of this Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 103, except respectfully refer the Court to the letters provided by Weil Gotshal for a true and complete statement of their contents. Wilson Decl. Exhs. 146; 69.

Underwriters' Paragraph 104: The Weil Gotshal Opinion Letter stated that the Registration Statement and the Prospectus "compl[ie]d as to form in all material respects with the requirements of the [Securities Act of 1933] and the rules and regulations thereunder" and the "statements in the Prospectus under the captions 'Business-Regulation,' 'Certain Relationships and Related Transactions,' 'Description of Capital Stock,' 'Description of Indebtedness,' and 'Shares Eligible for Future Sale' . . . fairly summarize the matters referred to in all material respects." See Wilson Decl., Ex. 146.

Responses: For purposes of this Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 104, except respectfully refer the Court to the letter provided by Weil Gotshal for a true and complete statement of its contents. Wilson Decl. Exs. 146. Lead Plaintiffs note that the referenced letter stated that it expressed no opinion on Refco's unaudited or audited financial statements.

Underwriters' Paragraph 105: The Weil Gotshal Negative Assurance Letter stated that no facts had come to the firm's attention during the course of performing its services to Refco, which caused it "to believe that the Registration Statement, as of its effective date, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading. ..." See Wilson Decl., Ex. 69.

Responses: For purposes of this Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 105, except respectfully refer the Court to the letter provided by Weil Gotshal for a true and complete statement of its contents. Wilson Decl. Exs. 69.

Underwriters' Paragraph 106: On August 16, 2005, Refco's outside counsel, Mayer Brown Rowe & Maw LLP ("Mayer Brown") furnished a letter to the Lead Managers, Co-Managers, and Junior Underwriters (the "Mayer Brown Opinion Letter"). See Wilson Decl., Ex. 147.

Responses: Lead Plaintiffs dispute that the Mayer Brown letter was furnished to the Junior Underwriters, as the cited exhibit does not support that statement. For purposes of this Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 106, except respectfully refer the Court to the letter provided by Mayer Brown for a true and complete statement of their contents. Wilson Decl. Exs. 147. Lead Plaintiffs note that the letter stated "we are not passing upon and assume no responsibility for the accuracy, completeness, or fairness of the statements contained [in the registration statement] or making any representation that we independently verified or checked the accuracy, completeness of fairness of such statements."

Underwriters' Paragraph 107: The Mayer Brown, Opinion Letter stated "statements contained in the Prospectus under the captions 'Risk Factors-Risk Relating to Our Company-We are subject to an SEC investigation, which could adversely affect our business' and 'Business-Legal Proceedings-SEC Investigation'," when filed contained no "untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements in the Prospectus . . . not misleading." See Wilson Decl., Ex. 147.

Responses: For purposes of this Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 107, except respectfully refer the Court to the letter provided by Mayer Brown for a

true and complete statement of its contents. Wilson Decl. Exs. 147. Lead Plaintiffs note that the letter stated “we are not passing upon and assume no responsibility for the accuracy, completeness, or fairness of the statements contained [in the registration statement] or making any representation that we independently verified or checked the accuracy, completeness of fairness of such statements.”

Underwriters’ Paragraph 108: On August 16, 2005, the President and Chief Executive Officer of Refco, Phillip R. Bennett, and the Executive Vice President and Chief Financial Officer of Refco, Gerald M. Sherer, furnished an Officers Certificate to the Lead Managers, Co-Managers, and Junior Underwriters (the "Officers' Certificate"). See Wilson Decl., Ex. 148.

Responses: Lead Plaintiffs dispute that the Officers’ Certificate was ever furnished to the Junior Underwriters, as the cited exhibit does not support that statement. For purposes of this Motion only, Lead Plaintiffs do not otherwise dispute Underwriters’ Paragraph 108, except respectfully refer the Court to the letter provided by Bennett and Sherer for a true and complete statement of its contents. Wilson Decl. Exs. 148.

Underwriters’ Paragraph 109: The Officers' Certificate certified that, among other things, "the representations and warranties of the Company in the Underwriting Agreement are true and correct on the date hereof." See Wilson Decl., Ex. 148.

Responses: For purposes of this Motion only, Lead Plaintiffs do not dispute Underwriters’ Paragraph 109, except respectfully refer the Court to the letter provided by Bennett and Sherer for a true and complete statement of its contents. Wilson Decl. Exs. 148.

Underwriters’ Paragraph 110: One of the representations and warranties of Refco set forth in the Underwriting Agreement was that "the financial statements included in each Registration Statement and the Prospectus present fairly the financial position of Refco Group Ltd., LLC" See Wilson Decl., Ex. 141 at 5.

Responses: For purposes of this Motion only, Lead Plaintiffs do not dispute Underwriters’

Paragraph 104, except respectfully refer the Court to the Underwriting Agreement for a true and complete statement of its contents. Wilson Decl. Exs. 141.

Underwriters' Paragraph 111: Junior underwriters are one of several tiers in a typical IPO underwriting syndicate. See Begley Decl. at ¶ 11; Turner Decl. at ¶ 12; Goldman Decl. at 12; Reyes Decl. at ¶ 8; Washburn Decl. at ¶ 11; Levin Decl. at ¶ 10; Daines Decl. at ¶ 10; Erb Decl. at II 33; Rudley Decl. at ¶ 17.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 111.

Underwriters' Paragraph 112: IPO underwriting syndicates usually consist of lead managers, co-managers, and junior underwriters, each of which serve different roles and have different responsibilities. See Begley Decl. at ¶ 11; Turner Decl. at ¶ 12; Goldman Decl. at ¶ 12; Reyes Decl. at ¶ 8; Washburn Decl. at ¶ 11; Levin Decl. at ¶ 10; Daines Decl. at ¶ 20-25; Erb Decl. at ¶ 33-34; Rudley Decl. at ¶ 17-20.

Responses: Lead Plaintiffs' dispute Underwriters' use of the phrase "different responsibilities" insofar as it means or implies that underwriters in an IPO have different legal responsibilities, which is conclusory, inappropriate for inclusion in a 56.1 statement, contrary to Section 11 of the Securities Act of 1933, and should be disregarded. For purposes of the Motion only, Lead Plaintiffs do not otherwise dispute Underwriters' Paragraph 112.

Underwriters' Paragraph 113: A junior underwriter serves the important purpose of expanding the channels of distribution available in the marketplace, thus increasing the likelihood of a successful offering and marketing the securities to a larger, more diverse pool of investors. See Begley Decl. at ¶ 14; Turner Decl. at ¶ 16; Goldman Decl. at ¶ 15; Washburn Decl. at ¶ 14; Levin Decl. at ¶ 13; Daines Decl. at ¶ 20-22; Erb Decl. at ¶ 36; Rudley Decl. at ¶ 20.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 113, which is irrelevant to this Motion.

Underwriters' Paragraph 114: By the time that junior underwriters are invited into an underwriting syndicate, the lead and co-managers, aided by underwriters' counsel, have already

substantially completed their due diligence investigation for the purpose of establishing a reasonable belief that the statements in the issuer's registration statement are true and that there is no omission to state a material fact required to be stated or necessary to make the statements not misleading. See Begley Decl. at 15; Turner Decl. at 17; Goldman Decl. at 16; Reyes Decl. at I 10; Washburn Decl. at 15; Levin Decl. at ¶ 14; Daines Decl. at 20-25, 33; Erb Decl. at ¶ 36; Rudley Decl. at 22-24.

Responses: The statements in Underwriters' Paragraph 114 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters' investigation relating to the Refco IPO, and they have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that the statements in Underwriters' Paragraph 114 are true for some (though not all) offerings. Lead Plaintiffs dispute any suggestion or inference in Underwriters' Paragraph 114 that it is inappropriate as a matter of industry custom and practice for participating or junior underwriters to play no role in conducting due diligence concerning public offering. The corporate representative for lead underwriter Credit Suisse Securities (USA) LLC testified to the benefits of having more investment banks involved in the due diligence process:

Q: Are there benefits in your mind to underwriters conducting due diligence together?

A: I think in general the more parties involved, the more eyes looking at things, the more, you know, brains thinking about things, that's a good thing. And that could mean more than one person or it could mean more than one investment bank. It could mean more than one law firm, more than one accounting firm, consultants, et cetera.

Q: And why is it a good thing in your mind to have more eyes looking at things while you're conducting due diligence?

A: It's just a good thing to have more than one person thinking about different questions to ask or looking at things in a different way.

Browne Reply Decl. Ex. G at 450-451 (Excerpt of Transcript of Rule 30(b)(6) Deposition of Credit Suisse Securities (USA) LLC by its designee Joseph Molluso dated March 27, 2009 (“Molluso Tr.”)).

Underwriters' Paragraph 115: The Junior Underwriters delegation of investigatory functions to the Lead Managers, assisted by Cravath, was consistent with their own policies, procedures and regular practice. See Begley Decl. at ¶ 42; Turner Decl. at ¶ 38; Goldman Decl. at ¶ 37; Reyes Decl. at ¶ 23; Washburn Decl. at ¶ 36; Levin Decl. at ¶ 35.

Responses: Lead Plaintiffs dispute Underwriters' Paragraph 115 insofar as it suggests that the Junior Underwriters were aware that they were delegating investigatory functions to Cravath, and Lead Plaintiffs incorporate and rely upon their response to Underwriters' Paragraph 25.

Underwriters' Paragraph 116: The Refco IPO closed on August 16, 2005. See Wilson Decl., Ex. 6.

Responses: For purposes of the Motion only, Lead Plaintiffs do not dispute Underwriters' Paragraph 116, except to clarify that the Refco IPO Registration Statement became effective on August 10, 2005 and Refco's securities were sold to investors on or about August 10, 2005.

Browne Decl. Ex. H.

Underwriters' Paragraph 117: It is the standard custom and practice in the investment banking industry for all the underwriters in a syndicate to rely on the lead underwriters' investigation. See Daines Decl. at ¶¶ 9-75; Erb Decl. at ¶¶ 33-47; Rudley Decl. at ¶¶ 17-41.

Responses: The statements in Underwriters' Paragraph 117 are immaterial to the resolution of the Motion because the Motion concerns the Junior Underwriters who have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO

Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U.

For purposes of the Motion only, Lead Plaintiffs do not dispute that it is customary in the investment banking industry for junior underwriters to rely to some extent on the lead underwriters' investigation. Although it is immaterial to the Motion, Lead Plaintiffs dispute any suggestion or inference in Underwriters' Paragraph 117 that such reliance constitutes adequate due diligence by junior underwriters and/or entitles them to a "reasonable investigation" defense under Section 11 of the Securities Act of 1933.

Underwriters' Paragraph 118: Each Junior Underwriter reasonably relied on the Lead Managers and Syndicate Counsel to conduct due diligence on its behalf. See Daines Decl. at ¶¶ 101-12; Erb Decl. at ¶ 78; Rudley Decl. at ¶ 75.

Responses: Lead Plaintiffs dispute Underwriters' Paragraph 115. The Junior Underwriters have admitted that they themselves took no steps to perform any investigation into the accuracy of the Refco IPO Registration Statement or to verify the adequacy of any investigation conducted by anyone else in connection with the Refco IPO. Browne Decl. Exs. N, O, P, Q, R, S, T & U. Further, expert testimony on this legal issue is improper.

**LEAD PLAINTIFFS' SUPPLEMENTAL
STATEMENTS OF UNDISPUTED FACTS**

1. On Friday, April 3, 2009, the Underwriters wrote to the Court and submitted that, among things, the Motion was premature and should be deferred to a later date. Browne Reply Decl. Ex. H.

2. On Monday, April 6, 2009, Lead Plaintiffs wrote to the Court in response the Underwriters' April 3rd letter and explained that, among other things, "there is no basis to delay consideration of this motion, which presents narrow legal issues that can be determined now."

Browne Reply Decl. Ex. I.

Dated: May 29, 2009

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